EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-0597-PST-E **TCEQ ID:** RN101656460 **CASE NO.:** 33195

RESPONDENT NAME: Ernest Hogue

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	X PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Hi-Low Trans (former site name), 1800 Wyoming Avenue, El Paso, El Paso County

TYPE OF OPERATION: Property with underground storage tanks ("USTs")

SMALL BUSINESS: ___ **Yes** X **No**

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

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 December 27, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Mr. Thomas Greimel, Enforcement Team 6, MC-128, (512) 239-5690; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-0468
Respondent: Mr. Ernest Hogue, 1931 Woodglen Way, Elcajon, California 92020
Mr. Mark V. Hogue, Power of Attorney for Ernest Hogue, 1931 Woodglen Way, Elcajon, California 92020
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: ___ Complaint ___ Routine ___ Enforcement Follow-up _X_ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** March 5, 2007 **Date of NOV/NOE Relating to this Case:** March 26, 2007 (NOE) **Background Facts:** This was a record review investigation. Three violations were documented. **WASTE** 1) Failure to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, as documented during a record review conducted on March 5, 2007 [30 TEX. ADMIN. CODE § 334.47(a)(2)]. 2) Failure to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change. Specifically, the registration was not updated to reflect the current operational status of the USTs [30 TEX. ADMIN. CODE § 334.7(d)(3)]. 3) Failure to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0041209U for fiscal years 2000 through 2007 [30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702].	**Total Assessed:** $8,925 **Total Deferred:** $7,725 _X_ Expedited Settlement ($1,785) _X_ Financial Inability to Pay ($5,940) **SEP Conditional Offset:** $0 **Total Due to General Revenue:** $1,200 (the Respondent has paid $100; remaining $1,100 to be paid in 11 monthly payments of $100 each) The Financial Assurance Section of the Commission's Financial Administration Division reviewed the financial documentation submitted by Ernest Hogue and determined that Mr. Hogue is unable to pay part of the administrative penalty. **Site Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Person Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Major Source:** ___ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** 1) The order will require the Respondent to: a) Within 30 days after the effective date of this Agreed Order, submit payment for all outstanding fees, including any associated penalties and interest; b) Within 45 days after the effective date of this Agreed Order, permanently remove the UST system from service; c) Within 60 days after the effective date of this Agreed Order, submit an amended registration to reflect the current operational status of the UST system. d) Within 75 days after the effective date of this Agreed 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 Nos. a through c. The certification shall be notarized by a State of Texas Notary Public.

Additional ID No(s).:PST 64946

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision December 8, 2006*

TCEQ

DATES					
Assigned	26-Mar-2007				
PCW	13-Apr-2007	Screening	4-Apr-2007	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Ernest Hogue		
Reg. Ent. Ref. No.	RN101656460		
Facility/Site Region	06-El Paso	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	33195	No. of Violations	3
Docket No.	2007-0597-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Thomas Greimel
Multi-Media		EC's Team	Enforcement Team 6
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* **$8,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 5% Enhancement — *Subtotals 2, 3, & 7* **$425**

Notes: Enhancement for one previous NOV with same or similar violations.

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 EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

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

0% Enhancement* — *Subtotal 6* **$0**

**Capped at the Total EB $ Amount*

Total EB Amounts	$4,478
Approx. Cost of Compliance	$10,100

SUM OF SUBTOTALS 1-7 — *Final Subtotal* **$8,925**

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 **$8,925**

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* **$8,925**

DEFERRAL — 20% Reduction — *Adjustment* **-$1,785**

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY **$7,140**

Screening Date 4-Apr-2007 **Docket No.** 2007-0597-PST-E **PCW**

Respondent Ernest Hogue *Policy Revision 2 (September 2002)*

Case ID No. 33195 *PCW Revision December 8, 2006*

Reg. Ent. Reference No. RN101656460

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

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*)	1	5%
	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) 5%

>> **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 Enhancement for one previous NOV with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 4-Apr-2007 **Docket No.** 2007-0597-PST-E **PCW**

Respondent Ernest Hogue *Policy Revision 2 (September 2002)*

Case ID No. 33195 *PCW Revision December 8, 2006*

Reg. Ent. Reference No. RN101656460

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.47(a)(2)

Violation Description Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

Release	Harm: Major	Moderate	Minor
Actual			
Potential	x		

OR

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment could be exposed to significant amounts of pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events 3 | 30 Number of violation days

mark only one with an x

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $7,500

Three monthly events are recommended (one month per tank) from the March 5, 2007 record review date to the April 4, 2007 screening date.

Economic Benefit (EB) for this violation

Estimated EB Amount $4,474

Statutory Limit Test

Violation Final Penalty Total $7,875

This violation Final Assessed Penalty (adjusted for limits) $7,875

Economic Benefit Worksheet

Respondent Ernest Hogue
Case ID No. 33195
Reg. Ent. Reference No. RN101656460
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	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)	$10,000	22-Dec-1998	1-Dec-2007	8.9	$4,474	n/a	$4,474

Notes for DELAYED costs: Estimated cost to permanently remove the UST system from service. Date Required is the date when the respondent was required to upgrade the UST system. Final Date is the date the respondent is projected to come into 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: $10,000

TOTAL: $4,474

Screening Date 4-Apr-2007 **Docket No.** 2007-0597-PST-E **PCW**

Respondent Ernest Hogue *Policy Revision 2 (September 2002)*

Case ID No. 33195 *PCW Revision December 8, 2006*

Reg. Ent. Reference No. RN101656460

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.7(d)(3)

Violation Description Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change. Specifically, the registration was not updated to reflect the current operational status of the USTs.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes: 100% of the rule requirement has not been met.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 1

30 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $1,000

One single event is recommended based on documentation of the violation during the March 5, 2007 investigation.

Economic Benefit (EB) for this violation

Estimated EB Amount $4

Statutory Limit Test

Violation Final Penalty Total $1,050

This violation Final Assessed Penalty (adjusted for limits) $1,050

Economic Benefit Worksheet

Respondent Ernest Hogue
Case ID No. 33195
Reg. Ent. Reference No. RN101656460
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	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)	$100	5-Mar-2007	1-Dec-2007	0.7	$4	n/a	$4

Notes for DELAYED costs: Estimated cost to update the UST registration. Date Required is the date of the record review. Final Date is the date the respondent is projected to come into 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: $100

TOTAL: $4

Screening Date 4-Apr-2007 **Docket No.** 2007-0597-PST-E **PCW**

Respondent Ernest Hogue *Policy Revision 2 (September 2002)*

Case ID No. 33195 *PCW Revision December 8, 2006*

Reg. Ent. Reference No. RN101656460

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.22(a) and Tex. Water Code § 5.702

Violation Description Failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0041209U for fiscal years 2000 through 2007.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Adjustment $10,000

$0

Violation Events

Number of Violation Events

Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $0

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

Economic Benefit (EB) for this violation

Estimated EB Amount $0

Statutory Limit Test

Violation Final Penalty Total $0

This violation Final Assessed Penalty (adjusted for limits) $0

Economic Benefit Worksheet

Respondent Ernest Hogue
Case ID No. 33195
Reg. Ent. Reference No. RN101656460
Media Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	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	N/A						
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: $0

TOTAL: $0

Compliance History

Customer/Respondent/Owner-Operator:	CN603170267	Ernest Hogue	Classification: AVERAGE	Rating: 2.00
Regulated Entity:	RN101656460	Hi-Low Trans	Classification: AVERAGE	Site Rating: 2.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	64946	
Location:	1800 WYOMING AVE, EL PASO, TX, 79902		Rating Date: 9/1/2006	Repeat Violator: NO
TCEQ Region:	REGION 06 - EL PASO			
Date Compliance History Prepared:	April 29, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	April 29, 2002 to April 29, 2007			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Thomas Greimel Phone: (512) 239-5690

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 08/30/2006 (510463)

2 03/23/2007 (554668)

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

Date: 08/30/2006 (510463)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)

Description: Failure to upgrade out of service tanks to meet all technical standards.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)

Description: Failure to amend PST registration as required to reflect current facility information.

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	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
ERNEST HOGUE	§	
RN101656460	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2007-0597-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Ernest Hogue ("Mr. Hogue") under the authority of TEX. WATER CODE chs. 5, 7, and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Mr. Hogue appear before the Commission and together stipulate that:

1. Mr. Hogue owns a property with underground storage tanks ("USTs") at 1800 Wyoming Avenue in El Paso, El Paso County, Texas (the "Facility").

2. Mr. Hogue's three USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.

3. The Commission and Mr. Hogue agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Hogue is subject to the Commission's jurisdiction.

4. Mr. Hogue received notice of the violations alleged in Section II ("Allegations") on or about March 31, 2007.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Hogue of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Eight Thousand Nine Hundred Twenty-Five ($8,925) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Financial Assurance Section of the Commission's Financial Administration

Division reviewed financial documentation submitted by Mr. Hogue and determined that Mr. Hogue is unable to pay part of the administrative penalty. Therefore, Seven Thousand Seven Hundred Twenty-Five ($7,725) of the penalty is deferred contingent upon Mr. Hogue's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Mr. Hogue fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require Mr. Hogue to pay all or part of the deferred penalty.

Mr. Hogue has paid One Hundred Dollars ($100) of the undeferred administrative penalty. The remaining amount of One Thousand One Hundred Dollars ($1,100) of the administrative penalty shall be payable in 11 monthly payments of One Hundred Dollars ($100) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment. If Mr. Hogue fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of Mr. Hogue to meet the payment schedule of this Agreed Order constitutes the failure by Mr. Hogue to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

8. The Executive Director of the TCEQ and Mr. Hogue have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Mr. Hogue has not complied with one or more of the terms or conditions in this Agreed Order.

10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner of the Facility, Mr. Hogue is alleged to have:

1. Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, in violation of 30 TEX. ADMIN. CODE § 334.47(a)(2), as documented during a record review conducted on March 5, 2007.

2. Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3), as documented during a record review conducted on March 5, 2007. Specifically, the registration was not updated to reflect the correct ownership information and the current operational status of the USTs.

3. Failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0041209U for fiscal years 2000 through 2007, in violation of 30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER. CODE § 5.702, as documented during a record review conducted on April 4, 2007.

III. DENIALS

Mr. Hogue generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Hogue pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Hogue's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Ernest Hogue, Docket No. 2007-0597-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. It is further ordered that Mr. Hogue shall undertake the following technical requirements:

   a. Within 30 days after the effective date of this Agreed Order, submit payment for all outstanding fees, including any associated penalties and interest and with the notation, "Ernest Hogue, TCEQ Financial Administration Account No. 0041209U", to the address listed in Ordering Provision No. 1;

   b. Within 45 days after the effective date of this Agreed Order, permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55; and

   c. Within 60 days after the effective date of this Agreed Order, submit an amended registration to reflect the correct ownership information and the current operational status of the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

      Registration and Reporting Section
      Permitting & Remediation Support Division, MC138
      Texas Commission on Environmental Quality

P. O. Box 13087
Austin, Texas 78711-3087

d. Within 75 days after the effective date of this Agreed 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 Nos. 2.a through 2.c.

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:

Waste Section Manager
El Paso Regional Office
Texas Commission on Environmental Quality
401 East Franklin Avenue, Suite 560
El Paso, Texas 79901-1206

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Hogue. Mr. Hogue is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

4. If Mr. Hogue fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Hogue's failure to comply is not a violation of this Agreed Order. Mr. Hogue shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Hogue shall notify the Executive Director within seven days after Mr. Hogue 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 Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and

substantiated showing of good cause. All requests for extensions by Mr. Hogue shall be made in writing to the Executive Director. Extensions are not effective until Mr. Hogue receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Hogue in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Mr. Hogue, or three days after the date on which the Commission mails notice of the Order to Mr. Hogue, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

_____ 12/7/07
For the Executive Director Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

_____ 10/1/07
Signature Date

MARK HOGUE _____
Name (Printed or typed) Title
Authorized Representative of
Ernest Hogue

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.