

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubenstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 29, 2013

Via Electronic Filing

The Honorable Steven D. Arnold
State Office of Administrative Hearings
William P. Clements Building
300 West 15th Street, Room 504
Austin, Texas 78701

Re: AMAN & BROTHERS LLC d/b/a Convenient Corner
SOAH Docket No. 582-13-1825
TCEQ Docket No. 2012-0478-PST-E

Dear Judge Arnold:

Please find enclosed the Exceptions and Suggested Modifications to the Administrative Law Judge's Proposed Order for the above-referenced case.

Sincerely,

A handwritten signature in black ink that reads "Kari L. Gilbreth".

Kari L. Gilbreth
Attorney
Litigation Division

cc: Bridget C. Bohac, Chief Clerk, TCEQ
Amancio R. Gutierrez, Enforcement Division, TCEQ
James Murphy, Public Interest Counsel, TCEQ
Devinder S. Toor, Via CM/RRR No. 7012 3460 0000 1642 6590, and
Via Facsimile No. (254) 765-3059

**SOAH DOCKET NO. 582-13-1825
TCEQ DOCKET NO. 2012-0478-PST-E**

EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, Petitioner	§ § § § § § § § § §	BEFORE THE STATE OFFICE
VS.		OF
AMAN & BROTHERS LLC D/B/A CONVENIENT CORNER, Respondent; RN102276839		ADMINISTRATIVE HEARINGS

**EXECUTIVE DIRECTOR'S EXCEPTIONS TO THE
ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

NOW COMES the Executive Director, by and through his attorney, Kari L. Gilbreth, and submits the following exceptions to the Administrative Law Judge's ("ALJ") Proposed Order:

1. The Executive Director respectfully requests that Finding of Fact No. 1 be amended to correct a typographical error in the address of the site from 302 N. 3rd Street to 203 N. 3rd Street.
2. The Executive Director respectfully requests that Findings of Fact Nos. 3, 4 and 5 be moved between Findings of Fact Nos. 10 and 11 and re-numbered accordingly to clarify that the penalty amount referenced in Findings of Fact Nos. 3, 4 and 5 is the penalty amount described in the Executive Director's Second Amended Report and Petition ("EDSARP"). The Executive Director's Preliminary Report and Petition ("EDPRP"), referenced in Finding of Fact No. 2, contained a different proposed penalty amount.
3. The Executive Director respectfully requests that Finding of Fact No. 6 be amended to correct an error in the date that Respondent requested a contested case hearing from January 31, 2013 to November 19, 2012. January 31, 2013, is the date the case records were sent to SOAH.
4. The Executive Director respectfully requests that Finding of Fact No. 2, Conclusion of Law No. 7, and Ordering Provision No. 1 be amended to correct the citation from 30 TAC § 334.50(a)(1)(A) to 30 TAC § 334.50(b)(1)(A) so the citation references the same one contained in the EDSARP.
5. The Executive Director respectfully requests that the first sentence of Finding of Fact No. 13 be stricken and replaced with a new sentence for clarification purposes. The first sentence currently states: "Respondent has corrected the testing violations so corrective action regarding those violations is no longer necessary." The Executive Director suggests that the following sentence be utilized in its place: "According to Respondent, it has conducted its annual pressurized piping tightness test and line leak detector test for the underground storage tank (UST) system at the site, but Respondent has not yet

Executive Director's Exceptions to the Administrative Law Judge's Proposed Order
AMAN & BROTHERS LLC d/b/a Convenient Corner
TCEQ Docket No. 2012-0478-PST-E
SOAH Docket No. 582-13-1825

provided test results to the Executive Director."

PRAYER

To the extent that the Administrative Law Judge's Proposal for Decision is inconsistent with these exceptions and recommended modifications, the Executive Director excepts to the Proposal for Decision. Copies of the Proposed Order with the recommended modifications are attached. Attachment "A" is the redline/strikeout version which clearly delineates the recommended modifications. Attachment "B" is a copy of the Proposed Order incorporating the Executive Director's recommended changes.

Respectfully submitted,
Texas Commission on Environmental Quality

Zak Covar
Executive Director

Caroline M. Sweeney, Deputy Director
Office of Legal Services

Kathleen C. Decker, Director
Litigation Division

by 

Kari L. Gilbreth
State Bar of Texas No. 24040969
Litigation Division, MC 175
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-1320
(512) 239-3434 (FAX)

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of August, 2013, the original of the foregoing "Executive Director's Exceptions to the Administrative Law Judge's Proposed Order" ("Exceptions") were filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

I further certify that on this day true and correct copies of the foregoing Exceptions were sent to the following persons by the method of service indicated:

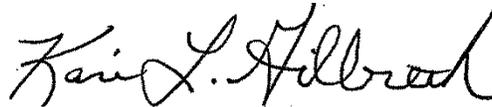
Mr. Devinder S. Toor, President &
Director
AMAN & BROTHERS LLC
P.O. Box 14
Wortham, Texas 76693

Via CM/RRR No. 7012 3460 0000 1642 6590,
and Via Facsimile No. (254) 765-3059

The Honorable Roy G. Scudday
State Office of Administrative Hearings
William P. Clements Building
300 West 15th Street, Suite 502
P.O. Box 13025
Austin, Texas 78711-3025

Electronically filed

I further certify that on this day a true and correct copy of the foregoing Exceptions were electronically submitted to Mr. James Murphy, Office of the Public Interest Counsel, Texas Commission on Environmental Quality, Austin, Texas.



Kari L. Gilbreth
Attorney
Litigation Division
Texas Commission on Environmental Quality

ATTACHMENT "A"

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER Assessing Administrative Penalties Against
Aman & Brothers LLC d/b/a Convenient Corner
TCEQ DOCKET NO. 2012-0478-PST-E
SOAH DOCKET NO. 582-13-1825**

On _____, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's Second Amended Report and Petition (EDSARP) recommending that the Commission enter an enforcement order assessing administrative penalties against Aman & Brothers LLC d/b/a Convenient Corner (Respondent). Roy G. Scudday, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted a public hearing on this matter on July 11, 2013, in Austin, Texas, and presented the Proposal for Decision.

The following are parties to the proceeding: Respondent, the Commission's Executive Director (ED), and the Office of Public Interest Counsel (OPIC).

After considering the ALJ's Proposal for Decision, the Commission makes the following Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT

1. On February 24, 2011, a contract environmental investigator for TCEQ conducted an investigation of Respondent's convenience store and gas station located at ~~302203~~ N. 3rd

Street, Wortham, Freestone County, Texas. The investigator observed several violations of the TCEQ rules regarding underground storage tanks.

2. On November 1, 2012, the ED issued the Executive Director's Report and Petition (EDPRP) in accordance with Texas Water Code (Code) § 7.054, alleging, among other items, that Respondent violated Code § 26.3475(a) and(c)(1) and 30 Texas Administrative Code (TAC) § 334.50(~~ab~~)(1)(A) and (b)(2), specifically for failing to have the pressurized piping tightness tested annually; failing to have the line leak detectors tested annually; and failing to monitor for releases at least once per month.

~~3. The ED recommended the imposition of an administrative penalty in the amount of \$2,635.00, and corrective action to bring the site into compliance.~~

~~4. The proposed penalty of \$2,635.00 represents the base penalty for the violations plus the costs avoided by not performing the required tests.~~

~~5. An administrative penalty of \$2,635.00 takes into account culpability, economic benefit, good faith efforts to comply, compliance history, release potential, and other factors set forth in Code § 7.053 and in the Commission's 2002 Penalty Policy.~~

~~6.3.~~ On ~~January 31, 2013~~ November 19, 2012, Respondent requested a contested case hearing on the allegations in the EDPRP.

~~7.4.~~ On December 20, 2012, the case was referred to SOAH for a hearing.

~~8.5.~~ On January 10, 2013, the Commission's Chief Clerk issued notice of the preliminary hearing to all parties, which included the date, time, and place of the hearing, the legal authority under which the hearing was being held, and the violations asserted.

~~9.6.~~ At the preliminary hearing that was held on February 28, 2013, the ED established jurisdiction to proceed.

~~10.7.~~ On June 26, 2013, the ED issued the EDSARP.

~~11.8.~~ The hearing on the merits was conducted on July 11, 2013, in Austin, Texas, by ALJ Roy G. Scudday.

9. Respondent was represented at the hearing by Devinder S. Toor, President of Respondent. The ED was represented by Kari Gilbreth, attorney in TCEQ's Litigation Division.

10. The ED recommended the imposition of an administrative penalty in the amount of \$2,635.00, and corrective action to bring the site into compliance.

11. The proposed penalty of \$2,635.00 represents the base penalty for the violations plus the costs avoided by not performing the required tests.
12. An administrative penalty of \$2,635.00 takes into account culpability, economic benefit, good faith efforts to comply, compliance history, release potential, and other factors set forth in Code § 7.053 and in the Commission's 2002 Penalty Policy.
13. ~~Respondent has corrected the testing violations so corrective action regarding those violations is no longer necessary.~~ According to Respondent, it conducted the annual pressurized piping tightness test and line leak detector test for the underground storage tank (UST) system at the site, but Respondent has not yet provided test results to the Executive Director. Corrective action regarding release detection is still needed.

II. CONCLUSIONS OF LAW

1. Under Code § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Code within the Commission's jurisdiction or of any rule, order, or permit adopted or issued thereunder.
2. Under the version of Code § 7.052 in effect on the date of the violations, a penalty may not exceed \$10,000 per violation, per day, for the violations at issue in this case.
3. Respondent is subject to the Commission's enforcement authority, pursuant to Code § 7.002.
4. As required by Code § 7.055 and 30 TAC §§ 1.11 and 70.104, Respondent was notified of the EDPRP and of the opportunity to request a hearing on the alleged violations, and the penalties and the corrective actions proposed therein.
5. As required by Texas Government Code §§ 2001.051(1) and 2001.052; Code § 7.058; 1 TAC § 155.27, and 30 TAC §§ 1.11, 1.12, 39.25, 70.104, and 80.6, Respondent was notified of the hearing on the alleged violations and the proposed penalties and corrective action.
6. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law, pursuant to Texas Government Code, ch. 2003.
7. Based on the above Findings of Fact Respondent violated Code § 26.3475(a) and(c)(1) and 30 TAC § 334.50(ab)(1)(A) and (b)(2).
8. In determining the amount of an administrative penalty, Code § 7.053 requires the Commission to consider several factors including:
 - Its impact or potential impact on public health and safety, natural resources and their

uses, and other persons;

- The nature, circumstances, extent, duration, and gravity of the prohibited act;
- The history and extent of previous violations by the violator;
- The violator's degree of culpability, good faith, and economic benefit gained through the violation;
- The amount necessary to deter future violations; and
- Any other matters that justice may require.

9. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.
10. Based on consideration of the above Findings of Fact, the factors set out in Code § 7.053, and the Commission's Penalty Policy, the ED correctly calculated the penalties for the alleged violations, and a total administrative penalty of \$2,635.00 is justified and should be assessed against Respondent, and the corrective action proposed by the ED regarding release detection should be implemented.

NOW, THEREFORE, IT IS ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. Aman & Brothers LLC d/b/a Convenient Corner is assessed an administrative penalty in the amount of \$2,635.00 for violation of Code § 26.3475(a) and(c)(1) and 30 TAC § 334.50(ab)(1)(A) and (b)(2). The payment of this administrative penalty and Aman & Brothers LLC's compliance with all the terms and conditions set forth in this Order will completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. All checks submitted to pay the penalty assessed by this Order shall be made out to "Texas Commission on Environmental Quality." Administrative penalty payments shall be sent with the notation "Re: Aman & Brothers LLC d/b/a Convenient Corner; Docket No. 2012-0478-PST-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Within 30 days from the effective date of the Commission Order, Respondent shall:

- a. Install and implement a release detection method for the underground storage tank (UST) system, in accordance with 30 TAC § 334.50; and
 - b. Install and implement a release detection method for the pressurized piping associated with the UST system, in accordance with 30 TAC § 334.50.
3. Within 45 days after the effective date of the Commission Order, Respondent shall submit written certification to demonstrate compliance with Corrective Action Ordering Provision Nos. 2(a) and (b). The certification required by these Corrective Action Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas notary public, and shall include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Frank Burlison, Waste Section, Manager
Waco Regional Office
Texas Commission on Environmental Quality
6801 Sanger Avenue, Suite 2500
Waco, Texas 78710-7826

4. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas (OAG) for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Commission Order.

5. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
6. The effective date of this Order is the date the Order is final, as provided by 30 TAC § 80.273 and Texas Government Code § 2001.144.
7. As required by Code § 7.059, the Commission's Chief Clerk shall forward a copy of this Order to Respondent.
8. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

Issue Date:

**TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

Bryan W. Shaw, Ph.D., Chairman for the Commission

ATTACHMENT "B"

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER Assessing Administrative Penalties Against
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2. On November 1, 2012, the ED issued the Executive Director's Report and Petition (EDPRP) in accordance with Texas Water Code (Code) § 7.054, alleging, among other items, that Respondent violated Code § 26.3475(a) and(c)(1) and 30 Texas Administrative Code (TAC) § 334.50(b)(1)(A) and (b)(2), specifically for failing to have the pressurized piping tightness tested annually; failing to have the line leak detectors tested annually; and failing to monitor for releases at least once per month.
3. On November 19, 2012, Respondent requested a contested case hearing on the allegations in the EDPRP.
4. On December 20, 2012, the case was referred to SOAH for a hearing.
5. On January 10, 2013, the Commission's Chief Clerk issued notice of the preliminary hearing to all parties, which included the date, time, and place of the hearing, the legal authority under which the hearing was being held, and the violations asserted.
6. At the preliminary hearing that was held on February 28, 2013, the ED established jurisdiction to proceed.
7. On June 26, 2013, the ED issued the EDSARP.
8. The hearing on the merits was conducted on July 11, 2013, in Austin, Texas, by ALJ Roy G. Scudday.
9. Respondent was represented at the hearing by Devinder S. Toor, President of Respondent. The ED was represented by Kari Gilbreth, attorney in TCEQ's Litigation Division.
10. The ED recommended the imposition of an administrative penalty in the amount of \$2,635.00, and corrective action to bring the site into compliance.
11. The proposed penalty of \$2,635.00 represents the base penalty for the violations plus the costs avoided by not performing the required tests.
12. An administrative penalty of \$2,635.00 takes into account culpability, economic benefit, good faith efforts to comply, compliance history, release potential, and other factors set forth in Code § 7.053 and in the Commission's 2002 Penalty Policy.
13. According to Respondent, it conducted the annual pressurized piping tightness test and line leak detector test for the underground storage tank (UST) system at the site, but Respondent has not yet provided test results to the Executive Director. Corrective action regarding release detection is still needed.

II. CONCLUSIONS OF LAW

1. Under Code § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Code within the Commission's jurisdiction or of any rule, order, or permit adopted or issued thereunder.
2. Under the version of Code § 7.052 in effect on the date of the violations, a penalty may not exceed \$10,000 per violation, per day, for the violations at issue in this case.
3. Respondent is subject to the Commission's enforcement authority, pursuant to Code § 7.002.
4. As required by Code § 7.055 and 30 TAC §§ 1.11 and 70.104, Respondent was notified of the EDPRP and of the opportunity to request a hearing on the alleged violations, and the penalties and the corrective actions proposed therein.
5. As required by Texas Government Code §§ 2001.051(1) and 2001.052; Code § 7.058; 1 TAC § 155.27, and 30 TAC §§ 1.11, 1.12, 39.25, 70.104, and 80.6, Respondent was notified of the hearing on the alleged violations and the proposed penalties and corrective action.
6. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law, pursuant to Texas Government Code, ch. 2003.
7. Based on the above Findings of Fact Respondent violated Code § 26.3475(a) and(c)(1) and 30 TAC § 334.50(b)(1)(A) and (b)(2).
8. In determining the amount of an administrative penalty, Code § 7.053 requires the Commission to consider several factors including:
 - Its impact or potential impact on public health and safety, natural resources and their uses, and other persons;
 - The nature, circumstances, extent, duration, and gravity of the prohibited act;
 - The history and extent of previous violations by the violator;
 - The violator's degree of culpability, good faith, and economic benefit gained through the violation;
 - The amount necessary to deter future violations; and
 - Any other matters that justice may require.
9. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.

10. Based on consideration of the above Findings of Fact, the factors set out in Code § 7.053, and the Commission’s Penalty Policy, the ED correctly calculated the penalties for the alleged violations, and a total administrative penalty of \$2,635.00 is justified and should be assessed against Respondent, and the corrective action proposed by the ED regarding release detection should be implemented.

NOW, THEREFORE, IT IS ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. Aman & Brothers LLC d/b/a Convenient Corner is assessed an administrative penalty in the amount of \$2,635.00 for violation of Code § 26.3475(a) and(c)(1) and 30 TAC § 334.50(b)(1)(A) and (b)(2). The payment of this administrative penalty and Aman & Brothers LLC’s compliance with all the terms and conditions set forth in this Order will completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. All checks submitted to pay the penalty assessed by this Order shall be made out to “Texas Commission on Environmental Quality.” Administrative penalty payments shall be sent with the notation “Re: Aman & Brothers LLC d/b/a Convenient Corner; Docket No. 2012-0478-PST-E” to:

Financial Administration Division, Revenues Section
Attention: Cashier’s Office, MC 214
Texas Commission on Environmental Quality
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2. Within 30 days from the effective date of the Commission Order, Respondent shall:
 - a. Install and implement a release detection method for the underground storage tank (UST) system, in accordance with 30 TAC § 334.50; and
 - b. Install and implement a release detection method for the pressurized piping associated with the UST system, in accordance with 30 TAC § 334.50.
3. Within 45 days after the effective date of the Commission Order, Respondent shall submit written certification to demonstrate compliance with Corrective Action Ordering Provision Nos. 2(a) and (b). The certification required by these Corrective Action Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts,

and/or other records, shall be notarized by a State of Texas notary public, and shall include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Frank Burleson, Waste Section, Manager
Waco Regional Office
Texas Commission on Environmental Quality
6801 Sanger Avenue, Suite 2500
Waco, Texas 78710-7826

4. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas (OAG) for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Commission Order.
5. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
6. The effective date of this Order is the date the Order is final, as provided by 30 TAC § 80.273 and Texas Government Code § 2001.144.
7. As required by Code § 7.059, the Commission’s Chief Clerk shall forward a copy of this Order to Respondent.

8. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

Issue Date:

**TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

Bryan W. Shaw, Ph.D., Chairman for the Commission