

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

May 15, 2025

Taylor Pack Ellis-Executive Director
Eli Martinez-OPIC

VIA EFILE TEXAS

Patrick Morah
9002 South Braeswood Blvd.
Houston, TX 77074

VIA REGULAR MAIL

RE: SOAH Docket Number 582-24-23709; TCEQ Docket No. 2022-1641-PST-E; *Executive Director of the Texas Commission on Environmental Quality v. Patrick K. Morah*

Dear Parties:

Please find attached a Proposal for Decision (PFD) in this case.

Any party may, within 20 days after the date of issuance of the PFD, file exceptions or briefs. Any replies to exceptions, briefs, or proposed findings of fact shall be filed within 30 days after the date of issuance on the PFD. 30 Tex. Admin. Code § 80.257.

All exceptions, briefs, and replies along with certification of service to the above parties and the ALJ shall be filed with the Chief Clerk of the TCEQ electronically at <http://www14.tceq.texas.gov/epic/eFiling/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

CC: Service List

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY,
PETITIONER**

v.

**PATRICK K. MORAH,
RESPONDENT**

PROPOSAL FOR DECISION

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) alleges that Patrick K. Morah (Respondent) violated the Commission's rules by failing to demonstrate acceptable financial assurance for Respondent's underground storage tank (UST) systems and failing to notify the TCEQ regarding changes to the Respondent's petroleum UST system.

The ED requests that the Commission assess an administrative penalty of \$5,000 for these violations.

The Administrative Law Judge (ALJ) finds that Respondent committed the alleged violations and that the proposed penalty is just and in accordance with applicable law and the TCEQ's Penalty Policy.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

Notice and jurisdiction were not disputed. The attached proposed order contains the required findings of fact and conclusions of law concerning those matters.

On September 12, 2024, ALJ Rachelle Nicolette Robles convened the preliminary hearing at the State Office of Administrative Hearings via Zoom videoconference and admitted Exhibits ED-A through ED-D proffered by the ED. The ALJ then convened the hearing on the merits via Zoom videoconference on February 11, 2025. Attorney Taylor Pack Ellis represented the ED. Respondent represented himself. Attorney Eli Martinez appeared on behalf of the Office of Public Interest Counsel (OPIC). The hearing concluded the same day, and the record closed on March 26, 2025, to allow for parties to file the admitted exhibits and post-hearing briefing.

II. APPLICABLE LAW

As a general matter, USTs must be registered with the TCEQ on authorized agency forms.¹ Moreover, financial assurance requirements apply to owners and operators of UST systems.²

Under 30 Texas Administrative Code (Rule) § 334.54(e)(2), when a UST is temporarily taken out of service, the owner shall inform the TCEQ as such by complying with the applicable tank registration requirements of Rule 334.7. Rule 334.7(d) provides that any change or additional information concerning a UST, such as a change in ownership or the UST's operational status, must be filed with the TCEQ within 30 days from the date of the occurrence of the change or addition, or within 30 days from the date on which the owner or operator first became aware of the change or addition.³

Rule 37.815 requires owners or operators of petroleum USTs to demonstrate financial assurance for the USTs. As to the amount and scope of the required financial assurance, an owner or operator must demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of

¹ 30 Tex. Admin. Code § 334.7(a)(1). There are exceptions to the general registration requirement that are not applicable to this case and are therefore not further discussed.

² 30 Tex. Admin. Code § 334.7(e)(7);

³ 30 Tex. Admin. Code § 334.7(d)(1), (3).

petroleum USTs at an amount of \$500,000 per occurrence or \$1 million on an annual basis.⁴

However, an owner or operator may be released from those financial assurance requirements for USTs temporarily removed from service if it can be demonstrated that (1) the USTs have been properly emptied in accordance with Rule 334.54(d), (2) a site check has been performed of the USTs and any necessary corrective actions have been taken in accordance with Rule 334.74, and (3) the owner or operator has notified TCEQ of the UST's change in operational status in accordance with Rule 334.7.⁵

Chapter 7 of the Texas Water Code (Code) grants the TCEQ enforcement authority for violations of Code provisions within TCEQ's authority, and any TCEQ rules adopted or orders issued thereunder, including the imposition of administrative penalties and other corrective measures.⁶ The Code requires TCEQ to adopt by rule a general enforcement policy describing its approach to enforcement.⁷

⁴ 30 Tex. Admin. Code § 37.815(a)(2), (b)(1).

⁵ 30 Tex. Admin. Code § 334.54(e)(5); 30 Tex. Admin. Code § 37.885(a)(1), (b).

⁶ Texas Water Code (Code) §§ 7.002, .051(a)(1)(A)-(B).

⁷ Code § 7.006(a).

For the violations at issue in this case, as alleged in the investigations conducted on September 16 and October 10, 2022, the maximum penalty amount is \$25,000 per day for each violation.⁸ The Code sets out several factors the Commission must consider in determining the amount of an administrative penalty.⁹ The Commission developed a Penalty Policy (Penalty Policy) that requires the ED to consider those factors when evaluating violations for purposes of recommending an administrative penalty.¹⁰

The ED has the burden of proving by a preponderance of the evidence that the alleged violations occurred and that the requested administrative penalty should be imposed.¹¹

III. BACKGROUND

TCEQ alleges Respondent owns and operates a UST system at his convenience store, Top 10 Foodmart, located at 9002 South Braeswood Boulevard, Houston, Texas 77074 (Facility). The Facility is a closed convenience store without retail sales of gasoline, and the three steel USTs at the Facility are not in operation.¹² Tanks 1 and 3 have a capacity of 10,000 gallons and contain gasoline fuel and Tank 2

⁸ Code § 7.052(c).

⁹ Code § 7.053.

¹⁰ Ex. ED-4 (TCEQ Penalty Policy) at 71-77;); *see also* 30 Tex. Admin. Code § 70.1(b), providing that the Commission may establish policies to delineate the specific procedures for calculating administrative penalties.

¹¹ Code § 7.053; 30 Tex. Admin. Code § 80.17(a), (b).

¹² Ex. ED-1 (September 16 and October 10, 2022 TCEQ Investigation Report) at 2.

has a capacity of 10,000 gallons and contains registered fuel.¹³ All three tanks are currently registered as temporarily-out-of-service, as of December 2, 2020.¹⁴

A TCEQ inspector performed multiple investigations of the Facility to determine whether the Facility was in compliance with regulations related to TCEQ's UST Program.¹⁵ Specifically, an investigation was performed on January 29, 2020, in which it was documented, among other issues, that Respondent violated Rule 334.54(e)(5) for failure to provide documentation to show the USTs at the Facility were properly temporarily removed from service and that Respondent was released from financial assurance requirements per Rule 37.885.¹⁶ As a result of that investigation, Respondent was sent a Notice of Violation.¹⁷

A record review was then conducted on May 18, 2021 (May 2021 Review), to determine whether Respondent had resolved that alleged violation.¹⁸ After communications with Respondent, the TCEQ investigator performing the record review determined the alleged violation had not been resolved and issued a Second

¹³ Ex. ED-1 at 2. The record does not clarify what "registered fuel" means, nor does the rule outlining the defined terms for the relevant subchapter. *See* 30 Tex. Admin. Code § 334.2. The investigator for the May 2021 Review characterized all three tanks as containing gasoline fuel; thus, for purposes of this PFD, the ALJ treats the fuel contained in all three tanks as gasoline fuel. Ex. ED-3 (May 18, 2021 TCEQ Investigation Report) at 30.

¹⁴ Ex. ED-1 at 2.

¹⁵ Ex. ED-1 at 2.

¹⁶ Ex. ED-3 at 37.

¹⁷ Ex. ED-3 at 30, referencing the Notice of Violation sent regarding the January 29, 2020. However, the letter itself is not in the record.

¹⁸ Ex. ED-3 at 30-31; *see also* Ex. ED-1 at 2.

Notice of Violation to Respondent.¹⁹ In order to bring the Facility into compliance, Respondent was required to “provide documentation that a site check had been conducted and that the tanks are empty or that financial assurance is provided for the USTs.”²⁰

The Facility was then investigated again on September 16 and October 10, 2022 (collectively, Current Investigation) to follow up on the outstanding violation addressed above.²¹ In the Current Investigation, the inspector noted that Respondent had still not demonstrated that he satisfied the financial assurance requirements for USTs temporarily removed from service.²² Specifically, he noted Respondent did not have documentation to show that a site check and any necessary corrective action had been performed.²³ The inspector also determined that Respondent violated Rule 334.7(d)(3) for failure to provide an amended registration to TCEQ for any change within 30 days of the occurrence of the change.²⁴ The inspector noted that, during the May 2021 Review, the tanks located at the Facility

¹⁹ Ex. ED-3 at 31, 35-39.

²⁰ Ex. ED-3 at 37.

²¹ Ex. ED-1 at 2, Attachment 3, at 20; *see also* Ex. ED-3 (May 2021 TCEQ Investigation Report) at 3, which lists the alleged violations for the May 2021 Review. The ALJ notes that the violation start date was January 29, 2020.

²² Ex. ED-1 at 3; also see ED-2 at 00026. It is not clear from the record when the tanks were actually emptied. The form asks whether the tanks met the TCEQ definition of “empty,” to which Respondent answered in the negative. Additionally, Respondent noted on the form that the tanks were not in use.

²³ Ex. ED-1 at 3.

²⁴ Ex. ED-1 at 3.

were empty.²⁵ At the time of the Current Investigation, the registration had not been amended to reflect that the tanks located at the Facility are registered as empty.²⁶ As a result of these findings, the TCEQ initiated an Enforcement Action Referral and issued a Notice of Enforcement letter to Respondent.²⁷

IV. EVIDENCE

The ED presented the testimony of two witnesses: Ubaldo Gongora, and Tiffany Chu. The ED also offered Exhibits ED-1 through ED-8, which were admitted without objection.²⁸ Respondent testified on his own behalf and presented the testimony of Scott Stevens. Additionally, Respondent offered Exhibits A through J, 1A through 1K, and 2A through 2G, which were admitted without objection.²⁹

A. ED'S EVIDENCE

1. Alleged violations

Respondent filed a UST Registration and Self-Certification Form (Form) with TCEQ, dated December 11, 2020, for the Facility, listing himself as the owner,

²⁵ Ex. ED-1 at 2. The TCEQ investigation number for the May 2021 Investigated is listed as CCDES Investigation 1706270.

²⁶ Ex. ED-1 at 4.

²⁷ Ex. ED-1 at 3.

²⁸ The ED's documentary evidence consists of ED-A through ED-D, admitted during the preliminary hearing, and ED-1 and ED-8, admitted during the hearing on the merits.

²⁹ To easily distinguish the parties' exhibits, Respondent's exhibits will be cited as "Respondent Ex. ___."

operator, and contact person.³⁰ The Form indicated that the change of ownership of the Facility to the Respondent was effective as of December 1, 2020.³¹ Respondent, through the Form, self-certified that the Rule 37.815 financial assurance requirements had not been met as of its filing.³² Additionally, Respondent indicated on the Form that the tanks were not empty.³³

On January 20, 2021, Respondent filed a second form, entitled Temporarily Out of Service UST Site Check Certification (Out of Service Form) regarding the USTs at the Facility.³⁴ Standard language in the Out of Service Form provides that any UST system temporarily taken out of service must maintain financial assurance until a site check is performed.³⁵ On the Out of Service Form, Respondent indicated that a site check had not yet been performed.³⁶

Mr. Gongora, an environmental investigator, testified regarding his investigations and record reviews of the Facility. He performed the May 2021 Review and contacted Respondent after that review regarding the status of the outstanding

³⁰ Ex. ED-2 at 23.

³¹ Ex. ED-2 at 24.

³² Ex. ED-2 at 25.

³³ Ex. ED-2 at 26.

³⁴ Ex. ED-2 at 28.

³⁵ Ex. ED-2 at 28.

³⁶ Ex. ED-2 at 28.

alleged Rule 334.54(e)(5) violation.³⁷ Mr. Gongora informed Respondent that, in order to resolve the violation, he could perform a site assessment, obtain financial assurance for the tanks, or remove the tanks.³⁸ He testified that Respondent answered that he was replacing the dispensers on site and would be sending a Notice of Construction, changing the status of the Facility to an “active” designation.³⁹ As noted above, the TCEQ sent Respondent a second Notice of Violation after the May 2021 Review, confirming the alleged violations Mr. Gongora discussed with Respondent.⁴⁰

Mr. Gongora also conducted the Current Investigation to determine if Respondent still had violations outstanding from his May 2021 Review.⁴¹ He summarized his findings from the Current Investigation and noted there was still no documentation available for review demonstrating Respondent’s financial assurance or that a site check had been performed.⁴² Mr. Gongora also noted that “[d]ocumentation indicating the tanks located at the [F]acility are empty was verified

³⁷ Ex. ED-3 at 30. Mr. Gongora performed the Current Investigation and the May 2021 Review of the Facility, but it is unclear from the record whether he performed the January 29, 2020, investigation.

³⁸ Ex. ED-3 at 30.

³⁹ Ex. ED-3 at 30.

⁴⁰ Ex. ED-3 at 35.

⁴¹ Ex. ED-1 at 2.

⁴² Ex. ED-1 at 2.

in CCEDS investigation 1706270 [i.e., the May 2021 Review].”⁴³ However, as of the Current Investigation, Respondent had not yet filed an amended registration form to indicate that the tanks located at the Facility were empty of fuel.⁴⁴ He conducted an exit interview with Respondent regarding the findings of the Current Investigation and followed up with an exit interview form.⁴⁵

Due to the outstanding violations, an Enforcement Action Referral was initiated and a Notice of Enforcement letter was issued.⁴⁶

On January 20, 2023, Scott Stephens, owner of SCS Environmental Consultants, Inc., performed a site check of the Facility; subsequently, Respondent filed a Remediation Division Correspondence Identification Form (Remediation Form) with the report from the site check attached.⁴⁷

⁴³ Ex. ED-1 at 2. The TCEQ investigation number for the May 2021 Review is listed as CCDES Investigation 1706270. The ALJ notes that the summary for the May 2021 Review contained in Ex. ED-3 does not reflect the contention that the tanks were empty at that time. That information is only included in ED-1. However, Ex. ED-3, Attachment 1, at 50 is a form filled out by Respondent as of March 19, 2020, stating that all tanks are empty.

⁴⁴ Ex. ED-1 at 2-3.

⁴⁵ Ex. ED-1 at 3; *see also* Attachment 2 of Ex. ED-1 at 14.

⁴⁶ Ex. ED-1 at; *see also* Attachment 3 at 18, 21.

⁴⁷ *See* Ex. ED-6 (Respondent Site Check Report).

On June 22, 2023, Respondent filled out an amended registration form indicating that the tanks were empty.⁴⁸

2. Proposed penalty

The Penalty Policy states that the TCEQ will evaluate the appropriate penalty based on the size of the site, its potential volume of pollutants, or both.⁴⁹ The Penalty Policy provides that the administrative penalty regarding USTs ranges from zero to \$25,000, per violation, per day.⁵⁰ If the Environmental Protection Agency has distinguished between “major” and “minor” sources, the TCEQ will also employ that distinction in its analysis.⁵¹ For USTs, a major source is a UST that has a monthly throughput of more than 100,000 gallons and a minor source is a UST that has less than 100,000 gallons.⁵²

Ms. Chu, the enforcement coordinator assigned to this case, testified regarding the ED’s proposed penalty. She employed TCEQ’s Penalty Calculation Worksheets to calculate the proposed penalty to be imposed on Respondent, for a

⁴⁸ Ex. ED-7 at 138. Although the Respondent signed and dated the form on October 25, 2022, the stamp stating that it was received by the TCEQ Central File Room is dated as of June 22, 2023, on the bottom right corner of 133, so the ALJ will use the latter date.

⁴⁹ Ex. ED-4 at 61.

⁵⁰ Ex. ED-4 at 58.

⁵¹ Ex. ED-4 at 61.

⁵² Ex. ED-4 at 62.

total of \$5,000, which includes reductions recognizing Respondent's good faith efforts to comply and his above-satisfactory compliance record.⁵³

For the penalty regarding Respondent's failure to demonstrate acceptable financial assurance, Ms. Chu started with the initial base penalty amount, \$25,000, but then adjusted the amount downward, arriving at \$3,000 for this alleged violation.⁵⁴ For the assessment of the penalty related to Respondent's failure to notify the TCEQ of changes or additional information regarding the USTs, she performed a similar calculation, starting with the initial base penalty amount, \$25,000, and, with applicable deductions, arrived at the final assessed penalty for this violation, in the amount of \$2,000.⁵⁵ The downward adjustments include a deduction for the fact that the alleged violation was for a potential, not actual, release, in addition to deductions for Respondent's above-satisfactory compliance history and good faith efforts to comply.⁵⁶

Ms. Chu testified that Respondent ultimately performed a site check of the Facility and filed the amended registration form and that those actions brought the

⁵³ Ex. ED-5 at 1. *See also* Ex. ED-4 at 74. The Compliance History Classification Adjustment allows for a reduction to the base penalty in the amount of 10% for a respondent with a "high performer" designation, defined as a site with an above-satisfactory compliance record. 30 Tex. Admin. Code § 60.2(a)(1).

⁵⁴ Ex. ED-5 at 82.

⁵⁵ Ex. ED-5 at 84.

⁵⁶ Ex. ED-5 at 80-84.

Facility into compliance.⁵⁷ However, he submitted them after the investigations were completed, alleged violations were assessed, and the Notice of Enforcement letter was issued. Ms. Chu clarified that, although Respondent eventually cured the defects and is currently in compliance, that would only affect whether he would potentially be assessed a reduction in the penalty, recognizing his good faith effort and compliance history, but that it would not completely negate the assessment of a violation. She testified that the assessed proposed penalty of \$5,000 complies with the Penalty Policy.

B. RESPONDENT'S EVIDENCE

Respondent testified that he tried to comply but that he was not given information to be able to do so. However, he presented evidence to the contrary. For example, Respondent's Exhibit E is an email from Mr. Gongora to Respondent, dated March 23, 2020, wherein Mr. Gongora explains that Respondent has outstanding violations and details the corrective actions that Respondent could take to resolve the allegations.⁵⁸

⁵⁷ See Ex. ED-7.

⁵⁸ Respondent Ex. E. It is unclear from the email if Mr. Gongora is addressing alleged violations identified during an investigation of the Facility or when such an investigation took place. However, because Respondent presented the email as evidence in this case, the ALJ assumes it concerns alleged violations documented at the Facility. Thus, the ALJ concludes the email demonstrates that Mr. Gongora did, at least some point in time, provide Respondent with information on how to resolve alleged violations at the Facility, in addition to the Notices of Violation and the exit interview.

Additionally, Respondent presented the testimony of Mr. Stevens, who performed a site check of the Facility on January 20, 2023.⁵⁹

Respondent did not dispute the amount of the penalty proposed by the ED; however, he argued that he should not be assessed a penalty because he brought the Facility into compliance.

V. ANALYSIS

A. ALLEGED VIOLATIONS

The ALJ finds that the ED established both alleged violations by a preponderance of the evidence.

The ED demonstrated that Respondent failed to provide documentation establishing he had acceptable financial assurance or that a site check of the UST system was performed, as required by TCEQ rules.⁶⁰ Respondent indicated in the Form that financial assurance had not been provided for the Facility at the time of the change of ownership to Respondent. Respondent had been informed that he was not in compliance with this requirement during the May 2021 Review and this alleged violation was still outstanding as of the Current Investigation. Respondent resolved

⁵⁹ See Ex. ED-6, which includes the Remediation Division Correspondence Identification Form and the attached documentation related to the site check. The substance of Mr. Stevens' testimony did not factor into the analysis of the violations at issue, only the fact that a site check was performed at all.

⁶⁰ 30 Tex. Admin. Code §§ 37.815(a)(2), (b)(1), 334.54(e)(5)(B).

this violation on January 20, 2023, when Mr. Stevens performed the required site inspection and filed the Remediation Form with the TCEQ.

The ED also demonstrated that Respondent failed to notify the agency of any changes of additional information regarding the USTs within 30 days of the occurrence of the change or addition. In the Form, which Respondent filled out when he initially registered as the owner of the Facility, he indicated that the tanks were not in use but did not meet the TCEQ definition of “empty.” However, Mr. Gongora’s notes for the Current Investigation indicate that, during his May 2021 Review, he reviewed documentation from Respondent indicating the tanks in the Facility were empty and subsequently directed the Respondent to amend his registration accordingly. Although Respondent eventually filed an amended registration form indicating that the tanks were empty, it was received by the TCEQ in June 2023, when the tanks were empty as of March 2020, if not earlier. Thus, although the record does not establish exactly when the tanks were emptied, it does establish that the tanks were empty as of at least March 2020 and the form indicating that change was not filed until June 2023.

The ED met its burden of proving both violations. Thus, an imposition of a penalty for the violations is appropriate. The ALJ now addresses what penalty amount should be assessed.

B. PROPOSED PENALTY

The ALJ finds that the ED met its burden of proving that the recommended penalty was assessed in compliance with applicable law and the Commission’s

Penalty Policy for both violations. The statutory factors governing the determination of the penalty amount consider the circumstances of the potential hazard created to the health and safety of the public, the impact of the violation, and certain aspects specific to the alleged violator.

The ED made significant adjustments to the initial base penalty amounts of \$25,000 for each violation. These deductions accounted for the health and safety to the public aspect and the fact that the violations were each a single event.⁶¹ As to factors specific to the Respondent, the other deductions include a downward adjustment to the base penalty amounts for Respondent's good faith efforts to comply and the economic benefit the Respondent might have gained due to the alleged violations. Finally, the ED had made an adjustment commensurate with Respondent's compliance history.

The other factors that must be considered do not support further adjustments. The alleged violations were not attributable to mechanical or electrical failures and Respondent could have reasonably anticipated and avoided the violations by reading the instructions set forth in the TCEQ forms he completed and through an understanding of his requirements as a UST owner.⁶²

⁶¹ Presumably, the latter speaks to the scope of the impact of the violation.

⁶² Tex. Water Code § 7.053(3)(B)

Moreover, Respondent was initially notified of the outstanding alleged violations as early as May 2021 and did not bring the Facility into compliance until as late as June 2023, even though he had been informed by the TCEQ of his outstanding violations and how to cure them. Respondent did not explain his delay in curing the deficiencies. His compliance with one of the violations only entailed filing paperwork to reflect that the tanks were empty and Respondent failed to provide any evidence as to why he was not able to comply within the 30 days required.

Additionally, although providing financial assurance or performing a site check arguably entails more coordination than the other violation, Respondent did not explain why he was not able to come into compliance for this alleged violation until one-and-a-half years after being notified of the alleged violation through the May 2021 Review.

Respondent argued that he complied and that he should not be assessed a penalty. Although Respondent testified that he tried to bring the Facility into compliance with the alleged violations, he only did so months after being informed of a potential administrative penalty on November 30, 2022.⁶³

Eventual compliance does not negate the fact that violations occurred and a penalty should be assessed for those violations. The ED already accounted for Respondent's eventual compliance and his above-satisfactory compliance history by

⁶³ Ex. ED-1, Attachment 3, at 18.

reducing the base penalty and the ALJ is not persuaded that further deductions for Respondent's compliance is warranted. According to TCEQ's evidence, an acknowledgement of Respondent's compliance, albeit eventually, in the form of a reduction of the proposed penalty may be assessed but it does not cancel out the assessment of the violation. Due to the above considerations, the penalty amount proposed by the ED is necessary to deter future violations.

For the reasons addressed above, the evidence indicates that the ED properly assessed the proposed penalty and that no adjustments to the ED's recommended \$5,000 administrative penalty are warranted.

VI. RECOMMENDATION

The ALJ recommends that the Commission adopt the attached proposed order, which assesses Respondent a total of \$5,000 in penalties for the violations proven in this case.

Signed May 15, 2025

ALJ Signature:

A handwritten signature in black ink, appearing to read "Rachelle Robles", written over a horizontal line.

Rachelle Nicolette Robles
Presiding Administrative Law Judge

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER
ASSESSING ADMINISTRATIVE PENALTIES AGAINST
PATRICK K. MORAH
TCEQ DOCKET NO. 2022-1641-PST-E
SOAH DOCKET NO. 582-24-23709**

On _____, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's (ED) Preliminary Report and Petition (EDPRP) recommending that the Commission enter an order assessing an administrative penalty against and requiring certain corrective actions be taken by Patrick K. Morah (Respondent). A Proposal for Decision (PFD) was issued by Rachelle Nicolette Robles, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a hearing concerning the EDPRP on February 11, 2025.

After considering the ALJ's PFD, the Commission makes the following findings of fact and conclusions of law.

VII. FINDINGS OF FACT

1. Respondent owned and operated an underground storage tank (UST) system at his convenience store at 9002 South Braeswood Boulevard, Houston, Harris County, Texas (Facility) at the time of the alleged violations.
2. There are three USTs at the Facility, each with the capacity of 10,000 gallons.
3. The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the Commission's rules.
4. The USTs previously contained a regulated petroleum substance but, at the time of the investigations, they were empty.
5. On May 18, 2021; September 16, 2022; and October 10, 2022, a TCEQ investigator performed a record review and compliance investigations at the Facility.
6. Respondent failed to file an updated UST Registration and Self-Certification Form indicating that the tanks were empty within 30 days of the USTs being emptied.
7. Respondent failed to provide documentation of financial assurance for the USTs or documentation that Respondent was released from such financial assurance because the USTs were properly temporarily removed from service.
8. On May 29, 2024, the ED filed the EDPRP and mailed a copy of it to Respondent at his last address of record known to the Commission.
9. Respondent requested a contested case hearing on the allegations in the EDPRP.
10. On August 8, 2024, the ED filed a letter asking the Commission's Chief Clerk to refer this case to SOAH for hearing. The Chief Clerk docketed the case with SOAH on August 8, 2024, and filed the EDPRP on the same date.

11. On August 19, 2024, ALJ Rachelle Nicolette Robles of SOAH issued Order No. 1 providing notice of the preliminary hearing.
12. The parties appeared at the preliminary hearing and asked the ALJ to admit into evidence Exhibits ED-A through ED-D for purposes of notice and jurisdiction, which were admitted. The parties also subsequently submitted an agreed procedural schedule.
13. On September 17, 2024, ALJ Robles issued Order No. 2 memorializing the preliminary hearing, adopting the parties' agreed procedural schedule, and setting the matter for hearing on February 11, 2025.
14. Together, the EDPRP and SOAH Order No. 2 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 incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
15. The hearing convened via Zoom videoconference on February 11, 2025, before ALJ Robles and concluded the same day. Attorney Taylor Pack Ellis represented the ED and Respondent represented himself. Attorney Eli Martinez appeared on behalf of the Office of Public Interest Counsel. The record closed on March 26, 2025, to allow for submission of exhibits and post-hearing briefing.
16. The EDPRP alleged that Respondent violated:
 - a. 30 Texas Administrative Code section 334.7(d)(1)(B) and (d)(3) by failing to notify the agency of any changes or additional information regarding the USTs within 30 days of the occurrence of the change or addition; and
 - b. 30 Texas Administrative Code section 37.815(a) and (b) by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily

injury and property damage caused by accidental releases arising from the operation of petroleum USTs.

17. The ED proposed administrative penalties of \$5,000 for these violations.
18. The Commission has adopted a Penalty Policy setting forth its policy regarding the calculation and assessment of administrative penalties, effective January 28, 2021.
19. Pursuant to the Commission's Penalty Policy, Respondent's UST system is a minor source.
20. In accordance with the Commission's Penalty Policy, the TCEQ started with an initial base penalty for the failure to demonstrate financial assurance, but arrived at a penalty in the amount of \$3,000, with downward adjustments, including one for good faith efforts to comply. Likewise, the TCEQ started with an initial base penalty for the failure to timely file a change of information form in the amount of \$25,000, but arrived at a penalty in the amount of \$2,000, with downward adjustments made, including one for good faith efforts to comply.
21. The total payable penalty for the violations is \$5,000.

VIII. CONCLUSIONS OF LAW

1. 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.
2. Under Texas Water Code section 7.002, Respondent is subject to the Commission's enforcement authority.
3. The administrative penalty may not exceed \$25,000 per violation, per day, for the violations at issue in this case. Texas Water Code § 7.052(c).

4. In determining the amount of an administrative penalty, Texas Water Code section 7.053 requires the Commission to consider several factors, and the Penalty Policy implements those factors.
5. SOAH has jurisdiction over matters related to the hearing in this case, including the authority to issue a Proposal for Decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
6. 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).
7. As required by Texas Water Code sections 7.054 and 7.055, and 30 Texas Administrative Code section 70.104, Respondent was notified of the EDPRP and of the opportunity to request a hearing on the alleged violations and penalties proposed therein.
8. As required by Texas Government Code sections 2001.051(1) and 2001.052; Texas Water Code section 7.058; 1 Texas Administrative Code section 155.401; and 30 Texas Administrative Code sections 1.12, 39.425, 70.104, and 80.6(b)(3), Respondent was notified of the hearing on the alleged violations and the proposed penalties.
9. Respondent violated 30 Texas Administrative Code sections 334.7(d)(1)(B) and (d)(3) and 37.815(a)-(b).
10. The penalty that the ED proposed for Respondent's violations considered in this case conforms to the requirements of Texas Water Code chapter 7 and the Commission's Penalty Policy.
11. Respondent should be assessed a total of \$5,000 in administrative penalties for the violations considered in this case as described in the Ordering Provisions below.

**NOW, THEREFORE, IT IS 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 \$5,000 for his violations of 30 Texas Administrative Code sections 37.815(a)-(b) and 334.7(d)(1)(B) and (d)(3).
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: Patrick K. Morah, TCEQ Docket No. 2022-1641-PST-E" and mailed 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 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.
4. 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.
5. 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.
6. The Commission's Chief Clerk shall forward a copy of this Order to Respondent.

7. 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**