

SOAH DOCKET NO. 582-12-7936
TCEQ DOCKET NO. 2012-0996-PST-E

EXECUTIVE DIRECTOR OF THE TEXAS	§	BEFORE THE STATE OFFICE
COMMISSION ON ENVIRONMENTAL	§	
QUALITY,	§	
Petitioner	§	
	§	OF
V.	§	
	§	
YAHYA JAFREH A/K/A JOHN JAFREH,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

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

COMES NOW the Executive Director ("ED") of the Texas Commission on Environmental Quality ("TCEQ"), represented by the Litigation Division, after having reviewed the Administrative Law Judge's ("ALJ's") Proposed Order, and files the following exceptions before the State Office of Administrative Hearings ("SOAH").

The ED respectfully recommends the following revisions to the Proposed Order:

FINDING OF FACT NO. 3

The ED respectfully recommends that Finding of Fact No. 3, page 1, be revised as follows:

3. "On December 21, 2011, Daniel Hamilton, an investigator with the University Texas at [Austin Arlington's](#) petroleum storage tank program, conducted a UST inspection of the Facility. Based on his inspection Mr. Hamilton documented the following violations:"

FINDING OF FACT NO. 8

The ED respectfully recommends that Finding of Fact No. 8, page 2, be revised to reflect that the TCEQ utilizes two penalty policies depending on the date of occurrence of a violation: the September 2002 Policy and September 2011 Penalty Policy. The penalties relating to two of the violations were calculated using the 2002 Penalty Policy and the penalties relating to two other violations were calculated using the 2011 Penalty Policy. Specifically, the ED respectfully recommends that Finding of Fact No. 8 be revised to read as follows:

8. "The Commission has adopted a Penalty Policy effective September 1, 2002, [and a Penalty Policy effective September 1, 2011](#), that set forth its policy regarding the computation and assessment of administrative penalties."

FINDING OF FACT NO. 19

The ED respectfully recommends that Finding of Fact No. 19, page 3, be revised to distinguish the violation relating to release detection for the USTs from the violation relating to release detection for the piping associated with the UST system. Specifically, the ED respectfully recommends that Finding of Fact No. 19 be revised to read as follows.

19. "Respondent failed to monitor the USTs for releases at least once every month (not to exceed 35 days between each monitoring) and failed to provide proper relased detection for the pressurized piping associated with the USTs, by failing to conduct the annual piping tightness and line leak detector tests associated piping for releases at least once every month."

FINDING OF FACT NO. 21

The ED respectfully recommends that a Finding of Fact No. 21 be added to the Findings to reflect that Respondent has returned to compliance with regard to two of the violations. Specifically, the ED respectfully recommends that the proposed Finding of Fact No. 21 read as follows:

21. "Respondent renewed his TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form, and conducted the annual piping tightness and line leak detector tests on the piping associated with the UST system."

CONCLUSION OF LAW NO. 2

The ED respectfully recommends that Conclusion of Law No. 2, page 3, be revised to correct the citation to the legislative history of Tex. Water Code § 7.052, as it relates to the history of the \$10,000 per violation, per day base penalty, which was utilized to calculate the administrative penalty assessed in this matter. In addition, the ED respectfully recommends that a citation be included relating to the legislative history for the September 2011 Penalty Policy since the 2011 Penalty Policy was used to compute the penalty for two of the violations. Specifically, the ED respectfully recommends that Conclusion of Law No. 2 be revised to read as follows:

2. "The penalty may not exceed \$10,000 per violation, per day, for the violations at issue in this case calculated using the September 2002 Penalty Policy. (Texas Water Code § 7.052; Acts 1997, 75th Leg., R.S., ch. 1072, Section 2, eff. September 1, 1997). The penalty may not exceed \$25,000 per violation, per day, for the violations at issue in this case calculated using the September 2011 Penalty Policy. (Texas Water Code § 7.052; Acts 2011, 82nd Leg., R.S. ch. 1072, Section 1, eff. June 17, 2011)."

ORDERING PROVISION NO. 1

The ED respectfully recommends that Ordering Provision No. 1, page 4, be revised to read as follows:

1. "Within 30 days after the effective date of this Commission Order, Yahya Jafreh a/k/a John Jafreh shall pay an administrative penalty in the amount of \$7,741.00 for its his violations of Texas Water Code §§ 26.3467(a) and 26.3475(a) and (c)(1); and 30 TAC §§ 334.8(c)(4)(A)(vii), (c)(5)(A)(i), and (c)(5)(B)(ii); 334.10(b); and 334.50(b)(1)(A) and (b)(2)."

ORDERING PROVISION NO. 4

The ED respectfully recommends that Ordering Provision No. 4, page 5, be revised to reflect that the Respondent has obtained a valid delivery certificate from TCEQ, and,

therefore, there is no longer a requirement that the Facility cease accepting fuel. Specifically, the ED respectfully recommends that the Provision be revised to read as follows:

4. "Immediately upon the effective date of the Commission Order, Respondent shall: ~~(1) cease accepting fuel until such time as a valid delivery certificate is obtained from TCEQ by submitting a property completed UST registration and self-certification form, in accordance with 30 TAC § 334.8; and (2)~~ begin maintaining all UST records and ensure they are made immediately available for inspection upon request by TCEQ personnel, in accordance with 30 TAC § 334.10

ORDERING PROVISION NO. 5

The ED respectfully recommends that Ordering Provision No. 5, page 5, be revised to reflect that the Respondent has installed and implemented a release detection method for the piping associated with the USTs at the Facility, and, therefore, this requirement should be removed. Specifically, the ED respectfully recommends that the Ordering Provision be revised to read as follows:

5. "Within 30 days after the effective date of this Order, Respondent shall: (1) install and implement a release detection method for the USTs at the Facility, in accordance with 30 TAC § 334.50; ~~and (2) install and implement a release detection method for the piping associated with the USTs at the Facility, in accordance with 30 TAC 334.50.~~"

ORDERING PROVISION NO. 7

The ED respectfully recommends that Ordering Provision No. 7, page 6, be revised to reflect that the TCEQ's Houston Regional Office should be copied with the required certification and documentation to demonstrate compliance, as opposed to the Abilene Regional Office. Specifically, the ED respectfully recommends that Ordering Provision No. 7 be revised to read as follows:

7. "Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions 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:

Waste Section Manager
Texas Commission on Environmental Quality
[Houston Regional Office](#)
[5425 Polk Street, Suite H](#)
[Houston, Texas 77023-1425](#)
~~[Abilene Regional Office](#)~~
~~[1977 Industrial Boulevard](#)~~
~~[Abilene, Texas 79602-7833](#)~~"

PRAYER

To the extent that the Administrative Law Judge's Proposed Order is inconsistent with these exceptions and recommended modifications, the ED excepts to the Proposed Order. 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 ED'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, Division Director
Litigation Division



by _____

Steven M. Fishburn
State Bar of Texas No. 24050600
Litigation Division, MC 175
P.O. Box 13087
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(512) 239-3400
(512) 239-3434 (FAX)
Mike.Fishburn@tceq.texas.gov

CERTIFICATE OF SERVICE
YAHYA JAFREH A/K/A JOHN JAFREH
SOAH Docket No. 582-12-7936
TCEQ Docket No. 2012-0996-PST-E

I hereby certify that on this 19th day of July, 2013, the original and 7 copies 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 a true and correct copy of the foregoing Exceptions were sent to the following:

Via Electronic Filing

The Honorable Richard R. Wilfong
State Office of Administrative Hearings
300 W. 15th Street, Suite 504
Austin, Texas 78701-1649

Via Certified Mail, Postage Prepaid

Article No. 7012 3460 0000 1643 2898

James D. Hurst, Attorney at Law
1202 Sam Houston Avenue
Huntsville, Texas 77340

Via electronic mail

Ms. Amy Swanholm
Office of the Public Interest Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
Amy.Swanholm@tceq.texas.gov



Steven M. Fishburn
Attorney
Litigation Division
Texas Commission on Environmental Quality

ATTACHMENT A



**AN ORDER
ASSESSING ADMINISTRATIVE PENALTIES AGAINST AND
ORDERING CORRECTIVE ACTION BY
YAHYA JAFREH A/K/A JOHN JAFREH
TCEQ DOCKET NO. 2012-0996-PST-E,
SOAH DOCKET NO. 582-12-7936**

On _____, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's First Amended Report and Petition recommending that the Commission enter an order assessing administrative penalties against and requiring corrective action by Yahya Jafreh a/k/a John Jafreh (Respondent). A Proposal for Decision (PFD) was presented by Richard R. Wilfong, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a hearing concerning the First Amended Report and Petition on April 3, 2013, in Austin, Texas.

After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. Respondent is the owner of a convenience store with an underground storage tank (UST) system used for retail sales of gasoline located at 525 11th Street in Huntsville, Walker County, Texas (Facility).
2. The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the Commission's rules.
3. On December 21, 2011, Daniel Hamilton, an investigator with the University of Texas at ~~Austin~~ Arlington's petroleum storage tank program, conducted a UST inspection of the Facility. Based on his inspection Mr. Hamilton documented the following violations:

- Failure to have a current and valid UST delivery certificate.
 - Failure to provide proper release detection for USTs.
 - Failure to provide proper release detection for piping associated with the USTs.
 - Failure to maintain records pertaining to the UST system and to make them available for inspection by TCEQ personnel.
4. Respondent's failure to provide release detection for its USTs and associated piping created a potential for a release of contaminants that could cause major harm to groundwater.
 5. On July 26, 2012, the ED filed his First Amended Report and Petition and mailed a copy of it to Respondent at his last address of record known to the Commission.
 6. In the First Amended Report and Petition, the ED alleged that Respondent had violated Texas Water Code §§ 26.3467(a), and 26.3475(a) and (c)(1); and 30 TAC §§ 334.8(c)(4)(A)(vii), (c)(5)(A)(i), and (c)(5)(B)(ii); 334.10(b); and 334.50(b)(1)(A) and (b)(2). The ED proposed administrative penalties of \$7,741.00 for these violations.
 7. The ED also recommended that Respondent be required to take the corrective actions that are set out in the Ordering Provisions below.
 8. The Commission has adopted a Penalty Policy effective September 1, 2002, [and a Penalty Policy effective September 1, 2011, that](#) setting forth its policy regarding the computation and assessment of administrative penalties.
 9. The ED accurately calculated the \$7,741.00 administrative penalty in accordance with the Commission's Penalty Policy.
 10. On July 6, 2012, Respondent requested a hearing.
 11. On August 8, 2012, the ED filed a letter asking the Commission's Chief Clerk to refer this case to SOAH for hearing, and the Chief Clerk referred it to SOAH on August 20, 2012.
 12. On September 11, 2012, the Chief Clerk mailed a notice of hearing to the Respondent, the ED, and the Office of Public Interest Counsel (OPIC).
 13. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

14. On October 11, 2012, the ALJ convened a preliminary hearing at the SOAH hearing facility in Austin, Texas, to establish jurisdiction over the contested case and to establish a procedural schedule leading to a hearing on the merits.
15. On April 3, 2013, the ALJ convened the hearing on the merits at the SOAH hearing facility in Austin, Texas. Closing arguments were submitted in writing, and the record closed May 22, 2013.
16. At the hearing, the ED appeared through his attorney, Steven M. Fishburn, and Respondent appeared through his attorney, James Hurst.
17. Respondent failed to renew a previously issued TCEQ delivery certificate.
18. Respondent failed to make available to a common carrier a valid delivery certificate before accepting delivery of a regulated substance into the USTs.
19. Respondent failed to monitor the USTs for releases at least once every month (not to exceed 35 days between each monitoring) and failed to provide proper release detection for the pressurized piping associated with the USTs, by failing to conduct the annual piping tightness and line leak detector tests. ~~associated piping for releases at least once every month.~~
20. Respondent failed to maintain UST records and make them immediately available upon request by TCEQ personnel.
- ~~20.~~21. Respondent renewed his TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form, and conducted the annual piping tightness and line leak detector tests on the piping associated with the UST system.

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II. CONCLUSIONS OF LAW

1. Under Texas Water Code § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Texas Water Code or the Texas Health & Safety Code within the Commission’s jurisdiction or any rule, order, or permit adopted or issued thereunder.
2. The penalty may not exceed \$10,000 per violation, per day, for the violations at issue in this case calculated using the September 2002 Penalty Policy. (Texas Water Code § 7.052; Acts 1977-97, 75th Leg., R.S., Ch. 1072, Section 2, eff. September 1, 1997). The penalty may not exceed \$25,000 per violation, per day, for the violations at issue in

[this case calculated using the September 1, 2011 Penalty Policy. \(Texas Water Code § 7.052; Acts 2011, 82nd Leg., R.S. ch. 1072, Section 1, eff. June 17, 2011\).](#)

3. In determining the amount of an administrative penalty, Texas Water Code § 7.053 requires the Commission to consider several factors, and the Penalty Policy implements those factors.
4. The Commission may order a violator to take corrective action. Tex. Water Code § 7.073.
5. SOAH has jurisdiction over matters related to the hearing in this case, including the authority to issue a PFD with findings of fact and conclusions of law. Tex. Gov't Code, ch. 2003.
6. The ED has the burden of proof in this case by a preponderance of the evidence. 30 Tex. Admin. Code (TAC) § 80.17(d).
7. As required by Texas Water Code § 7.055 and 30 TAC §§ 1.11 and 70.104, Respondent was notified of the First Amended Report and Petition and of the opportunity to request a hearing on the alleged violations, penalties, and corrective actions proposed therein.
8. As required by Texas Government Code §§ 2001.051(1) and 2001.052; Texas Water Code § 7.058; 1 TAC § 155.401; and 30 TAC §§ 1.11, 1.12, 39.25, 70.104, and 80.6(b)(3), the Respondent was notified of the hearing on the alleged violations and the proposed penalties and corrective actions.
9. As the owner of the Facility, Respondent is responsible for its compliance with TCEQ rules pursuant to 30 TAC §§ 334.1(b)(3) and 334.2(73).
10. Respondent violated Texas Water Code §§ 26.3467(a), 26.3475(a) and (c)(1); and 30 TAC §§ 334.8(c)(4)(A)(vii), (c)(5)(A)(i), and (c)(5)(B)(ii); 334.10(b); 334.50(b)(1)(A) and (b)(2).
11. The penalty and corrective action that the ED proposed for Respondent's violations considered in this case conform to the requirements of the Texas Water Code, ch. 7, and the Commission's Penalty Policy.
12. The Respondent should be assessed a total of \$7,741.00 in penalties for the violations considered in this case and ordered to take the corrective actions proposed by the ED and described in the Ordering Provisions below.

III. ORDERING PROVISIONS

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

1. Within 30 days after the effective date of this Commission Order, Yahya Jafreh a/k/a John Jafreh shall pay an administrative penalty in the amount of \$7,741.00 for ~~its~~ his violations of Texas Water Code §§ 26.3467(a) and 26.3475(a) and (c)(1); and 30 TAC §§ 334.8(c)(4)(A)(vii), (c)(5)(A)(i), and (c)(5)(B)(ii); 334.10(b); and 334.50(b)(1)(A) and (b)(2).
2. Checks rendered to pay penalties imposed by this Order shall be made out to "TCEQ." Administrative penalty payments shall be sent with the notation "Re: Yahya Jafreh a/k/a John Jafreh., TCEQ Docket No. 2012-0996-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

3. The payment of the administrative penalty and the performance of all corrective action listed herein will completely resolve the violations set forth by this Order. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here.
4. Immediately upon the effective date of the Commission Order, Respondent shall: ~~(1) cease accepting fuel until such time as a valid delivery certificate is obtained from TCEQ by submitting a properly completed UST registration and self certification form, in accordance with 30 TAC § 334.8; and (2)~~ begin maintaining all UST records and ensure they are made immediately available for inspection upon request by TCEQ personnel, in accordance with 30 TAC § 334.10
5. Within 30 days after the effective date of this Order, Respondent shall: ~~(1)~~ install and implement a release detection method for the USTs at the Facility, in accordance with 30 TAC § 334.50; ~~and (2) install and implement a release detection method for the piping associated with the USTs at the Facility, in accordance with 30 TAC § 334.50.~~
6. Within 45 days after the effective date of this Order, Respondent shall submit written certification to demonstrate compliance with Ordering Provision Nos. 4 and 5. The certification shall be accompanied by detailed supporting documentation, including

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photographs, receipts, and 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.”

7. Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

with a copy to:

Waste Section Manager
Texas Commission on Environmental Quality
[Houston Regional Office](#)
[5425 Polk Street, Suite H](#)
[Houston, Texas 77023-1425](#)
~~[Abilene Regional Office](#)~~
~~[1977 Industrial Boulevard](#)~~
~~[Abilene, Texas 79602-7833](#)~~

8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas 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 Order.
9. 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.
10. The effective date of this Order is the date the Order is final. 30 TAC § 80.273 and Tex. Gov't Code § 2001.144.
11. The Commission's Chief Clerk shall forward a copy of this Order to Respondent.

12. 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.

ISSUED:

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 AND
ORDERING CORRECTIVE ACTION BY
YAHYA JAFREH A/K/A JOHN JAFREH
TCEQ DOCKET NO. 2012-0996-PST-E,
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 - Failure to maintain records pertaining to the UST system and to make them available for inspection by TCEQ personnel.
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 7. The ED also recommended that Respondent be required to take the corrective actions that are set out in the Ordering Provisions below.
 8. The Commission has adopted a Penalty Policy effective September 1, 2002, and a Penalty Policy effective September 1, 2011, that set forth its policy regarding the computation and assessment of administrative penalties.
 9. The ED accurately calculated the \$7,741.00 administrative penalty in accordance with the Commission's Penalty Policy.
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16. At the hearing, the ED appeared through his attorney, Steven M. Fishburn, and Respondent appeared through his attorney, James Hurst.
17. Respondent failed to renew a previously issued TCEQ delivery certificate.
18. Respondent failed to make available to a common carrier a valid delivery certificate before accepting delivery of a regulated substance into the USTs.
19. Respondent failed to monitor the USTs for releases at least once every month (not to exceed 35 days between each monitoring) and failed to provide proper release detection for the pressurized piping associated with the USTs, by failing to conduct the annual piping tightness and line leak detector tests.
20. Respondent failed to maintain UST records and make them immediately available upon request by TCEQ personnel.
21. Respondent renewed his TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form, and conducted the annual piping tightness and line leak detector tests on the piping associated with the UST system.

II. CONCLUSIONS OF LAW

1. Under Texas Water Code § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Texas Water Code or the Texas Health & Safety Code within the Commission's jurisdiction or any rule, order, or permit adopted or issued thereunder.
2. The penalty may not exceed \$10,000 per violation, per day, for the violations at issue in this case calculated using the September 2002 Penalty Policy. (Texas Water Code § 7.052; Acts 1997, 75th Leg., R.S., ch. 1072, Section 2, eff. September 1, 1997). The penalty may not exceed \$25,000 per violation, per day, for the violations at issue in this case calculated using the September 1, 2011 Penalty Policy. (Texas Water Code § 7.052; Acts 2011, 82nd Leg., R.S. ch. 1072, Section 1, eff. June 17, 2011).

3. In determining the amount of an administrative penalty, Texas Water Code § 7.053 requires the Commission to consider several factors, and the Penalty Policy implements those factors.
4. The Commission may order a violator to take corrective action. Tex. Water Code § 7.073.
5. SOAH has jurisdiction over matters related to the hearing in this case, including the authority to issue a PFD with findings of fact and conclusions of law. Tex. Gov't Code, ch. 2003.
6. The ED has the burden of proof in this case by a preponderance of the evidence. 30 Tex. Admin. Code (TAC) § 80.17(d).
7. As required by Texas Water Code § 7.055 and 30 TAC §§ 1.11 and 70.104, Respondent was notified of the First Amended Report and Petition and of the opportunity to request a hearing on the alleged violations, penalties, and corrective actions proposed therein.
8. As required by Texas Government Code §§ 2001.051(1) and 2001.052; Texas Water Code § 7.058; 1 TAC § 155.401; and 30 TAC §§ 1.11, 1.12, 39.25, 70.104, and 80.6(b)(3), the Respondent was notified of the hearing on the alleged violations and the proposed penalties and corrective actions.
9. As the owner of the Facility, Respondent is responsible for its compliance with TCEQ rules pursuant to 30 TAC §§ 334.1(b)(3) and 334.2(73).
10. Respondent violated Texas Water Code §§ 26.3467(a), 26.3475(a) and (c)(1); and 30 TAC §§ 334.8(c)(4)(A)(vii), (c)(5)(A)(i), and (c)(5)(B)(ii); 334.10(b); 334.50(b)(1)(A) and (b)(2).
11. The penalty and corrective action that the ED proposed for Respondent's violations considered in this case conform to the requirements of the Texas Water Code, ch. 7, and the Commission's Penalty Policy.
12. The Respondent should be assessed a total of \$7,741.00 in penalties for the violations considered in this case and ordered to take the corrective actions proposed by the ED and described in the Ordering Provisions below.

III. ORDERING PROVISIONS

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

1. Within 30 days after the effective date of this Commission Order, Yahya Jafreh a/k/a John Jafreh shall pay an administrative penalty in the amount of \$7,741.00 for his violations of Texas Water Code §§ 26.3467(a) and 26.3475(a) and (c)(1); and 30 TAC §§ 334.8(c)(4)(A)(vii), (c)(5)(A)(i), and (c)(5)(B)(ii); 334.10(b); and 334.50(b)(1)(A) and (b)(2).
2. Checks rendered to pay penalties imposed by this Order shall be made out to “TCEQ.” Administrative penalty payments shall be sent with the notation “Re: Yahya Jafreh a/k/a John Jafreh., TCEQ Docket No. 2012-0996-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

3. The payment of the administrative penalty and the performance of all corrective action listed herein will completely resolve the violations set forth by this Order. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here.
4. Immediately upon the effective date of the Commission Order, Respondent shall begin maintaining all UST records and ensure they are made immediately available for inspection upon request by TCEQ personnel, in accordance with 30 TAC § 334.10
5. Within 30 days after the effective date of this Order, Respondent shall install and implement a release detection method for the USTs at the Facility, in accordance with 30 TAC § 334.50.
6. Within 45 days after the effective date of this Order, Respondent shall submit written certification to demonstrate compliance with Ordering Provision Nos. 4 and 5. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and 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.”

7. Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions 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:

Waste Section Manager
Texas Commission on Environmental Quality
Houston Regional Office
5425 Polk Street, Suite H
Houston, Texas 77023-1425

8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas 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 Order.
9. 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.
10. The effective date of this Order is the date the Order is final. 30 TAC § 80.273 and Tex. Gov’t Code § 2001.144.
11. The Commission’s Chief Clerk shall forward a copy of this Order to Respondent.
12. 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.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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