

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

**DOCKET NO.: 2006-0411-PST-E TCEQ ID NO.: RN102781952 CASE NO.: 29069
RESPONDENT NAME: WESTEX CAPITAL, LTD. DBA CORNER STORE**

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
<p>SITE WHERE VIOLATION(S) OCCURRED: 342 East Main Street, Yorktown, Dewitt County</p> <p>TYPE OF OPERATION: Convenience store with retail sales of gasoline</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on March 12, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Mr. Robert R. Mosley, Litigation Division, MC 175, (512) 239-6027; Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Mr. Samuel Short, Enforcement Division, Section II, MC 219, (512) 239-5363 TCEQ Regional Contact: Mr. Brad Genzer, Corpus Christi Regional Office, MC R-14, (361) 825-3106 Respondent: Mr. Robert Kusenberger, Registered Agent, Westex Capital, Ltd. dba Corner Store, 307 East 10th, Del Rio, Texas 78840 Respondent's Attorney: Not represented by counsel.</p>		

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>Date of Complaints Relating to this Case:</p> <p>Date of Investigation Relating to this Case: January 27, 2006</p> <p>Date of NOE Relating to this Case: March 22, 2006</p> <p>Background Facts:</p> <p>The Respondent registered the USTs as temporarily removed from service on February 13, 2005.</p> <p>An EDPRP was filed on September 8, 2006. The Respondent received notice of the EDPRP on September 9, 2006. The Respondent has not filed an answer, scheduled a settlement conference, or requested a hearing.</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>Failed to have the corrosion protection system operating in a manner that will ensure that corrosion protection will be continuously provided to all underground metal components of the UST system. Specifically, the rectifier switch was off on the Facility's field installed cathodic protection system [30 TEX. ADMIN. CODE § 334.49(a)(2) and TEX. WATER CODE § 26.3475(d)].</p>	<p>Total Assessed: \$2,500</p> <p>Total Deferred: \$0</p> <p>Total Due to General Revenue: \$2,500</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 type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" 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>The Executive Director recognizes that the Respondent temporarily removed the USTs from service on February 13, 2005 by emptying the tanks to less than one inch of petroleum products, securing the tanks and updating the UST registration information.</p> <p>Ordering Provisions</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Within 30 days, begin operating the corrosion protection system in a manner that will ensure that corrosion protection will be continuously provided to all underground metal components of the UST system. 2. Within 45 days, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 1.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 19, 2005

DATES	Assigned	03-Apr-2006	Screening	17-Apr-2006	EPA Due	
	PCW	19-Jul-2006				

RESPONDENT/FACILITY INFORMATION	
Respondent	Westex Capital, LTD. dba Corner Store
Reg. Ent. Ref. No.	RN102781952
Facility/Site Region	14-Corpus Christi
Major/Minor Source	Minor Source

CASE INFORMATION			
Enf./Case ID No.	29069	No. of Violations	1
Docket No.	2006-0411-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Samuel Short
Multi-Media		EC's Team	Enforcement Team 4
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 **\$2,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 0% Enhancement Subtotals 2, 3, & 7 **\$0**

Notes: No adjustment due to compliance history.

Culpability No 0% Enhancement Subtotal 4 **\$0**

Notes: The respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction Subtotal 5 **\$0**

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with a small x)

Notes: The respondent is not yet in compliance.

Economic Benefit 0% Enhancement* Subtotal 6 **\$0**

Total EB Amounts	\$59	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,000	

SUM OF SUBTOTALS 1-7 Final Subtotal **\$2,500**

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

Final Penalty Amount **\$2,500**

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty **\$2,500**

DEFERRAL 0% Reduction Adjustment **\$0**

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

Notes: No deferral offered for a non-expedited order.

PAYABLE PENALTY **\$2,500**

Screening Date 17-Apr-2006

Docket No. 2006-0411-PST-E

PCW

Respondent Westex Capital, LTD. dba Corner Store

Policy Revision 2 (September 2002)

Case ID No. 29069

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN102781952

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Samuel Short

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>	0	0%
	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 (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 <i>(number of audits for which notices were)</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%
<i>Please Enter Yes or No</i>			
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

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment due to compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date	17-Apr-2006	Docket No.	2006-0411-PST-E	PCW
Respondent	Westex Capital, LTD: dba Corner Store	<i>Policy Revision 2 (September 2002)</i>		
Case ID No.	29069	<i>PCW Revision May 19, 2005</i>		
Reg. Ent. Reference No.	RN102781952			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Samuel Short			
Violation Number	1			
Primary Rule Cite(s)	30 Tex. Admin. Code § 334.49(a)(2)			
Secondary Rule Cite(s)	Tex. Water Code § 26.3475(d)			
Violation Description	Failure to have the corrosion protection system operating in a manner that will ensure that corrosion protection will be continuously provided to all underground metal components of the UST system. Specifically, the rectifier switch was off on the Facility's field installed cathodic protection system.			
Base Penalty				\$10,000

>>	Environmental, Property and Human Health Matrix				
OR		Harm			
	Release	Major	Moderate	Minor	
	Actual				
	Potential	x			Percent 25%
>>	Programmatic Matrix				
	Falsification	Major	Moderate	Minor	
					Percent
Matrix Notes	Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.				
Adjustment					-\$7,500

Base Penalty Subtotal	\$2,500
------------------------------	---------

Violation Events					
	Number of Violation Events	1			
<i>mark only one use a small x</i>	<i>daily</i>				
	<i>monthly</i>				
	<i>quarterly</i>	x			
	<i>semiannual</i>				
	<i>annual</i>				
	<i>single event</i>				
Violation Base Penalty					\$2,500
One quarterly event is recommended from the investigation date of January 27, 2006 to the screening date of April 17, 2006.					

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount	\$59
	Violation Final Penalty Total
	\$2,500
This violation Final Assessed Penalty (adjusted for limits)	
\$2,500	

Economic Benefit Worksheet

Respondent Westex Capital, LTD. dba Corner Store

Case ID No. 29069

Reg. Ent. Reference No. RN102781952

Media [Statute] Petroleum Storage Tank

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment	\$1,000	27-Jan-2006	01-Dec-2006	0.8	\$3	\$56	\$59
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

The delayed cost includes the estimated amount required to have the corrosion protection system operating in a manner that will ensure that corrosion protection will be continuously provided to all underground metal components of the UST system. Date required is the date of investigation. Final date is the estimated date of compliance.

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/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

Approx. Cost of Compliance \$1,000

TOTAL \$59

Compliance History

Customer/Respondent/Owner-Operator:	CN601268402 Westex Capital, LTD.	Classification: AVERAGE	Rating: 3.78
Regulated Entity:	RN102781952 CORNER STORE	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	26785
Location:	342 E MAIN ST, YORKTOWN, TX, 78164	Rating Date: 9/1/2005	Repeat Violator: NO
TCEQ Region:	REGION 14 - CORPUS CHRISTI		
Date Compliance History Prepared:	April 17, 2006		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	April 17, 2001 to April 17, 2006		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Joseph Daley	Phone:	817-588-5928

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 03/22/2006 (455229)
 - 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
AGAINST WESTEX CAPITAL,
LTD. DBA CORNER STORE;
RN102781952**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER
DOCKET NO. 2006-0411-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 Westex Capital, Ltd. dba Corner Store ("Westex").

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

FINDINGS OF FACT

1. Westex owns and formerly operated a convenience store with retail sales of gasoline located at 342 East Main Street, Yorktown, Dewitt County, Texas (the "Facility").
2. Westex's three underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Westex's USTs contain a regulated substance as defined in the rules of the Commission.
3. During an inspection on January 27, 2006, a TCEQ Corpus Christi Regional Office investigator documented that Westex failed to have the corrosion protection system operating in a manner that will ensure that corrosion protection will be continuously provided to all underground metal components of the UST system. Specifically, the rectifier switch was off on the Facility's field installed cathodic protection system.
4. Westex received notice of the violation on or about March 22, 2006.
5. The Executive Director recognizes that Westex temporarily removed the USTs from service on February 13, 2005 by emptying the tanks to less than one inch of petroleum products, securing the tanks and updating the UST registration information.

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 Westex Capital, Ltd. dba Corner Store" (the "EDPRP") in the TCEQ Chief Clerk's office on September 8, 2006.
7. By letter dated September 8, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Westex with notice of the EDPRP. According to the return receipt "green card", Westex received notice of the EDPRP on September 11, 2006, as evidenced by the signature on the card.
8. More than 20 days have elapsed since Westex received notice of the EDPRP, provided by the Executive Director. Westex 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, Westex is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Westex failed to have the corrosion protection system operating in a manner that will ensure that corrosion protection will be continuously provided to all underground metal components of the UST system. Specifically, the rectifier switch was off on the Facility's field installed cathodic protection system, in violation of 30 TEX. ADMIN. CODE § 334.49(a)(2) and TEX. WATER CODE § 26.3475(d).
3. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director has timely served Westex with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 8, Westex 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 Westex and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Westex 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.

6. An administrative penalty in the amount of two thousand five hundred dollars (\$2,500.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. 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. Westex is assessed an administrative penalty in the amount of two thousand five hundred dollars (\$2,500.00) for violations of TEX. WATER CODE ch. 26 and rules of the TCEQ. The payment of this administrative penalty and Westex'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: Westex Capital, Ltd. dba Corner Store; Docket No. 2006-0411-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. The Executive Director recommends that Westex be required to implement the following corrective measures:
 - a. Within 30 days after the effective date of this Order, begin operating the corrosion protection system in a manner that will ensure that corrosion protection will be continuously provided to all underground metal components of the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.49; and
 - b. Within 45 days after the effective date of this Order, submit written certification as described below, and include detailed supporting documentation including

photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision number 2.a.

The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

the certification shall be submitted to:

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

with a copy to:

Brad Genzer, Waste Section Manager
Corpus Christi Regional Office
Texas Commission on Environmental Quality
6300 Ocean Drive, Unit 5839
Corpus Christi, Texas 78412

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Westex. Westex is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. If Westex 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, Westex's failure to comply is not a violation of this Order. Westex shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Westex shall notify the Executive Director within seven days after Westex

- 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 Westex shall be made in writing to the Executive Director. Extensions are not effective until Westex 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 Westex if the Executive Director determines that Westex 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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF ROBERT R. MOSLEY

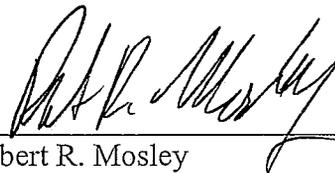
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Robert R. Mosley. 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 and Requiring Certain Actions of Westex Capital, Ltd. dba Corner Store” (the “EDPRP”) with the Office of the Chief Clerk on September 8, 2006.

I sent the EDPRP to Westex at its last known address on September 8, 2006 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card”, Westex received notice of the EDPRP on September 11, 2006, as evidenced by the signature on the card.

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



Robert R. Mosley
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Robert R. Mosley, 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 11 day of January A.D., 2007.

Notary Stamp

