

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2004-0679-PST-E TCEQ ID NO.: RN104137054 CASE NO.: 15472
RESPONDENT NAME: MARLIN GRUBER

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 211 Court Street, Highway 90, Newton, Newton County

TYPE OF OPERATION: Auto repair business

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this person.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on October 7, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Jim Sallans, Litigation Division, MC 175, (512) 239-2053
 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873
TCEQ Enforcement Coordinator: Mr. Sandy Van Cleave, Waste Enforcement Division, MC 169, (512) 239-2670
TCEQ Regional Contact: Mr. Derek Eades, Beaumont Regional Office, MC R-10, (409) 898-3838
Respondent: Mr. Marlin Gruber, Rt. 1, Box 211-B, Newton, Texas 75966
Respondent's Attorney: Not represented by counsel.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Dates of Complaints Relating to this Case: None</p> <p>Dates of Investigations Relating to this Case: January 22, 2004</p> <p>Date of NOE Relating to this Case: March 18, 2004</p> <p>Background Facts:</p> <p>The Respondent was the party that removed PSTs from the Site. A Beaumont Regional Office Investigator documented that he failed to follow Commission rules regarding the removal of the PSTs. The Respondent did not respond to the offer of an agreed settlement or the Petition filed.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>PST:</p> <p>1. Failed to obtain a registered and licensed UST contractor and on-site supervisor to perform the removal of the UST system [30 TEX. ADMIN. CODE §§ 334.55(a)(2) and (a)(3) and 334.401(a) and (b)].</p> <p>2. Failed to submit to the Commission the required notifications before removing the USTs from the Site [30 TEX. ADMIN. CODE § 334.6(a)(2), (b)(2) and (b)(2)(c)].</p>	<p>Total Assessed: \$4,050</p> <p>Total Deferred: \$0</p> <p>SEP Conditional Offset: \$0</p> <p>Total Due to General Revenue: \$4,050</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification: <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Action Taken</p> <p>Violations are past events with no opportunity for compliance.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (09/02)

PCW Revision 2/10/2004

DATES		PCW 15-Apr-2005	Screening 11-May-2004	Priority Due 8-Sep-2004	EPA Due
RESPONDENT INFORMATION					
Respondent Marlin Gruber					
Respondent/Site ID No(s) Petroleum Storage Tank Facility ID No. 76375					
Facility/Site Region 10 - Beaumont			Major/Minor Source Minor		
CASE INFORMATION					
Enf./Case ID No(s) CCEDS Case No. 15472					
Docket No. 2004-0679-PST-E			No. Violations 2		
Case Priority 3			Order Type 1660 without deferral		
Enf. Coordinator Sandy VanCleave			EC's Team Enforcement Team 5		
Media Program(s) Petroleum Storage Tank					
Admin. Penalty \$ Limit		Minimum \$0	Maximum \$10,000		

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage. +

Compliance History -10% Reduction Subtotals 2, 3 & 7

Notes +

Culpability 0% Enhancement Subtotal 4

No Select Yes/No +
 Notes +

Good Faith Effort to Comply 0% Reduction Subtotal 5

Extraordinary	Before NOV	NOV to EDRP/Settlement Offer	+
Ordinary			
None of the above	(mark with small x)		

Notes +

Economic Benefit 0% Enhancement* Subtotal 6

\$167	Total EB Amounts	=
\$12,100	Approx. Cost of Compliance	

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage. (enter number only; e.g. -30 for -30%)
 Notes =
Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty

DEFERRAL Deferral 0% Reduction Adjustment

Reduces the Final Assessed Penalty by the indicated percentage. (enter number only; e.g. 20 for 20% reduction)
 Notes =

PAYABLE PENALTY

Screening Date 11-May-2004

Docket Number 2004-0679-PST-E

PCW

Respondent Marlin Gruber

Policy Revision 2 (09/02)

Case ID No. CCEDS Case No. 15472

PCW Revision 2/10/2004

Respondent/Site ID No. Petroleum Storage Tank Facility ID No. 76375

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Sandy VanCleave

Site Address 211 Court St., Hwy 90, Newton, Newton County

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> **Repeat Violator (Subtotal 3)**

No Select Yes/No

Adjustment Percentage (Subtotal 3) 0%

>> **Compliance History Person Classification (Subtotal 7)**

High Performer Select High, Average or Poor

Adjustment Percentage (Subtotal 7) -10%

Compliance History Summary

Compliance History Notes

Reduction due to high performer classification.

Total Adjustment Percentage (Subtotals 2, 3 & 7) -10%

Screening Date 11-May-04

Docket Number 2004-0679-PST-E

PCW

Respondent Marlin Gruber

Policy Revision 2 (09/02)

Case ID No. CCEDS Case No. 15472

PCW Revision 2/10/2004

Respondent/Site ID No. Petroleum Storage Tank Facility ID No. 76375

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Sandy VanCleave

Violation Number

Primary Rule Cite

Secondary Cite(s)

Violation Description

Base Penalty

» Environmental, Property and Human Health Matrix

Harm

Release	Harm		
	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Percent

» Programmatic Matrix

OR	Falsification			
	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one; use small x

daily	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="checkbox"/>

Violation Base Penalty

Events Notes

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount (\$)

Violation Final Penalty total

This Violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Marlin Gruber
ID Number(s) CCEDS Case No. 15472
Media [Statute] Petroleum Storage Tank
Violation Number 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (As needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal	\$12,000	21-Jan-2004	2-Mar-2004	0.1	\$67	n/a	\$67
Permit Costs				0.0	\$0	n/a	\$0
Other (As Needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost for site assessment and tank disposal. Date required is the start date of the removal of the USTs. The final date is the date the licensed contractor submitted a Release Determination Report.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equip				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx Cost of Compliance

TOTAL

Screening Date 11-May-04

Docket Number 2004-0679-PST-E

PCW

Respondent Marlin Gruber

Policy Revision 2 (09/02)

Case ID No. CCEDS Case No. 15472

PCW Revision 2/10/2004

Respondent/Site ID No. Petroleum Storage Tank Facility ID No. 76375

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Sandy VanCleave

Violation Number

Primary Rule Cite

Secondary Cite(s)

Violation Description

Base Penalty

» Environmental, Property and Human Health Matrix

Harm

Release	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent

» Programmatic Matrix

Falsification	Major	Moderate	Minor
<input type="text"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Percent

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one; use small x

daily	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="checkbox"/>

Violation Base Penalty

Events Notes

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount (\$)

Violation Final Penalty total

This Violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Marlin Gruber
 ID Number(s) CCEDS Case No. 15472
 Media [Statute] Petroleum Storage Tank
 Violation Number 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (As needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (As Needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equip				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$100	22-Dec-2003	20-Jan-2004	0.0	\$0	\$100	\$100
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost for personnel to submit notification prior to construction. Date required is 30 days before UST removal. Final date is 24 hours prior to the removal of the USTs.

Approx Cost of Compliance \$100

TOTAL \$100

Compliance History

Customer/Respondent/Owner-Operator: CN602577314 GRUBER, MARLIN Classification: HIGH Rating: 0.000
Regulated Entity: RN104137054 HALTOM AUTO STORE Classification: HIGH Site Rating: 0.00
ID Number(s):
PETROLEUM STORAGE TANK REGISTRATION 0076375
REGISTRATION
Location: 211 E COURT ST, NEWTON, TX, 75966 Rating Date: 9/1/04 Repeat Violator: NO
TCEQ Region: REGION 10 - BEAUMONT
Date Compliance History Prepared: April 15, 2005
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: April 15, 2000 to April 15, 2005
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Sandy VanCleave Phone: (512) 239-0667

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

- 1 01/22/2003 (264715)
- 2 08/02/2004 (272832)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

N/A

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
MARLIN GRUBER,
RN104137054

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2004-0679-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Marlin Gruber ("Mr. Gruber").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Mr. Gruber removed underground storage tanks at an auto repair business located at 211 Court Street Highway 90, Newton, Newton County, Texas (the "Site").
2. Mr. Gruber's underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Gruber's USTs contain a regulated substance as defined in the rules of the Commission.
3. During an inspection on January 22, 2004, a TCEQ Beaumont Regional Office investigator documented that Mr. Gruber:
 - a. Failed to obtain a registered and licensed UST contractor and on-site supervisor to perform the removal of the UST system; and
 - b. Failed to submit to the Commission the required notifications before removing the USTs from the Site.
4. Mr. Gruber received notice of the violations on or about March 20, 2004.

5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Marlin Gruber" (the "EDPRP") in the TCEQ Chief Clerk's office on February 16, 2005.
6. By letter dated February 16, 2005, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Gruber with notice of the EDPRP. According to the return receipt "green card", Mr. Gruber received notice of the EDPRP on February 19, 2005, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Mr. Gruber received notice of the EDPRP, provided by the Executive Director. Mr. Gruber failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Gruber is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Gruber failed to obtain a registered and licensed UST contractor and on-site supervisor to perform the removal of the UST system, in violation of 30 TEX. ADMIN. CODE §§ 334.55(a)(2) and (a)(3) and 334.401(a) and (b).
3. As evidenced by Finding of Fact No. 3.b., Mr. Gruber failed to submit to the Commission the required notifications before removing the USTs from the Site, in violation of 30 TEX. ADMIN. CODE § 334.6(a)(2), (b)(2) and (b)(2)(c).
4. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director has timely served Mr. Gruber with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
5. As evidenced by Finding of Fact No. 8, Mr. Gruber has failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Gruber and assess the penalty recommended by the Executive Director.

6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Gruber for violations of the Texas Water Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of four thousand fifty dollars (\$4,050.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Mr. Gruber is assessed an administrative penalty in the amount of four thousand fifty dollars (\$4,050.00) for violations of TEX. WATER CODE ch. 26 and rules of the TCEQ. The payment of this administrative penalty and Mr. Gruber's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Marlin Gruber; Docket No. 2004-0679-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

2. All relief not expressly granted in this Order is denied.
3. The provisions of this Order shall apply to and be binding upon Mr. Gruber.

4. If Mr. Gruber fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Gruber's failure to comply is not a violation of this Order. Mr. Gruber shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Gruber shall notify the Executive Director within seven days after Mr. Gruber becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Gruber shall be made in writing to the Executive Director. Extensions are not effective until Mr. Gruber receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Gruber if the Executive Director determines that Mr. Gruber has not complied with one or more of the terms or conditions in this Order.
7. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
8. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Marlin Gruber
DOCKET NO. 2004-0679-PST-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF JIM SALLANS

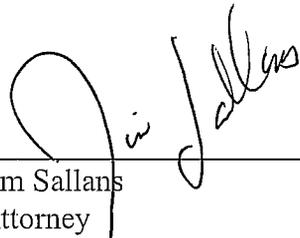
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Jim Sallans. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Marlin Gruber” (the “EDPRP”) with the Office of the Chief Clerk on February 16, 2005.

I sent the EDPRP to Mr. Gruber at his last known address on February 16, 2005 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card”, Mr. Gruber received notice of the EDPRP on February 19, 2005, as evidenced by the signature on the card.

More than 20 days have elapsed since Mr. Gruber received notice of the EDPRP. Mr. Gruber failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference”.

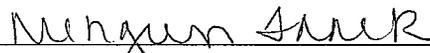


Jim Sallans
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jim Sallans, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 19th day of JULY, A.D., 2007.

Notary  Stamp



Notary Signature