

**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 RESPONSE TO RESPONDENT'S EXCEPTIONS TO THE
ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER**

TO THE HONORABLE SHARON S. CLONINGER:

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

Background

On January 6, 2014, Shashi C. Tanwar d/b/a Star Food Mart 1 ("Respondent") filed Respondent's Exceptions with the TCEQ Office of the Chief Clerk. The ED noted that Respondent's Exceptions were not filed with the State Office of Administrative Hearings ("SOAH"), so he filed Respondent's Exceptions with SOAH on Respondent's behalf on January 14, 2014.

The ED filed his Exceptions to the ALJ's Proposed Order on January 6, 2014.

ED's Response to Respondent's Exceptions

Respondent claims (in part) in her Exceptions that, "I am under compliance and did every things whatever was asked to do...". The ED respectfully points to the administrative record, ED Exhibit 3 (Respondents' Responses to Requests for Admissions; Bates pages numbers 000001 through 000010). Respondent admitted to all four violations alleged in the Executive Director's First Amended Report and Petition ("EDFARP") in her responses to the Executive Director's Requests for Admissions. Respondent's representative (Mohan Tanwar) admitted at the November 5, 2013, hearing on the merits that Respondent was not in compliance with any of the violations documented during the September 20, 2012 TCEQ investigation.

Both TCEQ witnesses (Lonnie Gilley ("Mr. Gilley"), investigator, and Michael Pace ("Mr. Pace"), enforcement coordinator) acknowledged at the November 5, 2013 hearing on the merits that Respondent is currently in compliance with the corrosion protection violation (but that she was not in compliance with the corrosion protection violation at the time of the investigation). Both TCEQ witnesses also acknowledged at the hearing on the merits that Respondent equipped the underground storage tank ("UST") system with spill containment

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equipment on November 27, 2012 (but that she was not in compliance with the violation for failing to provide the UST system spill containment equipment on the date of the investigation).

Furthermore, Mr. Pace testified that Respondent was given a 10% reduction in the penalty in accordance with the September 1, 2011 Penalty Policy, for equipping the USTs with spill containment equipment related to violation number 3 in the EDFARP. Mr. Pace also testified that Respondent eventually brought the Facility into compliance with the corrosion protection violation (violation number 4 in the EDFARP), but she was not entitled to a reduction in the administrative penalty for this violation because the Facility was brought into compliance well after the Executive Director's Preliminary Report and Petition ("EDPRP") was filed and served upon Respondent.

Mr. Gilley and Mr. Pace both testified that the corrective action related to the corrosion protection and spill containment equipment violations resulted in the ED seeking fewer corrective actions than were pled in the original EDPRP. The only corrective action ordering provisions the ED is currently seeking are that Respondent immediately begin maintaining UST records and ensure they are made available for inspection upon request by agency personnel; implement a method of release detection within 30 days; and, certify that both of these corrective actions have been satisfied within 45 days after the effective date of the Commission Order. Finally, the ED is recommending an administrative penalty of \$23,625, as was supported by the ALJ in her PFD and Proposed Order.

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PRAYER

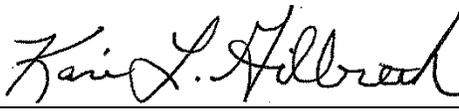
The Executive Director respectfully requests that the ALJ overrule Respondent's Exceptions. The ALJ again respectfully requests that to the extent that the Administrative Law Judge's Proposal for Decision or Proposed Order are inconsistent with the Exceptions and Proposed Modifications filed by the ED on January 6, 2014, the ED requests that the ALJ sustain the ED's proposed modifications to her Proposed Order incorporating only the changes recommended by the ED.

Respectfully submitted,
Texas Commission on Environmental Quality

Richard A. Hyde, P.E.
Executive Director

Caroline M. Sweeney, Deputy Director
Office of Legal Services

Kathleen C. Decker, Director
Litigation Division

by 
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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of January, 2014, the original of the foregoing "Executive Director's Response to Respondent'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 7320
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
Attorney
Litigation Division
Texas Commission on Environmental Quality