

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2008-0415-PST-E **TCEQ ID:** RN101892875 **CASE NO.:** 35526

**RESPONDENT NAME:** Grady W. Mosley

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input 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> Mosleys Convenience Store, Farm-to-Market Road 346 East, Troup, Smith County</p> <p><b>TYPE OF OPERATION:</b> Property with two inactive underground storage tanks ("USTs")</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 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 August 18, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. Steven Lopez, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-1896; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171  <b>Respondent:</b> Mr. Grady W. Mosley, Owner, 1230 East Erwin Street, Tyler, Texas 75702  <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>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> February 19, 2008 and February 6, 2008</p> <p><b>Date of NOV/NOE Relating to this Case:</b> February 29, 2008 (NOE)</p> <p><b>Background Facts:</b> These were record reviews.</p> <p><b>WASTE</b></p> <p>1) Failure to permanently remove from service, no later than 60 days after the prescribed implementation date, two underground storage tanks ("USTs") for which any applicable component of the system is not brought into timely compliance with the upgrade requirements [30 TEX. ADMIN. CODE § 334.47(a)(2)].</p> <p>2) Failure to notify the agency of any change or additional information regarding USTs within 30 days from the date of occurrence of the change or addition. Specifically, the registration was not updated to reflect the correct ownership information and the current operational status of the UST system [30 TEX. ADMIN. CODE § 334.7(d)(3)].</p> <p>3) Failure to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0023993U for fiscal years 1988 through 2007 [30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702].</p>	<p><b>Total Assessed:</b> \$6,300</p> <p><b>Total Deferred:</b> \$1,260  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid (Due) to General Revenue:</b> \$140 (remaining \$4,900 due in 35 monthly payments of \$140 each)</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" 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 Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, permanently remove the UST system from service;</p> <p>b. Within 30 days after the effective date of this Agreed Order, submit payment for outstanding fees, including any associated penalties and interest;</p> <p>c. Within 45 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; and</p> <p>d. Within 60 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a. through c.</p>

Additional ID No(s): 47151



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision February 29, 2008

<b>DATES</b>	<b>Assigned</b>	3-Mar-2008	<b>Screening</b>	6-Mar-2008	<b>EPA Due</b>	
	<b>PCW</b>	17-Mar-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Grady W. Mosley
<b>Reg. Ent. Ref. No.</b>	RN101892875
<b>Facility/Site Region</b>	5-Tyler
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>				
<b>Enf./Case ID No.</b>	35526	<b>No. of Violations</b>	3	
<b>Docket No.</b>	2008-0415-PST-E	<b>Order Type</b>	1660	
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Enf. Coordinator</b>	Steven Lopez	
<b>Multi-Media</b>		<b>EC's Team</b>	Enforcement Team 6	
<b>Admin. Penalty \$</b>	<b>Limit Minimum</b>	\$0	<b>Maximum</b>	\$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** **Subtotals 2, 3, & 7**

5% Enhancement

**Notes**

**Culpability** **Subtotal 4**

No 0% Enhancement

**Notes**

**Good Faith Effort to Comply** **Subtotal 5**

0% Reduction

Before NOV      NOV to EDRP/Settlement Offer

Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	X	(mark with x)

**Notes**

**Total EB Amounts**  **0% Enhancement\*** **Subtotal 6**   
 Approx. Cost of Compliance  \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **Adjustment**

0%

Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes**

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL** **Adjustment**

20% Reduction

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

**Notes**

**PAYABLE PENALTY**

Screening Date 6-Mar-2008

Docket No. 2008-0415-PST-E

PCW

Respondent Grady W. Mosley

Policy Revision 2 (September 2002)

Case ID No. 35526

PCW Revision February 29, 2008

Reg. Ent. Reference No. RN101892875

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Lopez

### 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%

<b>Screening Date</b> 6-Mar-2008	<b>Docket No.</b> 2008-0415-PST-E	<b>PCW</b>													
<b>Respondent</b> Grady W. Mosley		<i>Policy Revision 2 (September 2002)</i>													
<b>Case ID No.</b> 35526		<i>PCW Revision February 29, 2008</i>													
<b>Reg. Ent. Reference No.</b> RN101892875															
<b>Media [Statute]</b> Petroleum Storage Tank															
<b>Enf. Coordinator</b> Steven Lopez															
<b>Violation Number</b> <input type="text" value="1"/>															
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 334.47(a)(2)														
<b>Violation Description</b>	Failed to permanently remove from service, no later than 60 days after the prescribed implementation date, two USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.														
	<b>Base Penalty</b>	<input type="text" value="\$10,000"/>													
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>															
	<b>Harm</b>														
	Major	Moderate	Minor												
<b>OR</b>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"><b>Actual</b></td> <td style="width:33%;"><input type="text"/></td> <td style="width:33%;"><input type="text"/></td> </tr> <tr> <td><b>Potential</b></td> <td style="text-align: center;">x</td> <td><input type="text"/></td> </tr> </table>		<b>Actual</b>	<input type="text"/>	<input type="text"/>	<b>Potential</b>	x	<input type="text"/>	<b>Percent</b> <input type="text" value="25%"/>						
<b>Actual</b>	<input type="text"/>	<input type="text"/>													
<b>Potential</b>	x	<input type="text"/>													
<b>&gt;&gt; Programmatic Matrix</b>															
	Falsification	Major	Moderate	Minor											
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>											
				<b>Percent</b> <input type="text" value="0%"/>											
<b>Matrix Notes</b>	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.														
	<b>Adjustment</b>	<input type="text" value="\$7,500"/>													
		<input type="text" value="\$2,500"/>													
<b>Violation Events</b>															
	<b>Number of Violation Events</b>	<input type="text" value="2"/>	<b>Number of violation days</b>												
		<input type="text" value="16"/>													
	<i>mark only one with an x</i>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr><td>daily</td><td><input type="text"/></td></tr> <tr><td>monthly</td><td style="text-align: center;">x</td></tr> <tr><td>quarterly</td><td><input type="text"/></td></tr> <tr><td>semiannual</td><td><input type="text"/></td></tr> <tr><td>annual</td><td><input type="text"/></td></tr> <tr><td>single event</td><td><input type="text"/></td></tr> </table>	daily	<input type="text"/>	monthly	x	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input type="text"/>	<b>Violation Base Penalty</b>
daily	<input type="text"/>														
monthly	x														
quarterly	<input type="text"/>														
semiannual	<input type="text"/>														
annual	<input type="text"/>														
single event	<input type="text"/>														
			<input type="text" value="\$5,000"/>												
	Two monthly events (one month per tank) are recommended from the February 19, 2008 record review to the March 6, 2008 screening date.														
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>													
	<b>Estimated EB Amount</b>	<b>Violation Final Penalty Total</b>	<input type="text" value="\$5,250"/>												
	<input type="text" value="\$5,003"/>		<input type="text" value="\$5,250"/>												
	<b>This violation Final Assessed Penalty (adjusted for limits)</b>		<input type="text" value="\$5,250"/>												

## Economic Benefit Worksheet

**Respondent** Grady W. Mosley  
**Case ID No.** 35526  
**Reg. Ent. Reference No.** RN101892875  
**Media** Petroleum Storage Tank  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
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	21-Dec-2008	10.0	\$5,003	n/a	\$5,003

**Notes for DELAYED costs**  
 The estimated cost to permanently remove the UST system from service. The Date Required is the date the Respondent was required to upgrade the UST system and the Final Date is the estimated date of compliance.

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Avoided Costs</b>							
<b>ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)</b>							
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 \$5,003

**Screening Date** 6-Mar-2008

**Docket No.** 2008-0415-PST-E

**PCW**

**Respondent** Grady W. Mosley

*Policy Revision 2 (September 2002)*

**Case ID No.** 35526

*PCW Revision February 29, 2008*

**Reg. Ent. Reference No.** RN101892875

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** Steven Lopez

**Violation Number**

**Rule Cite(s)**

**Violation Description**

Failed to notify the agency of any change or additional information regarding USTs within 30 days from the date of occurrence of the change or addition. Specifically, the registration was not updated to reflect the correct ownership information and the current operational status of the UST system.

**Base Penalty**

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text" value="10%"/>

Matrix Notes

**Adjustment**

Violation Events

Number of Violation Events   Number of violation days

*mark only one with an 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**

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** Grady W. Mosley  
**Case ID No.** 35526  
**Reg. Ent. Reference No.** RN101892875  
**Media** Petroleum Storage Tank  
**Violation No.** 2

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
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	19-Feb-2008	6-Dec-2008	0.8	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to accurately prepare and submit an updated UST registration. The Date Required is the record review date and the 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

\$100

TOTAL

\$4

Screening Date 6-Mar-2008

Docket No. 2008-0415-PST-E

PCW

Respondent Grady W. Mosley

Policy Revision 2 (September 2002)

Case ID No. 35526

PCW Revision February 29, 2008

Reg. Ent. Reference No. RN101892875

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Lopez

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. 0023993U for fiscal years 1988 through 2007.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0%

Adjustment \$10,000

\$0

Violation Events

Number of Violation Events  Number of violation days

mark only one with an x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

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

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$0

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

## Economic Benefit Worksheet

**Respondent** Grady W. Mosley  
**Case ID No.** 35526  
**Reg. Ent. Reference No.** RN101892875  
**Media** Petroleum Storage Tank  
**Violation No.** 3

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

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

No commas or \$

**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

N/A

Approx. Cost of Compliance

\$0

TOTAL

\$0

# Compliance History

Customer/Respondent/Owner-Operator:	CN601033251 Mosley, Grady W	Classification: AVERAGE	Rating: 3.00
Regulated Entity:	RN101892875 MOSLEYS CONVENIENCE STORE	Classification: AVERAGE	Site Rating: 3.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	47151
Location:	FM 346 E., TROUP, TX, 75789	Rating Date: 9/1/2007	Repeat Violator: NO
TCEQ Region:	REGION 05 - TYLER		
Date Compliance History Prepared:	March 06, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	March 06, 2003 to March 06, 2008		

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

Name: Steven Lopez Phone: 512-239-1896

## 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 02/21/2007 (537997)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 

Date:	02/21/2007 (537997)	Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 334, SubChapter C 334.47(a)(2)				
Description:	Failure to perform the permanent removal of underground storage tanks(USTs) not meeting the technical upgrade requirements in accordance with 30 Tex. Admin. Code §334.55.				
Self Report?	NO	Classification:	Moderate		
Citation:	30 TAC Chapter 334, SubChapter A 334.7(d)(3)				
Description:	Failure to amend the site's PST Registration Information to reflect the current address of the underground storage tank (UST) system and property owner's name and contact 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  
ENFORCEMENT ACTION  
CONCERNING  
GRADY W. MOSLEY  
RN101892875**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2008-0415-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 Grady W. Mosley ("the Respondent") under the authority of TEX. WATER CODE chs. 5, 7, and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns property with two inactive underground storage tanks ("USTs") at Farm-to-Market Road 346 East in Troup, Smith County, Texas (the "Facility").
2. The Respondent's two USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about March 5, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Six Thousand Three Hundred Dollars (\$6,300) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Hundred Forty Dollars (\$140) of the administrative penalty and One Thousand Two Hundred Sixty Dollars (\$1,260) is deferred contingent upon the Respondent's



timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Four Thousand Nine Hundred Dollars (\$4,900) of the administrative penalty shall be payable in 35 monthly payments of One Hundred Forty Dollars (\$140) 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 until paid in full. If the Respondent 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 the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent 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 the Respondent 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 the Respondent 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, the Respondent is alleged to have:

1. Failed to permanently remove from service, no later than 60 days after the prescribed implementation date, two 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 February 19, 2008.
2. Failed to notify the agency of any change or additional information regarding USTs within 30 days from the date of occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3), as documented during a record review conducted on February 19, 2008.



Specifically, the registration was not updated to reflect the correct ownership information and the current operational status of the UST system.

3. Failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0023993U for fiscal years 1988 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 February 6, 2008.

### III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent'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: Grady W. Mosley, Docket No. 2008-0415-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 the Respondent shall undertake the following technical requirements:
  - a. Within 30 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;
  - b. Within 30 days after the effective date of this Agreed Order, submit payment for outstanding fees, including any associated penalties and interest and with the notation, "Grady W. Mosley, TCEQ Financial Account No. 0023993U", to the address listed in Paragraph 1 of this section;
  - c. Within 45 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 60 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  
Tyler Regional Office  
Texas Commission on Environmental Quality  
2916 Teague Drive  
Tyler, Texas 75701-3756

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent.
4. If the Respondent 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, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent 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 the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent 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 the Respondent 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 the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, 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

  
\_\_\_\_\_  
For the Executive Director

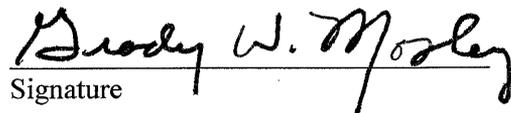
8/21/2008  
Date

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

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- 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;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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

  
Signature

6-2-08  
Date

\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Grady W. Mosley

\_\_\_\_\_  
Title

**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.

90-2-2

John W. Jones