

**SOAH DOCKET NO. 582-13-4033
TCEQ DOCKET NO. 2012-2570-PST-E**

EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, Petitioner	§ § § § § § § § § §	BEFORE THE STATE OFFICE
VS.		OF
SHASHI C. TANWAR D/B/A STAR FOOD MART 1, Respondent; RN102038916		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 ("ED"), 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 remove the words "owns and" in the first line. The Executive Director is alleging that Shashi Tanwar d/b/a Star Food Mart 1 operates the Facility.
2. The Executive Director respectfully requests that Finding of Fact No. 4 be amended to correct an error in the date that TCEQ Agreed Order Docket No. 2011-1108-PST-E ("Agreed Order") was issued. The Agreed Order was issued on March 15, 2012.
3. The Executive Director respectfully requests that Finding of Fact No. 16 be amended to correct a clerical error. The Executive Director requests that "334.501b)(2)(B)" be changed to "334.51(b)(2)(B)" to properly reflect the Texas Administrative Code citation.
4. The Executive Director respectfully requests the following new Finding of Fact No. 19 be included in the ALJ's Proposed Order, and the remaining Findings of Fact be renumbered accordingly: "Respondent submitted documentation to the ED indicating that the UST system now has corrosion protection."¹

¹ Investigator testimony at 43:30 through 46:44.

Executive Director's Exceptions to the Administrative Law Judge's Proposed Order
Shashi C. Tanwar d/b/a Star Food Mart 1
TCEQ Docket No. 2012-2570-PST-E
SOAH Docket No. 582-13-4033

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 6th day of January, 2014, the original of the foregoing "Executive Director's Exceptions to the Administrative Law Judge's Proposed Order" ("Exceptions") plus 7 copies 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:

Shashi C. Tanwar, Operator
Star Food Mart 1
1799 East Lancaster Avenue
Fort Worth, Texas 76103

Via CM/RRR No. 7012 3460 0000 1642 7276
and Via E-mail: tanwarmohan666@ymail.com

The Honorable Sharon Cloninger
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 Vic McWherter, Office of the Public Interest Counsel, Texas Commission on Environmental Quality, Austin, Texas.



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

ATTACHMENT "A"

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER
ASSESSING ADMINISTRATIVE PENALTIES AGAINST AND
ORDERING CORRECTIVE ACTION BY
SHASHI C. TANWAR D/B/A STAR FOOD MART 1,
TCEQ DOCKET NO. 2012-2570-PST-E,
SOAH DOCKET NO. 582-13-4033**

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 Shashi C. Tanwar d/b/a Star Food Mart 1 (Respondent). A Proposal for Decision (PFD) was presented by Sharon Cloninger, 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 November 5, 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 ~~owns and~~ operates an underground storage tank (UST) system at Star Food Mart 1 at 1799 East Lancaster Avenue, Fort Worth, Texas 76103 (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. The USTs contain a regulated petroleum substance as defined in the Commission's rules.
4. On March ~~15~~¹⁸, 2012, the Commission issued TCEQ Agreed Order Docket No. 2011-1108-PST-E (Agreed Order) to which Respondent had consented on October 11, 2011. Ordering Provision No. 2.a. of the Agreed Order required Respondent to begin maintaining all UST records; Ordering Provision 2.b.i. required Respondent to implement

a release detection method; and Ordering Provision 2.b.ii. required Respondent to install spill containment equipment.

5. As of September 20, 2012, Respondent had not begun keeping UST records.
6. As of September 20, 2012, Respondent had not implemented a release detection method.
7. Respondent's failure to monitor the USTs for releases created a potential for a release of contaminants that could cause major harm to human health or the environment.
8. As of September 20, 2012, Respondent had failed to equip the USTs with spill containment equipment.
9. Respondent's failure to install spill containment equipment on the USTs created a potential for a release of pollutants that could cause moderate harm to human health or the environment.
10. As of September 20, 2012, Respondent had failed to provide corrosion protection to all underground metal components of the USTs.
11. Respondent's failure to provide corrosion protection to all the underground metal components of the USTs created a potential for a release of pollutants that could cause major harm to human health or the environment.
12. On February 25, 2013, the ED filed his Preliminary Report and Petition and mailed a copy of it to Respondent at her last address of record known to the Commission.
13. On October 18, 2013, the ED filed a First Amended Preliminary Report and Petition (EDFARP) and mailed a copy of it to Respondent at her last address of record known to the Commission.
14. In the EDFARP, the ED alleged that Respondent had violated 30 Texas Administrative Code § 334.10(b) and Agreed Order Ordering Provision 2.a. by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel.
15. In the EDFARP, the ED alleged that Respondent had violated Texas Water Code § 26.3475(c)(1), 30 Texas Administrative Code § 334.50(b)(1)(a), and Agreed Order Ordering Provision No. 2.b.i. by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).
16. In the EDFARP, the ED alleged that Respondent had violated Texas Water Code § 26.3475(c)(2), 30 Texas Administrative Code § 334.501(b)(2)(B), and Agreed Order Ordering Provision No. 2.b.ii. by failing to equip the USTs with spill containment equipment.

17. Respondent equipped the USTs with spill containment equipment on November 27, 2012, after the Notice of Enforcement dated October 31, 2012.
18. In the EDFARP, the ED alleged that Respondent had violated Texas Water Code § 26.3475(d) and 30 Texas Administrative Code § 334.49(b)(2) by failing to provide corrosion protection to all underground metal components of the USTs.

19. Respondent submitted documentation to the ED indicating that the UST system now has corrosion protection.

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~~19-20.~~ The ED proposed administrative penalties of \$23,625 for these violations.

~~20-21.~~ The ED also recommended that Respondent be required to take corrective action.

~~21-22.~~ The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2011.

~~22-23.~~ In calculating a penalty, the ED treated the Respondent's failure to maintain UST records as one violation and calculated a penalty that assumed only one penalty event for 233 days, which represented the number of days between the March 18, 2012 Agreed Order effective date to the November 6, 2012 screening date.

~~23-24.~~ In accordance with the Commission's Penalty Policy:

- a. The base penalty for the failure to maintain UST records is \$25,000 per violation, before adjusting for other factors;
- b. The ED reduced the base-penalty total by 95% based on the Penalty Policy and increased the subtotal of \$1,250 by 20% because the Agreed Order had been issued; and
- c. The upward adjustment of the \$1,250 subtotal resulted in the \$1,500 penalty that the ED proposes.

~~24-25.~~ In calculating a penalty, the ED treated Respondent's failure to monitor the USTs as three violations and calculated a penalty that assumed only one penalty event per quarter for 233 days, which represented the number of days between the effective date of the Agreed Order and the date this case was screened for enforcement action by the ED.

~~25-26.~~ In accordance with the Commission's Penalty Policy:

- a. Respondent's UST system is a minor source;
- b. The base penalty for failure to monitor USTs is \$25,000 per violation before adjusting for other factors;

- c. The ED reduced the base-penalty total by 85% in accordance with the Penalty Policy for a subtotal of \$3,750 per violation for a total of \$11,250 and increased the subtotal by 20% because the Agreed Order had previously been issued; and
- d. The 20% upward adjustment of the subtotal of \$11,250 resulted in the \$13,500 penalty that the ED proposes.

| ~~26-27.~~ In calculating a penalty, the ED treated Respondent's failure to equip the USTs with spill containment equipment as three violations and calculated a penalty that assumed only one penalty event per quarter for 233 days, which represented the number of months between the effective date of the Agreed Order and the date this case was screened for enforcement action by the ED.

| ~~27-28.~~ In accordance with the Commission's Penalty Policy:

- a. Respondent's UST system is a minor source;
- b. The base penalty for failure to equip USTs with spill containment equipment is \$25,000 per violation before adjusting for other factors;
- c. The ED reduced the base penalty by 95% in accordance with the Penalty Policy for a subtotal of \$1,250 per violation or \$3,750 for the three violations and increased the subtotal by 20% for a total of \$4,500 because the Agreed Order had previously been issued;
- d. The ED reduced the \$3,750 subtotal by 10% or \$375 because Respondent came into compliance on November 27, 2012.
- e. Subtracting the \$375 from the \$4,500 subtotal resulted in the \$4,125 penalty that the ED proposes.

| ~~28-29.~~ In calculating a penalty, the ED treated Respondent's failure to provide corrosion protection to all underground components of the USTs as one violation and calculated a penalty that assumed only one penalty event per quarter for 47 days, which represented the number of days between the documentation of the violation during the September 20, 2012 investigation and the November 6, 2012 screening date.

| ~~29-30.~~ In accordance with the Commission's Penalty Policy:

- a. Respondent's UST system is a minor source;
- b. The base penalty for the failure to provide corrosion protection to all underground components of the USTs is \$25,000 per violation before adjusting for other factors;
- c. The ED reduced the base-penalty total by 85% in accordance with the Penalty Policy, for a subtotal of \$3,750, and increased the penalty by 20% because of

Respondent's compliance history as reflected by the violations of the provisions of the Agreed Order; and

- d. The 20% upward adjustment of the \$3,750 subtotal resulted in the \$4,500 penalty that the ED proposes.

- | ~~30~~31. On March 13, 2013, Respondent filed an answer to the EDFARP which the ED treated as a hearing request.
- | ~~31~~32. On April 25, 2013, 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.
- | ~~32~~33. On May 13, 2013, the Chief Clerk mailed a notice of hearing to Respondent, the ED, and the Office of Public Interest Counsel.
- | ~~33~~34. 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.
- | ~~34~~35. The preliminary hearing was held June 13, 2013, at SOAH, William P. Clements State Office Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Kari L. Gilbreth, Staff Attorney, appeared in person on behalf of the ED. Mohan Tanwar, the husband of Shashi C. Tanwar, appeared by telephone on behalf of Respondent.
- | ~~35~~36. The hearing was held November 5, 2013, at SOAH, William P. Clements State Office Building, 300 West 15th Street, Fourth Floor, Austin, Texas.
- | ~~36~~37. At the hearing, Ms. Gilbreth, Staff Attorney, appeared in person on behalf of the ED and Respondent was represented by Mr. Tanwar, who appeared by telephone.
- | ~~37~~38. The hearing was concluded and the record was closed on that same day.

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 any rule, order, or permit adopted or issued thereunder.
2. The penalty may not exceed \$25,000 per violation, per day, for each of the violations at issue in this case. Texas Water Code § 7.052.
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 § 80.17(d).
7. As required by Texas Water Code § 7.055 and 30 Texas Administrative Code §§ 1.11 and 70.104, Respondent was notified of the EDFARP and of the opportunity to request a hearing on the alleged violations, penalties, and corrective action proposed therein.
8. As required by Texas Government Code §§ 2001.051(1) and 2001.052; Texas Water Code § 7.058; 1 Texas Administrative Code § 155.401; and 30 Texas Administrative Code §§ 1.11, 1.12, 39.25, 70.104, and 80.6(b)(3), Respondent was notified of the hearing on the alleged violations and the proposed penalties and corrective action.
9. Respondent violated 30 Texas Administrative Code § 334.10(b) and the Agreed Order, Ordering Provision No. 2.a.
10. Respondent violated Texas Water Code § 26.3475(c)(1), 30 Texas Administrative Code § 334.50(b)(1)(A), and the Agreed Order, Ordering Provision No. 2.b.i.
11. Respondent violated Texas Water Code § 26.3475(c)(2), 30 Texas Administrative Code § 334.51(b)(2)(B), and the Agreed Order, Ordering Provision No. 2.b.ii.
12. Respondent violated Texas Water Code § 26.3475(d) and 30 Texas Administrative Code § 334.49(b)(2).
13. The penalty and corrective action that the ED proposed for the Respondent's violations considered in this case conform to the requirements of the Texas Water Code, ch. 7 and the Commission's Penalty Policy.
14. Respondent should be assessed a total of \$23,625 in penalties for the violations considered in this case and ordered to take the corrective action 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, Respondent shall pay an administrative penalty in the amount of \$23,625 for its violations of Texas Water Code § 26.3475(c)(1), (c)(2), and (d); 30 Texas Administrative Code §§ 334.10(b), 334.49(b)(2), 334.50(b)(1)(A), and 334.51(b)(2)(B); and TCEQ Agreed Order Docket No. 2011-1108-PST-E, Ordering Provision Nos. 2.a., 2.b.i., and 2.b.ii., considered in this case.
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: Star Food Mart 1, TCEQ Docket No. 2012-2570-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 action or penalties for other violations that are not raised here.
4. Immediately upon the effective date of this Order, Respondent shall begin maintaining all UST records and ensure that they are made available for inspection upon request by agency personnel, in accordance with 30 Texas Administrative Code § 334.10.
5. Within 30 days of the effective date of this Order, Respondent shall implement a release detection method for all USTs at the Facility, in accordance with 30 Texas Administrative Code § 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/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.

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:

Sam Barrett, Waste Section Manager
Texas Commission on Environmental Quality
Dallas/Ft. Worth Regional Office
2309 Gravel Drive
Fort Worth, Texas 76118-6951

8. The ED 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 ED 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 Tex. Admin. Code § 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., P.E., Chairman
For the Commission

ATTACHMENT "B"

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER
ASSESSING ADMINISTRATIVE PENALTIES AGAINST AND
ORDERING CORRECTIVE ACTION BY
SHASHI C. TANWAR D/B/A STAR FOOD MART 1,
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SOAH DOCKET NO. 582-13-4033**

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 Shashi C. Tanwar d/b/a Star Food Mart 1 (Respondent). A Proposal for Decision (PFD) was presented by Sharon Cloninger, 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 November 5, 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 operates an underground storage tank (UST) system at Star Food Mart 1 at 1799 East Lancaster Avenue, Fort Worth, Texas 76103 (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. The USTs contain a regulated petroleum substance as defined in the Commission's rules.
4. On March 15, 2012, the Commission issued TCEQ Agreed Order Docket No. 2011-1108-PST-E (Agreed Order) to which Respondent had consented on October 11, 2011. Ordering Provision No. 2.a. of the Agreed Order required Respondent to begin maintaining all UST records; Ordering Provision 2.b.i. required Respondent to implement

- a release detection method; and Ordering Provision 2.b.ii. required Respondent to install spill containment equipment.
5. As of September 20, 2012, Respondent had not begun keeping UST records.
 6. As of September 20, 2012, Respondent had not implemented a release detection method.
 7. Respondent's failure to monitor the USTs for releases created a potential for a release of contaminants that could cause major harm to human health or the environment.
 8. As of September 20, 2012, Respondent had failed to equip the USTs with spill containment equipment.
 9. Respondent's failure to install spill containment equipment on the USTs created a potential for a release of pollutants that could cause moderate harm to human health or the environment.
 10. As of September 20, 2012, Respondent had failed to provide corrosion protection to all underground metal components of the USTs.
 11. Respondent's failure to provide corrosion protection to all the underground metal components of the USTs created a potential for a release of pollutants that could cause major harm to human health or the environment.
 12. On February 25, 2013, the ED filed his Preliminary Report and Petition and mailed a copy of it to Respondent at her last address of record known to the Commission.
 13. On October 18, 2013, the ED filed a First Amended Preliminary Report and Petition (EDFARP) and mailed a copy of it to Respondent at her last address of record known to the Commission.
 14. In the EDFARP, the ED alleged that Respondent had violated 30 Texas Administrative Code § 334.10(b) and Agreed Order Ordering Provision 2.a. by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel.
 15. In the EDFARP, the ED alleged that Respondent had violated Texas Water Code § 26.3475(c)(1), 30 Texas Administrative Code § 334.50(b)(1)(a), and Agreed Order Ordering Provision No. 2.b.i. by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).
 16. In the EDFARP, the ED alleged that Respondent had violated Texas Water Code § 26.3475(c)(2), 30 Texas Administrative Code § 334.51(b)(2)(B), and Agreed Order Ordering Provision No. 2.b.ii. by failing to equip the USTs with spill containment equipment.

17. Respondent equipped the USTs with spill containment equipment on November 27, 2012, after the Notice of Enforcement dated October 31, 2012.
18. In the EDFARP, the ED alleged that Respondent had violated Texas Water Code § 26.3475(d) and 30 Texas Administrative Code § 334.49(b)(2) by failing to provide corrosion protection to all underground metal components of the USTs.
19. Respondent submitted documentation to the ED indicating that the UST system now has corrosion protection.
20. The ED proposed administrative penalties of \$23,625 for these violations.
21. The ED also recommended that Respondent be required to take corrective action.
22. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2011.
23. In calculating a penalty, the ED treated the Respondent's failure to maintain UST records as one violation and calculated a penalty that assumed only one penalty event for 233 days, which represented the number of days between the March 18, 2012 Agreed Order effective date to the November 6, 2012 screening date.
24. In accordance with the Commission's Penalty Policy:
 - a. The base penalty for the failure to maintain UST records is \$25,000 per violation, before adjusting for other factors;
 - b. The ED reduced the base-penalty total by 95% based on the Penalty Policy and increased the subtotal of \$1,250 by 20% because the Agreed Order had been issued; and
 - c. The upward adjustment of the \$1,250 subtotal resulted in the \$1,500 penalty that the ED proposes.
25. In calculating a penalty, the ED treated Respondent's failure to monitor the USTs as three violations and calculated a penalty that assumed only one penalty event per quarter for 233 days, which represented the number of days between the effective date of the Agreed Order and the date this case was screened for enforcement action by the ED.
26. In accordance with the Commission's Penalty Policy:
 - a. Respondent's UST system is a minor source;
 - b. The base penalty for failure to monitor USTs is \$25,000 per violation before adjusting for other factors;

- c. The ED reduced the base-penalty total by 85% in accordance with the Penalty Policy for a subtotal of \$3,750 per violation for a total of \$11,250 and increased the subtotal by 20% because the Agreed Order had previously been issued; and
 - d. The 20% upward adjustment of the subtotal of \$11,250 resulted in the \$13,500 penalty that the ED proposes.

- 27. In calculating a penalty, the ED treated Respondent's failure to equip the USTs with spill containment equipment as three violations and calculated a penalty that assumed only one penalty event per quarter for 233 days, which represented the number of months between the effective date of the Agreed Order and the date this case was screened for enforcement action by the ED.

- 28. In accordance with the Commission's Penalty Policy:
 - a. Respondent's UST system is a minor source;
 - b. The base penalty for failure to equip USTs with spill containment equipment is \$25,000 per violation before adjusting for other factors;
 - c. The ED reduced the base penalty by 95% in accordance with the Penalty Policy for a subtotal of \$1,250 per violation or \$3,750 for the three violations and increased the subtotal by 20% for a total of \$4,500 because the Agreed Order had previously been issued;
 - d. The ED reduced the \$3,750 subtotal by 10% or \$375 because Respondent came into compliance on November 27, 2012.
 - e. Subtracting the \$375 from the \$4,500 subtotal resulted in the \$4,125 penalty that the ED proposes.

- 29. In calculating a penalty, the ED treated Respondent's failure to provide corrosion protection to all underground components of the USTs as one violation and calculated a penalty that assumed only one penalty event per quarter for 47 days, which represented the number of days between the documentation of the violation during the September 20, 2012 investigation and the November 6, 2012 screening date.

- 30. In accordance with the Commission's Penalty Policy:
 - a. Respondent's UST system is a minor source;
 - b. The base penalty for the failure to provide corrosion protection to all underground components of the USTs is \$25,000 per violation before adjusting for other factors;
 - c. The ED reduced the base-penalty total by 85% in accordance with the Penalty Policy, for a subtotal of \$3,750, and increased the penalty by 20% because of

Respondent's compliance history as reflected by the violations of the provisions of the Agreed Order; and

- d. The 20% upward adjustment of the \$3,750 subtotal resulted in the \$4,500 penalty that the ED proposes.
31. On March 13, 2013, Respondent filed an answer to the EDFARP which the ED treated as a hearing request.
32. On April 25, 2013, 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.
33. On May 13, 2013, the Chief Clerk mailed a notice of hearing to Respondent, the ED, and the Office of Public Interest Counsel.
34. 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.
35. The preliminary hearing was held June 13, 2013, at SOAH, William P. Clements State Office Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Kari L. Gilbreth, Staff Attorney, appeared in person on behalf of the ED. Mohan Tanwar, the husband of Shashi C. Tanwar, appeared by telephone on behalf of Respondent.
36. The hearing was held November 5, 2013, at SOAH, William P. Clements State Office Building, 300 West 15th Street, Fourth Floor, Austin, Texas.
37. At the hearing, Ms. Gilbreth, Staff Attorney, appeared in person on behalf of the ED and Respondent was represented by Mr. Tanwar, who appeared by telephone.
38. The hearing was concluded and the record was closed on that same day.

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 any rule, order, or permit adopted or issued thereunder.
2. The penalty may not exceed \$25,000 per violation, per day, for each of the violations at issue in this case. Texas Water Code § 7.052.
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 § 80.17(d).
7. As required by Texas Water Code § 7.055 and 30 Texas Administrative Code §§ 1.11 and 70.104, Respondent was notified of the EDFARP and of the opportunity to request a hearing on the alleged violations, penalties, and corrective action proposed therein.
8. As required by Texas Government Code §§ 2001.051(1) and 2001.052; Texas Water Code § 7.058; 1 Texas Administrative Code § 155.401; and 30 Texas Administrative Code §§ 1.11, 1.12, 39.25, 70.104, and 80.6(b)(3), Respondent was notified of the hearing on the alleged violations and the proposed penalties and corrective action.
9. Respondent violated 30 Texas Administrative Code § 334.10(b) and the Agreed Order, Ordering Provision No. 2.a.
10. Respondent violated Texas Water Code § 26.3475(c)(1), 30 Texas Administrative Code § 334.50(b)(1)(A), and the Agreed Order, Ordering Provision No. 2.b.i.
11. Respondent violated Texas Water Code § 26.3475(c)(2), 30 Texas Administrative Code § 334.51(b)(2)(B), and the Agreed Order, Ordering Provision No. 2.b.ii.
12. Respondent violated Texas Water Code § 26.3475(d) and 30 Texas Administrative Code § 334.49(b)(2).
13. The penalty and corrective action that the ED proposed for the Respondent's violations considered in this case conform to the requirements of the Texas Water Code, ch. 7 and the Commission's Penalty Policy.
14. Respondent should be assessed a total of \$23,625 in penalties for the violations considered in this case and ordered to take the corrective action 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, Respondent shall pay an administrative penalty in the amount of \$23,625 for its violations of Texas Water Code § 26.3475(c)(1), (c)(2), and (d); 30 Texas Administrative Code §§ 334.10(b), 334.49(b)(2), 334.50(b)(1)(A), and 334.51(b)(2)(B); and TCEQ Agreed Order Docket No. 2011-1108-PST-E, Ordering Provision Nos. 2.a., 2.b.i., and 2.b.ii., considered in this case.
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: Star Food Mart 1, TCEQ Docket No. 2012-2570-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 action or penalties for other violations that are not raised here.
4. Immediately upon the effective date of this Order, Respondent shall begin maintaining all UST records and ensure that they are made available for inspection upon request by agency personnel, in accordance with 30 Texas Administrative Code § 334.10.
5. Within 30 days of the effective date of this Order, Respondent shall implement a release detection method for all USTs at the Facility, in accordance with 30 Texas Administrative Code § 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/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.

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:

Sam Barrett, Waste Section Manager
Texas Commission on Environmental Quality
Dallas/Ft. Worth Regional Office
2309 Gravel Drive
Fort Worth, Texas 76118-6951

8. The ED 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 ED 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 Tex. Admin. Code § 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., P.E., Chairman
For the Commission**