

DOCKET NO. 504710

EASTEX TEXACO L.L.C.
D/B/A SANA TEXACO
LICENSE NO. BQ546446

§ BEFORE THE TEXAS
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§
§
§ ALCOHOLIC
§
§ BEVERAGE COMMISSION

HARRIS COUNTY, TEXAS
(SOAH DOCKET NO.458-06-1451)

ORDER

CAME ON FOR CONSIDERATION this 14th day of July 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Roshunda Pringle. The hearing convened on April 21, 2006 and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 22, 2006. The Proposal For Decision, attached as Exhibit "A", was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. As of this date no exceptions have been filed.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which are contained in the Proposal For Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein, are denied.

IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that your license is hereby **SUSPENDED** for **sixty (60) days**.

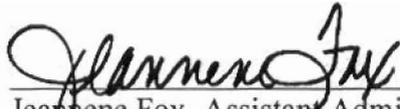
IT IS FURTHER ORDERED, that unless the Respondent pays a civil penalty in the amount of \$9,000.00 on or before the 15th day of August 2006, all rights and privileges under the above described permits will be **SUSPENDED** for a period of **sixty (60) days**, beginning at 12:01 A.M. on the 23rd day of August 2006.

This Order will become final and enforceable on 3rd day of August 2006 unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by in the manner indicated below.

SIGNED on this the 14th day of July 2006.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

Hon. Roshunda Pringle
State Office of Administrative Hearings
2020 North Loop West, Suite 111
Houston, Texas 77018
Via Facsimile 713-812-1001

Eastex Texaco L.L.C.
RESPONDENT
d/b/a Sana Texaco
9278 Eastex Freeway
Houston, TX 77093
CERTIFIED MAIL NO. 7005 3110 0000 6409 0963

Ramona M. Perry
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

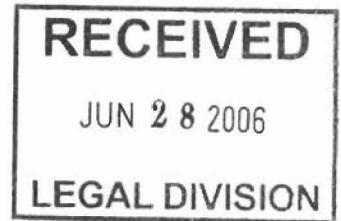
Houston District Office

State Office of Administrative Hearings

RP



Shelia Bailey Taylor
Chief Administrative Law Judge



June 22, 2006

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

504710

**RE: Docket No. 458-06-1451; Texas Alcoholic Beverage Commission v. Eastex
Texaco LLC d/b/a Sana Texaco**

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Roshunda Pringle".

Roshunda Pringle
Administrative Law Judge

RP/mc
Enclosure

xc: **Ramona Perry**, Texas Alcoholic Beverage Commission, 427 West 20th Street, Suite 600, Houston, Texas 77008 -
VIA REGULAR MAIL
Eastex Texaco LLC d/b/a Sana Texaco, 11103 Katy Freeway, Houston, Texas 77079 -**VIA REGULAR MAIL**



DOCKET NO. 458-06-1451

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION**

v.

**EASTEX TEXACO LLC
D/B/A SANA TEXACO
HARRIS COUNTY, TEXAS**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this disciplinary action against Eastex Texaco LLC d/b/a Sana Texaco (Respondent), alleging that Respondent issued checks or drafts for the purchase of beer which were dishonored when presented for payment. Petitioner requested that Respondent's permit and license be suspended for 60 days, or in lieu of suspension, that Respondent pay a civil penalty of \$9,000.00. The Administrative Law Judge (ALJ) agrees with this recommendation.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The Texas Alcoholic Beverage Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 11.61(b)(2), 24.06, 61.71(a)(1), and 61.73(b). The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.

On February 21, 2006, Petitioner issued its notice of hearing, directed to Eastex Texaco LLC d/b/a Sana Texaco at both its physical address of 9278 Eastex Freeway, Houston, Harris County, Texas 77093 and its mailing address of 11103 Katy Freeway, Houston, Harris County, Texas, 77079, via certified mail, return receipt requested. The notice of hearing was received by Respondent on or before March 3, 2006, as evidenced by the return receipt. On April 21, 2006, a hearing convened

before SOAH ALJ Roshunda Pringle at 2020 North Loop West, Suite # 111, Houston, Texas. Petitioner was represented at the hearing by Ramona Perry, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. After presentation of evidence regarding notice and jurisdiction, the record closed on that same date.

II. DISCUSSION

Based on the failure of Respondent to appear at the hearing, Petitioner requested that the default provisions of 1 TEX. ADMIN. CODE § 155.55 be invoked. The ALJ finds that Petitioner issued notice in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63. Pursuant to 1 TEX. ADMIN. CODE § 155.55, the allegations presented in the notice of hearing are deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Proposed Findings of Fact below.

III. FINDINGS OF FACT

1. Respondent, Eastex Texaco LLC d/b/a Sana Texaco, holds a Wine and Beer Retailer's Off-Premises Permit, BQ-546446, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 9278 Eastex Freeway, Houston, Harris County, Texas 77093, and whose mailing address is 11103 Katy Freeway, Houston, Harris County, Texas 77079.
2. On February 21, 2006, Petitioner issued its notice of hearing to Respondent, for a hearing that was held on April 21, 2006. This notice of hearing was received by Respondent on or before March 2, 2006.
3. 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.
4. The notice of hearing also contained the following language in 12-point or larger boldface type: If a party fails to appear at the hearing, the factual allegations in the notice of hearing will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.

5. A hearing convened before Roshunda Pringle, an Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on April 21, 2006. Respondent did not appear and was not represented at the hearing.
6. On or about May 17, 2005, Respondent issued a check or draft in the amount of \$3,988.39 for the purchase of beer that was dishonored when presented for payment violating TEXAS ALCOHOLIC BEVERAGE CODE ANN. §§ 61.73 and 102.31.

IV. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 11.61(b)(2), 24.06, 61.71(a)(1), and 61.73(b).
2. SOAH has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Proper and timely notice of the hearing was affected on Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, 1 TEX. ADMIN. CODE (TAC) § 155.55, and 16 TAC § 37.3.
4. A default judgment should be entered against Respondent pursuant to 1 TEX. ADMIN. CODE § 155.55.
5. Based upon Findings of Fact No. 6, Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 61.73(b) and 102.31.
6. Based upon Conclusion of Law No. 5 and TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), 24.06, 61.71(a)(1), 61.73(b), and 102.31, Respondent's permit and license should be suspended for a period of 60 days. Alternatively, based upon TEX. ALCO. BEV. CODE ANN. § 11.64 Respondent should be permitted to pay a civil penalty of \$9,000.00 in lieu of suspension of the permit and license.

SIGNED June 22, 2006.



**ROSHUNDA PRINGLE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**