

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Kelly Keel, *Interim Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 6, 2023

Via Electronic Filing

The Honorable Rebecca Smith
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-3025

Re: A S K C-Stores, Inc.
SOAH Docket No. 582-22-08384
TCEQ Docket No. 2020-0255-PST-E
ED's Exceptions to the ALJ's Proposed Order

Dear Judge Smith:

Enclosed is the Executive Director's Exceptions to the ALJ's Proposed Order, for the above-referenced case. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Benjamin Pence".

Benjamin Pence, Staff Attorney
Texas Commission on Environmental Quality
Office of Legal Services, Litigation Division
Benjamin.Pence@tceq.texas.gov

Enclosure

cc: Pranjali Mehta, Office of Public Interest Counsel
Sayedali Modi, President, A S K C-STORES, INC.

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of September, 2023, the foregoing Executive Director's Exceptions to 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 via the methods indicated below:

Sayedali Modi, President
A S K C-STORES, INC.
2018 Gustave Cook Lane
Richmond, Texas 77469

Via Electronic Mail

The Honorable Judge Rebecca Smith
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-3025

Via Electronic Filing

Pranjal Mehta
Office of Public Interest Counsel, MC 103
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
Pranjal.Mehta@tceq.texas.gov

Via Electronic Mail



Benjamin Pence, Staff Attorney
Texas Commission on Environmental Quality
Office of Legal Services, Litigation Division

**SOAH DOCKET NO. 582-22-08384
TCEQ DOCKET NO. 2020-0255-PST-E**

EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, PETITIONER	§ § § § § § § § §	BEFORE THE
VS.		STATE OFFICE OF
A S K C-STORES, INC. DBA AMIGO MART, RESPONDENT		ADMINISTRATIVE HEARINGS

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

TO THE HONORABLE JUDGE SMITH:

COMES NOW, the Executive Director ("ED") of the Texas Commission on Environmental Quality ("TCEQ"), by and through Benjamin Pence, a representative of TCEQ's Litigation Division, and respectfully files these exceptions to the Administrative Law Judge's ("ALJ's") Proposed Order ("Exceptions"). The ED agrees with the substance of the Proposed Order, and these recommended modifications are intended to clarify the provisions of the Order and correct typographical errors.¹

On August 18, 2023, the Honorable ALJ Smith issued the Proposed Order in this case. Pursuant to Title 30 of the Texas Administrative Code § 80.257, the ED respectfully files the following exceptions:

1. Respondent's name should be changed throughout the Proposed Order so that it is written in all capital letters, to match how it was written in the ED's pleadings and as registered with the Texas Secretary of State.²
2. Add a new Finding of Fact between currently numbered Finding of Fact Nos. 7 and 8, which states: "The remaining SIR reports of the Facility's UST system that were reviewed for the investigation were not timely received by Respondent."³
3. The Findings of Fact after the new No. 8 should be renumbered accordingly.
4. In what is currently numbered as Finding of Fact No. 10, the language should be modified to clarify that its referenced September 30, 2019 inspection was not performed by TCEQ. The ED recommends this be done by replacing the phrase "An inspection" with the phrase "A third-party cathodic protection inspection and testing."

¹ Copies of the Proposed Order with the recommended modifications are attached. Attachment A is the redline version and Attachment B is a copy of the Proposed Order incorporating all of the Executive Director's recommended changes.

² See ED-A at BP 00004; ED-4 at BP 0065 and 0066.

³ See testimony of Jenn Thicket, timestamped in an audio recording of the hearing at 1:58:43 - 1:59:24 (in the recording as received by ED at timestamp 1:22:36 - 1:23:17 in file two). See also ED-7 at BP 0105-0108 (showing "Dates Analyzed" exceeding the 15-day limit following each report's monitoring period, as imposed in 30 TEX. ADMIN. CODE § 334.50(d)(9)(A)(iii)).

5. In what is currently numbered as Finding of Fact Nos. 12 and 13, the word "Preliminary" should be deleted. The ED's November 3, 2021 petition was an amendment to his preliminary petition and was necessarily not itself the preliminary issuance.
6. In Conclusion of Law No. 4, replace "The UST at the Facility is not..." with "The USTs at the Facility are not..." As recognized elsewhere in the ALJ's Proposed Order, three USTs exist at the Facility.
7. Add new Conclusion of Law No. 7, "The UST system owner or operator must take appropriate steps to ensure they receive an SIR report in no more than 15 calendar days following the last day of the 30-day period for which the analysis is performed. 30 Tex. Admin. Code § 334.50(d)(9)(A)(iii)."
8. The Conclusions of Law after the new No. 7 will be renumbered accordingly.

WHEREFORE, PREMISES CONSIDERED, the ED provides these Exceptions to the ALJ's Proposed Order so that justice may be done.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel
Interim Executive Director

Erin E. Chancellor, Director
Office of Legal Services

Gitanjali Yadav, Deputy Director
Litigation Division



Benjamin Pence
State Bar of Texas No. 24128117
Texas Commission on Environmental Quality
Litigation Division, MC 175
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-2157 (Phone)
Ben.Pence@tceq.texas.gov

ATTACHMENT A
Redlined Proposed Order

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER
ASSESSING ADMINISTRATIVE PENALTIES AGAINST
A S K C-STORES, INC. DBA AMIGO MART,
TCEQ DOCKET NO. 2020-0255-PST-E,
SOAH DOCKET NO. 582-22-08384

On _____, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's (ED) First Amended Report and Petition recommending that the Commission enter an order assessing administrative penalties against A S K C-~~STORES~~Stores, ~~INC~~nc. dba A~~MIGOMigo~~MARTart (Respondent). A Proposal for Decision (PFD) was drafted by Rebecca Smith, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a hearing via videoconference concerning the First Amended Report and Petition on June 22, 2023.

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

I. FINDINGS OF FACT

1. In 2019, Respondent operated an underground storage tank (UST) system and a convenience store with retail sales of gasoline located at 14325 State Highway 6 in Santa Fe, Galveston County, Texas (Facility).
2. Three USTs were installed at the Facility, and each tank had a 10,000-gallon capacity. The monthly throughput was approximately 3,000 gallons.
3. The USTs contain a regulated petroleum substance.
4. The Facility was investigated beginning September 16, 2019, as part of a routine investigation.
5. Respondent selected statistical inventory reconciliation (SIR) with inventory control as its release detection method for the UST system at the Facility.
6. The SIR report of the Facility's UST system for the 30-day period from January 27, 2019, to February 25, 2019, was not provided until April 10, 2019.
7. The SIR report of the Facility's UST system for the 30-day period from February 26, 2019, to March 27, 2019, was not provided until April 29, 2019.
8. The remaining SIR reports of the Facility's UST system that were reviewed for the investigation were not timely received by Respondent.
- 8.9. Respondent did not perform the reconciliation required for inventory control every 30 days.
- 9.10. Respondent failed to use an approved release detection method to monitor tanks for leaks at least once every 30 days.
- 10.11. An inspectionA third-party cathodic protection inspection and testing on September 30, 2019, determined that submersible turbine pumps (STPs) and dispensers at the Facility lacked corrosion protection.
- 11.12. Respondent did not provide corrosion protection for the STPs and dispensers.
- 12.13. On November 3, 2021, the ED filed a First Amended ~~Preliminary~~ Report and Petition and mailed a copy of it to Respondent at its last address of record known to the Commission.

- 13.14. On November 30, 2021, Respondent filed an answer to the First Amended ~~Preliminary~~ Report and Petition and requested a hearing.
- 14.15. On July 29, 2022, the ED filed a letter asking the Commission's Chief Clerk to refer this case to SOAH for hearing, and the Chief Clerk docketed it with SOAH on August 12, 2022.
- 15.16. On August 31, 2022, the Chief Clerk mailed a notice of hearing to Respondent, the ED, and the Office of Public Interest Counsel.
- 16.17. 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 factual matters asserted or an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency.
- 17.18. On September 22, 2022, a preliminary hearing was held via Zoom videoconference, and jurisdictional exhibits were admitted into evidence.
- 18.19. On September 26, 2022, the ALJ entered an order memorializing the preliminary hearing and adopting a hearing schedule.
- 19.20. On January 18, 2023, the ALJ issued an order prohibiting Respondent from raising the issue of its financial inability to pay a penalty because it failed to produce certain financial information.
- 20.21. The hearing on the merits was held via Zoom videoconference on June 22, 2023, before ALJ Rebecca Smith. The ED was represented by attorney Benjamin Pence. Respondent was represented by its president Sayedi Modi. The Office of Public Interest Counsel was represented by attorney Pranjal Mehta. The record closed with the filing of the admitted exhibits on June 23, 2023.
- 21.22. The Commission has adopted a Penalty Policy setting out its policy regarding the computation and assessment of administrative penalties, effective April 1, 2014.
- 22.23. The ED's calculation of a total penalty of \$14,751.00 is consistent with the Penalty Policy.

II. CONCLUSIONS OF LAW

1. Under Texas Water Code section 7.002, Respondent is subject to the Commission's enforcement authority.
2. 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.
3. Under Texas Water Code section 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Texas Water Code within the Commission's jurisdiction or any rule, order, or permit adopted or issued thereunder.
4. The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the Commission's rules.
5. The ED has the burden of proving the violations in this case by a preponderance of the evidence. 30 Tex. Admin. Code § 80.17(b).
6. USTs must comply with TCEQ's requirements for tank release detection equipment. Tex. Water Code §26.3475(c)(1).
7. The UST system owner or operator must take appropriate steps to ensure they receive an SIR report in no more than 15 calendar days following the last day of the 30-day period for which the analysis is performed. 30 Tex. Admin. Code § 334.50(d)(9)(A)(iii).
- 7.8. Respondent violated 30 Texas Administrative Code section 334.50(b)(1)(A), which requires an owner or operator of a UST to use an approved release detection method to monitor tanks for leaks at least once every 30 days.
- 8.9. Respondent violated 30 Texas Administrative Code section 334.50(d)(1)(B)(ii), which requires reconciliation of detailed inventory control records to be conducted at least once every 30 days.
- 9.10. Respondent also violated Texas Water Code section 26.3475(c)(1), which requires USTs to comply with TCEQ's requirements for tank release detection equipment.

~~10.11.~~ By failing to provide corrosion protection for the STPs and dispensers, Respondent violated Texas Water Code section 26.3475(d) and 30 Texas Administrative Code section 334.49(a)(1), which require UST systems to comply with corrosion protection requirements.

~~11.12.~~ The penalty that the ED proposed for Respondent's violations in this case conforms to the requirements of Texas Water Code sections 7.052(c) and 7.053.

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 \$14,751.00 for its violations of Texas Water Code section 26.3475(c)(1) and (d); and 30 Texas Administrative Code sections 334.49(a)(1) and 334.50(b)(1)(A) and (d)(1)(B)(ii).
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: A S K C-~~STORE~~Stores, INC~~ne~~. dba A~~MIGOMigo~~MART~~art~~, TCEQ Docket No. 2020-0255- 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 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. 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.
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. Tex. Gov't Code § 2001.144; 30 Tex. Admin. Code § 80.273.
7. 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.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**Jon Niermann, Chairman
For the Commission**

ATTACHMENT B
Proposed Order Incorporating the ED's Recommended Changes

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER
ASSESSING ADMINISTRATIVE PENALTIES AGAINST
A S K C-STORES, INC. DBA AMIGO MART,
TCEQ DOCKET NO. 2020-0255-PST-E,
SOAH DOCKET NO. 582-22-08384**

On _____, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's (ED) First Amended Report and Petition recommending that the Commission enter an order assessing administrative penalties against A S K C-STORES, INC. dba AMIGO MART (Respondent). A Proposal for Decision (PFD) was drafted by Rebecca Smith, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a hearing via videoconference concerning the First Amended Report and Petition on June 22, 2023.

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

I. FINDINGS OF FACT

1. In 2019, Respondent operated an underground storage tank (UST) system and a convenience store with retail sales of gasoline located at 14325 State Highway 6 in Santa Fe, Galveston County, Texas (Facility).
2. Three USTs were installed at the Facility, and each tank had a 10,000-gallon capacity. The monthly throughput was approximately 3,000 gallons.
3. The USTs contain a regulated petroleum substance.
4. The Facility was investigated beginning September 16, 2019, as part of a routine investigation.
5. Respondent selected statistical inventory reconciliation (SIR) with inventory control as its release detection method for the UST system at the Facility.
6. The SIR report of the Facility's UST system for the 30-day period from January 27, 2019, to February 25, 2019, was not provided until April 10, 2019.
7. The SIR report of the Facility's UST system for the 30-day period from February 26, 2019, to March 27, 2019, was not provided until April 29, 2019.
8. The remaining SIR reports of the Facility's UST system that were reviewed for the investigation were not timely received by Respondent.
9. Respondent did not perform the reconciliation required for inventory control every 30 days.
10. Respondent failed to use an approved release detection method to monitor tanks for leaks at least once every 30 days.
11. A third-party cathodic protection inspection and testing on September 30, 2019, determined that submersible turbine pumps (STPs) and dispensers at the Facility lacked corrosion protection.
12. Respondent did not provide corrosion protection for the STPs and dispensers.
13. On November 3, 2021, the ED filed a First Amended Report and Petition and mailed a copy of it to Respondent at its last address of record known to the Commission.

14. On November 30, 2021, Respondent filed an answer to the First Amended Report and Petition and requested a hearing.
15. On July 29, 2022, the ED filed a letter asking the Commission's Chief Clerk to refer this case to SOAH for hearing, and the Chief Clerk docketed it with SOAH on August 12, 2022.
16. On August 31, 2022, the Chief Clerk mailed a notice of hearing to Respondent, the ED, and the Office of Public Interest Counsel.
17. 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 factual matters asserted or an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency.
18. On September 22, 2022, a preliminary hearing was held via Zoom videoconference, and jurisdictional exhibits were admitted into evidence.
19. On September 26, 2022, the ALJ entered an order memorializing the preliminary hearing and adopting a hearing schedule.
20. On January 18, 2023, the ALJ issued an order prohibiting Respondent from raising the issue of its financial inability to pay a penalty because it failed to produce certain financial information.
21. The hearing on the merits was held via Zoom videoconference on June 22, 2023, before ALJ Rebecca Smith. The ED was represented by attorney Benjamin Pence. Respondent was represented by its president Sayedi Modi. The Office of Public Interest Counsel was represented by attorney Pranjal Mehta. The record closed with the filing of the admitted exhibits on June 23, 2023.
22. The Commission has adopted a Penalty Policy setting out its policy regarding the computation and assessment of administrative penalties, effective April 1, 2014.
23. The ED's calculation of a total penalty of \$14,751.00 is consistent with the Penalty Policy.

II. CONCLUSIONS OF LAW

1. Under Texas Water Code section 7.002, Respondent is subject to the Commission's enforcement authority.
2. 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.
3. Under Texas Water Code section 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Texas Water Code within the Commission's jurisdiction or any rule, order, or permit adopted or issued thereunder.
4. The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the Commission's rules.
5. The ED has the burden of proving the violations in this case by a preponderance of the evidence. 30 Tex. Admin. Code § 80.17(b).
6. USTs must comply with TCEQ's requirements for tank release detection equipment. Tex. Water Code §26.3475(c)(1).
7. The UST system owner or operator must take appropriate steps to ensure they receive an SIR report in no more than 15 calendar days following the last day of the 30-day period for which the analysis is performed. 30 Tex. Admin. Code § 334.50(d)(9)(A)(iii).
8. Respondent violated 30 Texas Administrative Code section 334.50(b)(1)(A), which requires an owner or operator of a UST to use an approved release detection method to monitor tanks for leaks at least once every 30 days.
9. Respondent violated 30 Texas Administrative Code section 334.50(d)(1)(B)(ii), which requires reconciliation of detailed inventory control records to be conducted at least once every 30 days.
10. Respondent also violated Texas Water Code section 26.3475(c)(1), which requires USTs to comply with TCEQ's requirements for tank release detection equipment.

11. By failing to provide corrosion protection for the STPs and dispensers, Respondent violated Texas Water Code section 26.3475(d) and 30 Texas Administrative Code section 334.49(a)(1), which require UST systems to comply with corrosion protection requirements.
12. The penalty that the ED proposed for Respondent's violations in this case conforms to the requirements of Texas Water Code sections 7.052(c) and 7.053.

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 \$14,751.00 for its violations of Texas Water Code section 26.3475(c)(1) and (d); and 30 Texas Administrative Code sections 334.49(a)(1) and 334.50(b)(1)(A) and (d)(1)(B)(ii).
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: A S K C-STORES, INC. dba AMIGO MART, TCEQ Docket No. 2020-0255-PST-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
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3. The payment of the administrative penalty 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. 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.
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. Tex. Gov't Code § 2001.144; 30 Tex. Admin. Code § 80.273.
7. 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.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**Jon Niermann, Chairman
For the Commission**