

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER** Page 1 of 2  
**DOCKET NO.: 2005-1246-PST-E TCEQ ID: RN102357019 CASE NO.: 26199**  
**RESPONDENT NAME: FIRST GATESVILLE VENTURE, INC. DBA AMIGOS 3**

<b>ORDER TYPE:</b>		
<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	
<b>CASE TYPE:</b>		
<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
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 3102 South Presa Street, Bexar County</p> <p><b>TYPE OF OPERATION:</b> Convenience store with retail sales of gasoline</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no previous complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on February 12, 2007. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Mr. Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016  Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873  <b>TCEQ Enforcement Coordinator:</b> Mr. Brent Hurta, Enforcement Division, MC 169, (512) 239-6589  <b>TCEQ Regional Contact:</b> Mr. Henry Karnei, Jr., San Antonio Regional Office, MC R-13, (210) 490-3096  <b>Respondent:</b> Mr. Altaf Wadiwalla, Registered Agent, First Gatesville Venture, Inc., 3102 Presa Street, San Antonio, Texas 78210  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter.</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date of Complaints Relating to this Case:</b> None</p> <p><b>Dates of Investigation Relating to this Case:</b> December 31, 2004, and June 30, 2005</p> <p><b>Date of NOV/NOE Relating to this Case:</b> February 23, 2005 (NOV), July 14, 2005 (NOE)</p> <p><b>Background Facts:</b></p> <p>The EDPRP was filed on November 9, 2005. The Respondent received notice of the EDPRP on November 11, 2005, as evidenced by a signed USPS certified mail return receipt via the "green card". The Respondent failed to answer the EDPRP. Attempts to locate the Respondent in order to avoid a default, including enlisting the help of the facility's current owner, were not successful.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p><b>PST</b></p> <p>1. Failed to provide acceptable financial assurance for taking corrective action for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].</p> <p>2. Failed to pay UST fees fro TCEQ Account No. 0062750U for Fiscal Year 2005 [30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702].</p>	<p><b>Total Assessed:</b> \$3,150</p> <p><b>Total Deferred:</b> \$0</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Due to General Revenue:</b> \$3,150</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 proposed Order.</p> <p><b>Site Compliance History Classification</b>  <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provision(s)</b></p> <p>Within 30 days, the Respondent shall submit payment for all outstanding fees, including any associated penalties and interest.</p> <p>The Respondent no longer owns or operates the Facility.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 19, 2005

DATES		Assigned	18-Jul-2005		
PCW	19-Mar-2007	Screening	21-Jul-2005	EPA Due	

RESPONDENT/FACILITY INFORMATION					
Respondent	First Gatesville Venture, Inc. dba Amigos 3				
Reg. Ent. Ref. No.	RN102357019				
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor Source		

CASE INFORMATION					
Enf./Case ID No.	26199		No. of Violations	2	
Docket No.	2005-1246-PST-E		Order Type	1660	
Media Program(s)	Petroleum Storage Tank		Enf. Coordinator	Miriam Hall	
Multi-Media			EC's Team	Enforcement Team 5	
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000		

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$3,000</b>
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	-5% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>-\$150</b>
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Notes: Enhancement due to previous NOV with same or similar violations.

<b>Culpability</b>	No	0% Enhancement	<b>Subtotal 4</b>	<b>\$0</b>
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Notes: The Respondent did not meet the culpability criteria.

<b>Good Faith Effort to Comply</b>	0% Reduction	<b>Subtotal 5</b>	<b>\$0</b>
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with a small x)

Notes: The Respondent does not meet the good faith criteria.

<b>Economic Benefit</b>	0% Enhancement	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts	\$1,943	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,850	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$2,850</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	11% Enhancement	<b>Adjustment</b>	<b>\$300</b>
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes: Because this is a default order, the Respondent loses the High Performer Credit which was \$300.

**Final Penalty Amount** **\$3,150**

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$3,150</b>
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<b>DEFERRAL</b>	0% Reduction	<b>Adjustment</b>	<b>\$0</b>
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral offered for non-expedited settlement.

<b>PAYABLE PENALTY</b>	<b>\$3,150</b>
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**Screening Date** 21-Jul-2005

**Docket No.** 2005-1246-PST-E

**PCW**

**Respondent** First Gatesville Venture, Inc. dba Amigos 3

*Policy Revision 2 (September 2002)*

**Case ID No.** 26199

*PCW Revision May 19, 2005*

**Reg. Ent. Reference No.** RN102357019

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** Miriam Hall

**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 <i>(number of NOVs meeting criteria)</i>	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	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 <i>(number of judgements or consent decrees meeting criteria)</i>	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 <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	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 <i>(number of audits for which notices were disclosed)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%
Other	<i>Please Enter Yes or No</i>		
	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)**

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

**Adjustment Percentage (Subtotal 3)**

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

**Adjustment Percentage (Subtotal 7)**

**>> Compliance History Summary**

**Compliance History Notes**

**Total Adjustment Percentage (Subtotals 2, 3, & 7)**

<b>Screening Date</b> 21-Jul-2005	<b>Docket No.</b> 2005-1246-PST-E	<b>PCW</b>
<b>Respondent</b> First Gatesville Venture, Inc. dba Amigos 3	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 26199	<i>PCW Revision May 19, 2005</i>	
<b>Reg. Ent. Reference No.</b> RN102357019		
<b>Media [Statute]</b> Petroleum Storage Tank		
<b>Enf. Coordinator</b> Miriam Hall		
<b>Violation Number</b> 1		
<b>Primary Rule Cite(s)</b>	30 TAC § 37.815(a) and (b)	
<b>Secondary Rule Cite(s)</b>		
<b>Violation Description</b>	Failure to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs.	
<b>Base Penalty</b>		\$10,000

<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>					
OR	<b>Harm</b>				
	<b>Release</b>	Major	Moderate		Minor
	Actual	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Potential	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Percent</b> <input type="text"/>	
<b>&gt;&gt; Programmatic Matrix</b>					
	Falsification	Major	Moderate	Minor	<b>Percent</b> <input type="text"/>
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Matrix Notes</b>	<input type="text" value="100% of the rule requirement was not met."/>				
<b>Adjustment</b>				-\$9,000	

<b>Base Penalty Subtotal</b>	\$1,000
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<b>Violation Events</b>			
<b>Number of Violation Events</b>	<input type="text" value="3"/>		
mark only one use a small x	<i>daily</i>	<input type="checkbox"/>	
	<i>monthly</i>	<input type="checkbox"/>	
	<i>quarterly</i>	<input type="checkbox"/>	
	<i>semiannual</i>	<input type="checkbox"/>	
	<i>annual</i>	<input type="checkbox"/>	
	<i>single event</i>	<input checked="" type="checkbox"/>	
<b>Violation Base Penalty</b>			\$3,000
<input type="text" value="Three single events (one event per tank) are recommended based upon the record review conducted on June 30, 2005."/>			

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b> <input type="text" value="\$1,943"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$3,150"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$3,150"/>	

### Economic Benefit Worksheet

Respondent: First Gatesville Venture, Inc. dba Amigos 3  
 Case ID No: 26199  
 Reg. Ent. Reference No: RN102357019  
 Media [Statute]: Petroleum Storage Tank  
 Violation No: 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Overtime Costs	EB Amount
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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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				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)	\$1,850	01-Dec-2003	01-Dec-2004	1.0	\$93	\$1,850	\$1,943

Notes for AVOIDED costs

Estimated cost to provide financial assurance for three petroleum USTs (\$650 per tank) for one year prior to the December 1, 2004 request for financial assurance documentation.

Approx. Cost of Compliance \$1,850

**TOTAL** \$1,943

<b>Screening Date</b> 21-Jul-2005	<b>Docket No.</b> 2005-1246-PST-E	<b>PCW</b>
<b>Respondent</b> First Gatesville Venture, Inc. dba Amigos 3	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 26199	<i>PCW Revision May 19, 2005</i>	
<b>Reg. Ent. Reference No.</b> RN102357019		
<b>Media [Statute]</b> Petroleum Storage Tank		
<b>Enf. Coordinator</b> Miriam Hall		
<b>Violation Number</b> <input type="text" value="2"/>		
<b>Primary Rule Cite(s)</b>	30 TAC § 334.22(a)	
<b>Secondary Rule Cite(s)</b>	TWC § 5.702	
<b>Violation Description</b>	Failure to pay Underground Storage Tank late fees for TCEQ Account No. 0062750U for Fiscal Year 2005.	
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>

**>> Environmental, Property and Human Health Matrix**

<b>OR</b>	<b>Harm</b>				
	<b>Release</b>	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text"/>

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	<b>Percent</b> <input type="text"/>				
<b>Matrix Notes</b>	<input style="width:100%; height:100%;" type="text"/>				

**Adjustment**

**Base Penalty Subtotal**

**Violation Events**

Number of Violation Events

	daily	<input type="text"/>
	monthly	<input type="text"/>
mark only one	quarterly	<input type="text"/>
use a small x	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

**Violation Base Penalty**

No penalty is recommended because penalty and interest will be assessed at the next billing.

**Economic Benefit (EB) for this violation      Statutory Limit Test**

**Estimated EB Amount**

**Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

Respondent: First Gatesville Venture, Inc. dba Amigos 3  
 Case ID No: 26199  
 Reg. Ent. Reference No: RN102357019  
 Media [Statute]: Petroleum Storage Tank  
 Violation No: 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	N/A						

Item Description	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal		0.0	\$0	\$0	\$0
Personnel		0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling		0.0	\$0	\$0	\$0
Supplies/equipment		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	N/A				

Approx. Cost of Compliance

## Compliance History

Customer/Respondent/Owner-Operator: CN602725202 First Gatesville Venture, Inc. Classification: HIGH Rating: 0.000

Regulated Entity: RN102357019 AMIGOS 3 Classification: HIGH Site Rating: 0.00

ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 17078  
REGISTRATION

Location: 3102 S PRESA ST, SAN ANTONIO, TX, 78210

TCEQ Region: REGION 13 - SAN ANTONIO

Date Compliance History Prepared: July 20, 2005

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: July 20, 2000 to July 20, 2005

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Brent Hurta Phone: 512-239-6589

### 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

6. Comments:

#### 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 02/23/2005 (398190)
- 2 07/14/2005 (398507)
- 3 08/29/2003 (153061)
- 4 08/20/2003 (150575)

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

Date: 02/23/2005 (398190)

Self Report? NO

Classification: Moderate

Citation:

30 TAC Chapter 37, SubChapter I 37.815(a)[G]

30 TAC Chapter 37, SubChapter I 37.815(b)[G]

Description: Failure to provide acceptable Financial Assurance.

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  
FIRST GATESVILLE  
VENTURE, INC. DBA AMIGOS 3;  
RN102357019

§  
§  
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§  
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BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**DEFAULT ORDER**  
**DOCKET NO. 2005-1246-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. 5, 7 and 26, and the rules of the TCEQ, which requests appropriate relief, the imposition of an administrative penalty, and corrective action of the respondent. The respondent made the subject of this Order is First Gatesville Venture, Inc. dba Amigos 3 ("First Gatesville Venture").

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

**FINDINGS OF FACT**

1. At the time of the violation, First Gatesville Venture owned and operated a convenience store with retail sales of gasoline located at 3102 South Presa Street, San Antonio, Bexar County, Texas (the "Facility").
2. First Gatesville Venture's underground storage tanks ("USTs") were not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. First Gatesville Venture's USTs contained a regulated substance as defined in the rules of the Commission.
3. During a record review conducted on June 30, 2005, a TCEQ San Antonio Regional Office investigator documented that First Gatesville Venture:
  - a. failed to provide acceptable financial assurance for taking corrective action for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs; and
  - b. failed to pay Underground Storage Tank fees for TCEQ Account No. 0062750U for fiscal year 2005.

4. First Gatesville Venture received notice of the violations on or about July 19, 2005.
5. The Executive Director recognizes that First Gatesville Venture no longer owns the Facility which was sold to QD Ventures, Inc. registered with TCEQ as the owner of the Facility effective July 10, 2006.
6. 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 and Requiring Certain Actions of First Gatesville Venture, Inc. dba Amigos 3" (the "EDPRP") in the TCEQ Chief Clerk's office on November 9, 2005.
7. By letter dated November 9, 2005, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served First Gatesville Venture with notice of the EDPRP. According to the return receipt "green card," First Gatesville Venture received notice of the EDPRP on November 22, 2005, as evidenced by the signature on the card.
8. More than 20 days have elapsed since First Gatesville Venture received notice of the EDPRP, provided by the Executive Director. First Gatesville Venture 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, First Gatesville Venture is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 5, 7 and 26, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., First Gatesville Venture failed to provide acceptable financial assurance for taking corrective action for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b).
3. As evidenced by Finding of Fact No. 3.b., First Gatesville Venture failed to pay Underground Storage Tank fees for TCEQ Account No. 0062750U for fiscal year 2005, in violation of 30 TEX. ADMIN. CODE § 334.22(a) AND TEX. WATER CODE § 5.702.
4. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director has timely served First Gatesville Venture 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, First Gatesville Venture 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 First Gatesville Venture 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 First Gatesville Venture for violations of the Texas Water Code and the Texas Health and Safety 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 three thousand one hundred fifty dollars (\$3,150.00.00) 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. First Gatesville Venture is assessed an administrative penalty in the amount of three thousand one hundred fifty dollars (\$3,150.00.00) for violations of TEX. WATER CODE chs. 5, 7, and 26, and rules of the TCEQ. The payment of this administrative penalty and First Gatesville Venture'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: First Gatesville Venture, Inc. dba Amigos 3; Docket No. 2005-1246-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. First Gatesville Venture shall undertake the following technical requirements:
- a. Within 30 days after the effective date of this Order, First Gatesville Venture shall submit payment for all outstanding fees, including any associated penalties and interest and with the notation, "First Gatesville Venture, Inc. dba Amigos 3, TCEQ Financial Administration Account No. 0062750U", 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

- b. First Gatesville Venture shall submit all correspondence, reports, and documentation required by these Ordering Provisions to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

and

Henri Karnei, Waste Section Manager  
Texas Commission on Environmental Quality  
San Antonio Regional Office  
14250 Judson Road  
San Antonio, Texas 78233-4480

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon First Gatesville Venture. First Gatesville Venture is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility's operations referenced in this Order.

5. If First Gatesville Venture fails to comply with any of the Ordering Provisions in this Order within the prescribed schedule, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, First Gatesville Venture's failure to comply is not a violation of this Order. First Gatesville Venture shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. First Gatesville Venture shall notify the Executive Director within seven days after First Gatesville Venture becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. 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 First Gatesville Venture shall be made in writing to the Executive Director. Extensions are not effective until First Gatesville Venture receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. 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 First Gatesville Venture if the Executive Director determines that First Gatesville Venture has not complied with one or more of the terms or conditions in this Order.
8. 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.
9. 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.

First Gatesville Venture, Inc. dba Amigos 3  
Docket No. 2005-1246-PST-E  
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## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF XAVIER GUERRA**

STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR       §

“My name is Xavier Guerra. 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, Rebecca Davis 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 and Requiring Certain Actions of First Gatesville Venture, Inc. dba Amigos 3” (the “EDPRP”) with the Office of the Chief Clerk on November 9, 2005.

Rebecca Davis sent the EDPRP to First Gatesville Venture at its last known address on November 9, 2005, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” First Gatesville Venture received notice of the EDPRP on November 22, 2005, as evidenced by the signature on the card.

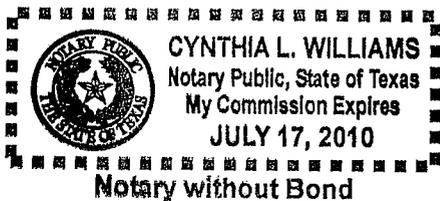
More than 20 days have elapsed since First Gatesville Venture received notice of the EDPRP. First Gatesville Venture failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”



Xavier Guerra  
Attorney  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Xavier Guerra, 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 15<sup>th</sup> day of December, A.D., 2006.

  
Notary Stamp