

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2005-1601-PST-E TCEQ ID: RN101445310 CASE NO.: 26868
RESPONDENT NAME: ARNOLDO PEREZ DBA PEREZ FUEL STOP

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: 1.75 miles west of US Highway 83 in Mission, Hidalgo 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 October 13, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Dinniah M. Chahin, Litigation Division, MC 175, (512) 239-0617 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 TCEQ Enforcement Coordinator: Mr. Bryan Elliott, Air Enforcement Section, MC 149, (512) 239-6162 TCEQ Regional Contact: Mr. Jaime A. Garza, Harlingen Regional Office, MC R-15, (956) 430-6030 Respondent: Mr. Arnolando Perez, Owner, Perez Fuel Stop, Route 28, Box 8041, Mission, Texas 78572; 902 E. Loop 374, Palmview, Texas 78572; c/o Perez Auto Sales, 2504 W. Business Highway 83, Mission, Texas 78572 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: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: January 2, 2004 and September 12, 2005</p> <p>Date of NOE Relating to this Case: August 5, 2005</p> <p>Background Facts: The EDPRP was filed on January 4, 2006, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on January 6, 2006, as evidenced by the signature on the card. The Respondent has failed to answer the EDPRP and failed to request a hearing.</p> <p>On January 19, 2006, the Respondent stated he was interested in signing an Agreed Order with a payment plan. An Agreed Order with a 24 month payment plan was mailed to the Respondent on February 16, 2006. The TCEQ Attorney received the signed Agreed Order and an initial payment on March 23, 2006. Correction letters were sent to the Respondent to address the addition of deferral language and a statutory citation correction on June 9, 2006, June 27, 2006, July 13, 2006, July 24, 2006, August 29, 2006, October 4, 2006, and February 9, 2007. On June 18, 2008 and July 11, 2008, the Attorney for the TCEQ contacted the Respondent by telephone to request that the corrections letter be signed and returned. Respondent has not signed and returned the correction letter.</p> <p>Current Compliance Status: As of October 10, 2008, UST fees of \$165.66 are still outstanding, and the Facility's financial assurance is no longer current.</p> <p>PST:</p> <p>1. 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 [30 TEX. ADMIN. CODE § 37.815(a) and (b)].</p> <p>2. Failed to pay UST late fees associated with Financial Administration Account No. 0057827U [30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702].</p>	<p>Total Assessed: \$3,150</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid/Total Due to General Revenue: \$620/\$2,530</p> <p>The Respondent has paid \$620 of the administrative penalty. The remaining amount of \$2,530 shall be payable in twenty-three payments of \$105, and one payment of \$115.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Action Taken: The Executive Director recognizes that the Respondent provided proof of acceptable financial assurance on January 13, 2006.</p> <p>Ordering Provisions: Respondent's UST delivery certificate is revoked immediately upon the effective date of this Order. Respondent may submit an application for a new delivery certificate only after the Respondent has complied with all the requirements of this order.</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Within 10 days, submit his UST delivery certificate to the TCEQ. 2. Within 30 days, submit payment for all outstanding UST fees, including any associated penalties and interest. 3. Within 45 days, submit written notarized certification supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with the above Ordering Provisions.

Penalty Calculation Worksheet (PCW)
 Policy Revision 2 (September 2002) PCW Revision May 19, 2005

TCEQ	DATES	Assigned 08-Aug-2005	Screening 12-Sep-2005	EPA Due	
	PCW	12-Sep-2005			

RESPONDENT/FACILITY INFORMATION	
Respondent	Arnoldo Perez dba Perez Fuel Stop
Reg. Ent. Ref. No.	RN101445310
Facility/Site Region	15-Harlingen <input type="button" value="<"/>
Major/Minor Source	Minor Source <input type="button" value="<"/>

CASE INFORMATION			
Enf./Case ID No.	26868	No. of Violations	2
Docket No.	2005-1601-PST-E	Order Type	1660 <input type="button" value="<"/>
Media Program(s)	Petroleum Storage Tank <input type="button" value="<"/>	Enf. Coordinator	Mike Limos
Multi-Media		EC's Team	Enforcement Team 8 <input type="button" value="<"/>
Admin. Penalty \$	Limit Minimum \$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** \$3,000

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** \$150

Notes Enhancement due to one NOV received for same or similar violations at this site within the past five years.

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

Notes The Respondent does not meet culpability criteria.

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

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	<i>(mark with a small x)</i>

Notes The Respondent is not yet in compliance.

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

Total EB Amounts	\$2,048	<small>*Capped at the Total EB \$ Amount</small>
Approx. Cost of Compliance	\$1,950	

SUM OF SUBTOTALS 1-7 **Final Subtotal** \$3,150

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 \$3,150

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$3,150

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

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

Notes Deferral not offered for non-expedited settlement.

PAYABLE PENALTY **\$3,150**

Screening Date 12-Sep-2005	Docket No. 2005-1601-PST-E	PCW
Respondent Arnoldo Perez dba Perez Fuel Stop	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 26868	<i>PCW Revision May 19, 2005</i>	
Reg. Ent. Reference No. RN101445310		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Mike Limos		

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action <i>(number of NOVs meeting criteria)</i>	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government <i>(number of judgements or consent decrees meeting criteria)</i>	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which notices were)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2)

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

Adjustment Percentage (Subtotal 3)

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

Adjustment Percentage (Subtotal 7)

>> **Compliance History Summary**

Compliance History Notes

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

Screening Date	12-Sep-2005	Docket No.	2005-1601-PST-E	PCW
Respondent	Arnoldo Perez dba Perez Fuel Stop			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	26868			<i>PCW Revision May 19, 2005</i>
Reg. Ent. Reference No.	RN101445310			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Mike Limos			
Violation Number	1			
Primary Rule Cite(s)	30 Tex. Admin. Code § 37.815(a) and (b)			
Secondary Rule Cite(s)				
Violation Description	Failure 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 underground storage tanks (USTs), as documented during a record review investigation conducted on 1/2/04.			

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**

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

Three single events are recommended (one event for each of the three USTs located at the facility.)

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: Arnoldo Perez dba Perez Fuel Stop
 Case ID No. 26868
 Reg. Ent. Reference No. RN101445310
 Media [Statute] Petroleum Storage Tank
 Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

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]	\$1,950	03-Dec-2002	03-Dec-2003	1.0	\$98	\$1,950	\$2,048
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to provide financial assurance for three petroleum USTs. Date required is one year prior to the initial request to submit proof of financial assurance dated 12/3/03.

Approx. Cost of Compliance \$1,950

TOTAL \$2,048

Screening Date 12-Sep-2005 **Docket No.** 2005-1601-PST-E **PCW**
Respondent Arnoldo Perez dba Perez Fuel Stop *Policy Revision 2 (September 2002)*
Case ID No. 26868 *PCW Revision May 19, 2005*
Reg. Ent. Reference No. RN101445310
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Mike Limos
Violation Number
Primary Rule Cite(s)
Secondary Rule Cite(s)
Violation Description
Base Penalty

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

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

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

<i>mark only one use a small x</i>	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

No additional penalty is recommended because penalties and interest will be assessed during the next billing cycle.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$0"/>	Violation Final Penalty Total <input type="text" value="\$0"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$0"/>	

Economic Benefit Worksheet

Respondent Arnoldo Perez dba Perez Fuel Stop
Case ID No. 26868
Reg. Ent. Reference No. RN101445310
Media [Statute] Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	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		There is no economic benefit associated with this violation.					

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:	CN600751549 PEREZ, ARNOLDO	Classification: AVERAGE	Rating: 1.00
Regulated Entity:	RN101445310 PEREZ FUEL STOP	Classification: AVERAGE	Site Rating: 1.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	35982
Location:	1 3/4 MI W STATE HIGHWAY 83 MISSION TX		Rating Date: 9/1/2005 Repeat Violator: NO
TCEQ Region:	REGION 15 - HARLINGEN		
Date Compliance History Prepared:	September 12, 2005		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	September 12, 2000 to September 12, 2005		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Mike Limos	Phone:	(512) 239-5839

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 08/05/2005 (396272)
 - 2 02/23/2004 (282357)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - Date: 02/23/2004 (282357)
 - Self Report? NO
 - 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.
 - Classification: Moderate
 - 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
ARNOLDO PEREZ DBA PEREZ
FUEL STOP,
RN101445310

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2005-1601-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 5, 7, and 26 and the rules of the TCEQ, which requests appropriate relief, 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 Arnoldo Perez dba Perez Fuel Stop ("Mr. Perez").

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

FINDINGS OF FACT

1. Mr. Perez owns and operates a convenience store with retail sales of gasoline located 1.75 miles west of US Highway 83 in Mission, Hidalgo County, Texas (the "Facility").
2. Mr. Perez's three underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Perez's USTs contain a regulated substance as defined in the rules of the Commission.
3. During a record review conducted on January 2, 2004, a TCEQ Financial Analyst documented that Mr. Perez failed to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs.
4. During a record review conducted on September 12, 2005, a TCEQ Financial Analyst documented that Mr. Perez failed to pay UST late fees associated with Financial Administration Account No. 0057827U.
5. Mr. Perez received notice of the violation in paragraph 3 on or about February 28, 2004 and August 10, 2005.

6. The Executive Director recognizes that Mr. Perez obtained 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 the petroleum USTs. Specifically, on January 13, 2006, Mr. Perez provided financial assurance on all three USTs.
7. 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 Arnoldo Perez dba Perez Fuel Stop" (the "EDPRP") in the TCEQ Chief Clerk's Office on January 4, 2006.
8. By letter dated January 4, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Perez with notice of the EDPRP. According to the return receipt "green card," Mr. Perez received notice of the EDPRP on January 6, 2006, as evidenced by the signature on the card.
9. More than 20 days have elapsed since Mr. Perez received notice of the EDPRP, provided by the Executive Director. Mr. Perez failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Perez 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, Mr. Perez 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 from the operation of petroleum USTs, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and 37.815(b).
3. As evidenced by Finding of Fact No. 4, Mr. Perez failed to pay UST late fees associated with Financial Administration Account No. 0057827U, in violation of 30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702.
4. As evidenced by Finding of Fact Nos. 7 and 8, the Executive Director has timely served Mr. Perez with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
5. As evidenced by Finding of Fact No. 9, Mr. Perez 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 Mr. Perez and assess the penalty recommended by the Executive Director.

6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Perez for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of three thousand one hundred fifty dollars (\$3,150.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Mr. Perez has paid six hundred twenty dollars (\$620.00) of the administrative penalty. The remaining amount of two thousand five hundred thirty dollars (\$2,530.00) of the administrative penalty shall be payable in one monthly payment of one hundred fifteen dollars (\$115.00) and twenty-three monthly payments of one hundred five dollars (\$105.00) 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 Mr. Perez fails to timely and satisfactorily comply with the payment requirements of this Default Order, including the payment schedule, the Executive Director may, at his 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. Perez to meet the payment schedule of this Agreed Order constitutes the failure by Mr. Perez to timely and satisfactorily comply with all of the terms of this Default Order.
8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.
9. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Mr. Perez's UST delivery certificate if the Commission finds that good cause exists.
10. Good cause for revocation of Mr. Perez's UST delivery certificate exists as justified by Findings of Fact Nos. 3, 4, 7, 8, and 9 and Conclusions of Law Nos. 2, 3, 4, and 5.

ORDERING PROVISIONS

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

1. Mr. Perez is assessed an administrative penalty in the amount of three thousand one hundred fifty dollars (\$3,150.00) as set forth in Conclusion of Law No. 7 for violations of TEX. WATER CODE chs. 5 and 26 and the rules of the TCEQ. The payment of this administrative

penalty and Mr. Perez'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 as set forth in Conclusion of Law No. 7 and shall be sent with the notation "Re: Arnoldo Perez dba Perez Fuel Stop; Docket No. 2005-1601-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. Mr. Perez's UST delivery certificate is revoked immediately upon the effective date of this Order. Mr. Perez may submit an application for a new delivery certificate only after Mr. Perez has complied with all of the requirements of this Order.
3. Within 10 days after the effective date of this Order, Mr. Perez shall send his 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. Mr. Perez shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order, Mr. Perez shall submit payment for all outstanding UST fees, including any associated penalties and interest with the notation "Arnoldo Perez dba Perez Fuel Stop, Financial Administration Account No. 0057827U" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

- b. Within 45 days after the effective date of this Order, Mr. Perez shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision 4.a.

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

and

David Ramirez, Waste Section Manager
Texas Commission on Environmental Quality
Harlingen Regional Office
1804 West Jefferson Avenue
Harlingen, Texas 78550-5247

5. All relief not expressly granted in this Order is denied.
6. The provisions of this Order shall apply to and be binding upon Mr. Perez. Mr. Perez 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 Mr. Perez shall be made in writing to the Executive Director. Extensions are not effective until Mr. Perez 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 Mr. Perez if the Executive Director determines that Mr. Perez 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.

Arnoldo Perez dba Perez Fuel Stop
DOCKET NO. 2005-1601-PST-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF DINNIAH M. CHAHIN

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Dinniah M. Chahin. 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, 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 Arnolndo Perez dba Perez Fuel Stop” (the “EDPRP”) was filed with the Office of the Chief Clerk on January 4, 2006.

The EDPRP was sent to Mr. Perez at his last known address on January 4, 2006 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Perez received notice of the EDPRP on January 6, 2006, as evidenced by the signature on the card.

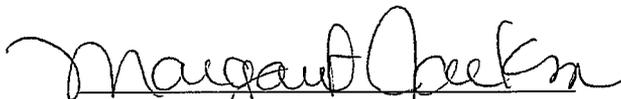
More than 20 days have elapsed since Mr. Perez received notice of the EDPRP. Mr. Perez failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”



Dinniah M. Chahin
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Dinniah M. Chahin, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 21 day of August, A.D., 2008.


Notary Stamp