

Anne Idsal, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Re: SOAH Docket No. 582-13-4305; TCEQ Docket No. 2012-2291-PST-E;
Re: Executive Director of the Texas Commission on Environmental Quality
v. Snappy Pappy's L.L.C.

1/7/2014

Dear Ms. Idsal:

I would like to file an exception or brief concerning the decision and order made by the ALJ Ms. Smith. Not on the grounds of did or did I not perform the required calculations, but on the grounds that insufficient information was supplied by the investigator to do those calculations required by Doing Inventory Right.

It is clear that the calculations were not done. Phillip Goodwin pointed it out as did the Respondent. The term inventory control involves five steps. The first of those are being done by machines designed to monitor tanks or ATG. The last two require calculations using those numbers obtained by the ATG machine sensors. The bag full of ATG tickets mentioned in the ALJ finding proves I am collecting the data for steps 1 – 3. The problem has always been how to apply them to the forms in Doing Inventory Right. In Section B Respondents Evidence it is convenient the ALJ left out the part where I mentioned the forms did not fit the blended pumps that are at my store. Temperature changes, Gas volume, inaccuracies in the pumps, and not being able to meter delivery amounts are mentioned in the 3rd paragraph 4th sentence. But not blended pumps. I bring this up because after the hearing Mr. Goodwin, Ms Mitchell, Mr. Sims, and Mr. Norwood and I all stayed in the hearing room so that they could show me how to comply by helping me fill out one of the sheets in the Doing Inventory Right. As they began to request numbers from my ATG tapes I asked how do you compensate for the fuel that is used by the blended pumps for the mid grade fuel. Their mouths dropped open and eyes got wide as they backed up and realized that the problem I had all along was now staring them in the face. They openly said that the calculations for the blended pumps were more complicated and they did not know how to do them. They referred me to a field agent in Tyler who could help me with those calculations. Sadly for me this was after the ALJ had left and judging by the report from the ALJ they did not bother to convey this to her. Call these folks, e-mail them, text them to prove this.

I think there is enough evidence to show that there is more that the TCEQ needs to look at in their investigation process. Not all stores fall into the cookie cutter process that was displayed in this case. There seems to be a failure to properly evaluate my needs from the outset of this and virtually no training where needed. It seems to be club and stick approach for compliance. I'm sure I'm not the only one having difficulty doing this, I'm just not willing to lie about it. This case brings to light the holes in the process that should alarm TCEQ for possible abuse. But then no one wants to point the finger at themselves.

Therefore I am asking for, in light of the new evidence concerning the blended pumps, that the fine be dropped and that I attend the training in Tyler.

Regards,

Tim Blair