

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

**DOCKET NO.: 2005-0614-PST-E TCEQ ID: RN102717543 CASE NO.: 25126
RESPONDENT NAME: IRMA M. SALDIVAR DBA SALDIVAR FOOD STORE 2**

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: 901 East Harrison Avenue, Harlingen, Cameron 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 location.</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 July 7, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Mr. Alfred Oloko, Litigation Division, MC R-12, (713) 422-8918 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Mr. Tom Greimel, Waste Enforcement Section, MC 128, (512) 239-5690 TCEQ Regional Contact: Mr. David Ramirez, Harlingen Regional Office, MC R-15, (956) 430-6048 Respondent: Ms. Irma M. Saldivar, Owner, Saldivar Food Store 2, 901 E. Harrison Avenue, Harlingen, Texas 78550 Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: March 22, 2005; March 31, 2005</p> <p>Date of NOE Relating to this Case: March 24, 2005</p> <p>Background Facts: The EDPRP was filed on September 29, 2005. Service was not achieved and the EDPRP was mailed several times before service was achieved with the EDFARP filed on January 23, 2008. The envelope sent by certified mail was returned "unclaimed" but the first class mail has not been returned. The Respondent failed to file an Answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>PST:</p> <p>1. Failed to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].</p> <p>2. Failed to pay outstanding underground storage tanks fees for TCEQ Financial Account No. 0057655U for fiscal year 2004 [30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702].</p>	<p>Total Assessed: \$2,140</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$2,140</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this proposed Order.</p> <p>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>Ordering Provisions:</p> <p>The Respondent's delivery certificate is revoked immediately.</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Within 10 days, submit UST delivery certificate. 2. Within 30 days: <ol style="list-style-type: none"> a. submit payment for all outstanding fees, including any associated penalties and interest; and b. submit documentation that demonstrates acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision December 7, 2004

DATES	Assigned	28-Mar-2005	Screening	01-Apr-2005	Priority Due	27-May-2005	EPA Due	
	PCW	04-Apr-2005						

RESPONDENT/FACILITY INFORMATION	
Respondent	Irma M. Saldivar dba Saldivar Food Store 2
Reg. Ent. Ref. No.	RN102717543
Additional ID No(s)	Petroleum Storage Tank Facility ID No. 74184
Facility/Site Region	15-Harlingen <
Major/Minor Source	Minor Source <

CASE INFORMATION			
Enf./Case ID No.	25126	No. of Violations	2
Docket No.	2005-0614-PST-E	Order Type	1660 <
Case Priority	3 <	Enf. Coordinator	Deana Holland
Media Program(s)	Petroleum Storage Tank <	EC's Team	Enforcement Team 2 <
Multi-Media			
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 7% Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability 0% Enhancement **Subtotal 4**

Notes

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

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

Notes

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

Total EB Amounts	\$1,365	*Capped at the Total EB \$ Amou.rit
Approx. Cost of Compliance	\$1,300	

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

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

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

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 01-Apr-2005

Docket No. 2005-0614-PST-E

PCW

Respondent Irma M. Saldivar dba Saldivar Food Store 2

Policy Revision 2 (September 2002)

Case ID No. 25126

PCW Revision December 7, 2004

Reg. Ent. Reference No. RN102717543

Additional ID No(s). Petroleum Storage Tank Facility ID No. 74184

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Deana Holland

Site Address 901 East Harrison Avenue, Harlingen, Cameron County

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	1	2%
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)	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%
Other	Please Enter Yes or No		
	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) 7%

>> 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 NOV with same or similar violations and one NOV without same or similar violations.

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

Screening Date 01-Apr-2005

Docket No. 2005-0614-PST-E

PCW

Respondent Irma M. Saldivar dba Saldivar Food Store 2

Policy Revision 2 (September 2002)

Case ID No. 25126

PCW Revision December 7, 2004

Reg. Ent. Reference No. RN102717543

Additional ID No(s). Petroleum Storage Tank Facility ID No. 74184

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Deana Holland

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

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

OR

>> 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

Base Penalty Subtotal

Violation Events

Number of Violation Events

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

Violation Base Penalty

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 Irma M. Saldivar dba Saldivar Food Store 2
 Case ID No. 25126
 Reg. Ent. Reference No. RN102717543
 Additional ID No(s). Petroleum Storage Tank Facility ID No. 74184
 Media [Statute] Petroleum Storage Tank
 Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	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						

Item	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]	\$1,300	03-Dec-2002	03-Dec-2003	1.0	\$65	\$1,300	\$1,365
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Notes for AVOIDED costs	The estimated cost (\$650 per tank) to provide financial assurance for two petroleum USTs for one year prior to December 3, 2003 request for financial assurance documentation.						

Approx. Cost of Compliance

TOTAL

Screening Date 01-Apr-2005

Docket No. 2005-0614-PST-E

PCW

Respondent Irma M. Saldivar dba Saldivar Food Store 2

Policy Revision 2 (September 2002)

Case ID No. 25126

PCW Revision December 7, 2004

Reg. Ent. Reference No. RN102717543

Additional ID No(s). Petroleum Storage Tank Facility ID No. 74184

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Deana Holland

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

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

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

Use a small x only one	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

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 Irma M. Saldivar dba Saldivar Food Store 2
 Case ID No. 25126
 Reg. Ent. Reference No. RN102717543
 Additional ID No(s). Petroleum Storage Tank Facility ID No. 74184
 Media [Statute] Petroleum Storage Tank
 Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

TOTAL

Compliance History

Customer/Respondent/Owner-Operator:	CN601381197 SALDIVAR, IRMA M	Classification: AVERAGE	Rating: 3.000
Regulated Entity:	RN102717543 SALDIVAR FOOD STORE 2	Classification: AVERAGE	Site Rating: 3.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	74184
Location:	901 E HARRISON AVE, HARLINGEN, TX, 78550		Rating Date: 9/1/04 Repeat Violator: NO
TCEQ Region:	REGION 15 - HARLINGEN		
Date Compliance History Prepared:	March 29, 2005		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	March 29, 2000 to March 29, 2005		

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

Name: Deana Holland Phone: (512)239-2504

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? | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>N/A</u> |
| 5. When did the change(s) in ownership occur? | <u>N/A</u> |
| 6. Comments: | |

Components (Multimedia) for the Site :

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

N/A

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

N/A

C. Chronic excessive emissions events.

N/A

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

- | | | |
|---|------------|----------|
| 1 | 03/24/2005 | (375112) |
| 2 | 07/29/2004 | (279861) |
| 3 | 12/06/2004 | (343150) |
| 4 | 02/23/2004 | (281030) |

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

Date: 02/23/2004 (281030)

Self Report? NO

Classification: Moderate

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

Description: Failure to provide acceptable financial assurance.

Date: 06/30/2004 (279861)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 334, SubChapter C 334.54(b)(2)

Description: Failure of the owner/operator, regardless of whether or not regulated substances remain in the UST system, to assure all other piping, manways, tank access points and ancillary equipment are capped, plugged, locked, to prevent access, tampering, or vandalism by unauthorized persons.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.54(c)(2)

Description: Failure to assure the UST system has been emptied of all regulated substances at the time it is temporarily removed from service. If the UST system has not been emptied it shall be monitored for releases in accordance with applicable requirements in 30 TAC 334.50 relating to release detection.

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(C)

Description: Failure to ensure that a legible tag, label, or marking is permanently applied to the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST at the facility.

Classification: Minor

Self Report? NO

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

Description: Failure to provide notice of any change or additional information to the agency within 30 days from the date of the occurrence of the change or addition, or within 30 days from the date on which the owner or operator first became aware of the change or addition.

F. Environmental audits.

N/A

Description:

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
IRMA M. SALDIVAR DBA
SALDIVAR FOOD STORE 2,
RN102717543

§
§
§
§
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§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2005-0614-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality, formerly known as the Texas Natural Resource Conservation Commission ("Commission" or "TCEQ" or "TNRCC") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 5, 7, and 26, and the rules of the TCEQ, which requests appropriate relief, including the revocation of the respondent's underground storage tank delivery certificate, the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Irma M. Saldivar dba Saldivar Food Store 2 ("Ms. Saldivar").

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

FINDINGS OF FACT

1. Ms. Saldivar owns and operates a convenience store with retail sales of gasoline located at 901 East Harrison Avenue in Harlingen, Cameron County, Texas (the "Facility").
2. Ms. Saldivar's underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Ms. Saldivar's USTs contain a regulated petroleum substance as defined in the rules of the Commission.
3. During a record review conducted on March 22, 2005, a TCEQ Central Office investigator documented that Ms. Saldivar failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.
4. During a record review conducted on March 31, 2005, a TCEQ Central Office investigator documented that Ms. Saldivar failed to pay UST fees and associated late fees for TCEQ Financial Account No. 0057655U for the fiscal year 2004.

5. Ms. Saldivar received notice of the violations on or about March 29, 2005.
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 Irma M. Saldivar dba Saldivar Food Store 2" (the "EDPRP") in the TCEQ Chief Clerk's office on September 29, 2005.
7. By letter dated September 29, 2005, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Ms. Saldivar with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Ms. Saldivar received notice of the EDPRP.
8. More than 20 days have elapsed since Ms. Saldivar received notice of the EDPRP, provided by the Executive Director. Mr. Saldivar failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.
9. The Executive Director filed the "Executive Director's First Amended 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 Irma M. Saldivar dba Saldivar Food Store 2" (the "EDFARP") in the TCEQ Chief Clerk's office on January 23, 2008.
10. By letter dated January 23, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Ms. Saldivar with notice of the EDFARP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Ms. Saldivar received notice of the EDFARP.
11. More than 20 days have elapsed since Ms. Saldivar received notice of the EDFARP, provided by the Executive Director. Ms. Saldivar failed to file an answer to the EDFARP, 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, Ms. Saldivar is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 5, 7, and 26, and the rules of the Commission.

2. As evidenced by Finding of Fact No. 3., Ms. Saldivar failed to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b).
3. As evidenced by Finding of Fact No. 4., Ms. Saldivar failed to pay outstanding underground storage tank fees for TCEQ Financial Account No. 0057655U for fiscal year 2004, in violation of 30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702
4. As evidenced by Finding of Fact Nos. 6. and 7, the Executive Director has timely served Ms. Saldivar with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
5. As evidenced by Finding of Fact No. 8, Ms. Saldivar 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 Ms. Saldivar and assess the penalty recommended by the Executive Director.
6. As evidenced by Finding of Fact Nos. 9. and 10, the Executive Director has timely served Ms. Saldivar with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
7. As evidenced by Finding of Fact No. 11, Ms. Saldivar has failed to file a timely answer to the EDFARP, 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 Ms. Saldivar and assess the penalty recommended by the Executive Director.
8. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Ms. Saldivar 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.
9. An administrative penalty in the amount of Two Thousand One Hundred Forty Dollars (\$2,140) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
10. 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.

11. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Ms. Saldivar's UST delivery certificate if the Commission finds that good cause exists.
12. Good cause for revocation of Ms. Saldivar's UST delivery certificate exists as justified by Findings of Fact Nos. 3, 4, and 6 through 11, and Conclusions of Law Nos. 2 through 7.

ORDERING PROVISIONS

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

1. Ms. Saldivar is assessed an administrative penalty in the amount of Two Thousand One Hundred Forty Dollars (\$2,140) for violations of TEX. WATER chs. 5 and 26 and rules of the TCEQ. The payment of this administrative penalty and Ms. Saldivar'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: Irma M. Saldivar dba Saldivar Food Store 2; Docket No. 2005-0614-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. Ms. Saldivar's UST delivery certificate is revoked immediately upon the effective date of this Order. Ms. Saldivar may submit an application for a new delivery certificate only after Ms. Saldivar has complied with all of the requirements of this Order.
3. Within 10 days after the effective date of this Order, Ms. Saldivar shall send her UST delivery certificate to:

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

4. Ms. Saldivar shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Order, Ms. Saldivar shall submit payment for all outstanding fees, including any associated penalties and interest and with the notation, "Irma M. Saldivar dba Saldivar Food Store 2, TCEQ Financial Administration Account No. 0057655U", to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- b. Within 30 days after the effective date of this Order, Ms. Saldivar shall submit documentation that demonstrates acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in accordance with 30 TEX. ADMIN. CODE § 37.815(a) and (b) to:

Mr. Rob Norris, Senior Financial Analyst
Financial Assurance Unit, MC 184
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

5. All relief not expressly granted in this Order is denied.
6. The provisions of this Order shall apply to and be binding upon Ms. Saldivar. Ms. Saldivar is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
7. 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 Ms. Saldivar shall be made in writing to the Executive Director. Extensions are not effective until Ms. Saldivar receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

8. 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 Ms. Saldivar if the Executive Director determines that Ms. Saldivar has not complied with one or more of the terms or conditions in this Order.
9. 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.
10. 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.

Irma M. Saldivar dba Saldivar Food Store 2
Docket No. 2005-0614-PST-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF ALFRED A. OLOKO

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Alfred A. Oloko. 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 Irma Saldivar dba Saldivar Food Store 2” (the “EDPRP”) with the Office of the Chief Clerk on.

I sent the EDPRP to Ms. Saldivar at her last known address on September 29, 2005 via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating the respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

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

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the “Executive Director’s First Amended 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 Irma Saldivar dba Saldivar Food Store 2” (the “EDFARP”) with the Office of the Chief Clerk on.

I sent the EDFARP to Ms. Saldivar at her last known address on January 23, 2008 via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating the respondent received notice of the EDFARP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

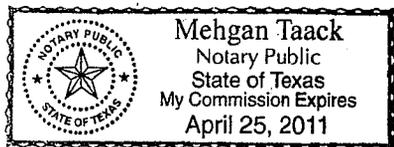
More than 20 days have elapsed since Mr. Ms. Saldivar received notice of the EDFARP. Ms. Saldivar failed to file an answer to the EDFARP, failed to request a hearing, and failed to schedule a settlement conference.”

alfred oloko

Alfred A. Oloko
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Alfred A. Oloko, 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 21st day of MAY, A.D., 2008.



Mehgan Taack

Notary Stamp