

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-0197-PST-E **TCEQ ID:** RN101679876 **CASE NO.:** 35331

RESPONDENT NAME: Alberto Lopez

ORDER TYPE:		
<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	
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: 4306 Lopez Drive, Edinburg, Hidalgo County</p> <p>TYPE OF OPERATION: Convenience store</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 November 17, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Steven Lopez, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-1896; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Alberto Lopez, Owner, 4312 East Lopez Drive, Edinburg, Texas 78539 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(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: January 16, 2008</p> <p>Date of NOV/NOE Relating to this Case: January 21, 2008 (NOE)</p> <p>Background Facts: This was a record review.</p> <p>WASTE</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 current operational status of the UST system [30 TEX. ADMIN. CODE § 334.7(d)(3)].</p>	<p>Total Assessed: \$6,300</p> <p>Total Deferred: \$1,260 <input checked="" type="checkbox"/> Expedited Settlement <input checked="" type="checkbox"/> Financial Inability to Pay</p> <p>The Financial Assurance Section of the Commission's Financial Administration Division reviewed financial documentation submitted by the Respondent and determined that the Respondent is able to pay the full payable penalty in accordance with the installment schedule detailed below.</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$140 (remaining \$4,900 due in 35 monthly payments of \$140 each)</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 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 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>c. 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. and b.</p>

Additional ID No(s): 53317



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision January 29, 2008

DATES	Assigned	28-Jan-2008			
	PCW	31-Jan-2008	Screening	29-Jan-2008	EPA Due

RESPONDENT/FACILITY INFORMATION			
Respondent	Alberto Lopez		
Reg. Ent. Ref. No.	RN101679876		
Facility/Site Region	15-Harlingen	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	35331	No. of Violations	2
Docket No.	2008-0197-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Steven Lopez
Multi-Media		EC's Team	Enforcement Team 6
Admin. Penalty \$	Limit Minimum	\$0	Maximum
			\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	<i>Subtotal 1</i>	\$6,000
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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	<i>Subtotals 2, 3, & 7</i>	\$300
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Notes: Enhancement for one previous NOV with same or similar violations.

Culpability	No	0% Enhancement	<i>Subtotal 4</i>	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply	0% Reduction	<i>Subtotal 5</i>	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

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

Total EB Amounts	\$4,893	0% Enhancement*	<i>Subtotal 6</i>	\$0
Approx. Cost of Compliance	\$10,100	*Capped at the Total EB \$ Amount		

SUM OF SUBTOTALS 1-7	<i>Final Subtotal</i>	\$6,300
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0%	<i>Adjustment</i>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$6,300**

STATUTORY LIMIT ADJUSTMENT	<i>Final Assessed Penalty</i>	\$6,300
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DEFERRAL	20%	Reduction	<i>Adjustment</i>	-\$1,260
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$5,040
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Screening Date 29-Jan-2008

Docket No. 2008-0197-PST-E

PCW

Respondent Alberto Lopez

Policy Revision 2 (September 2002)

Case ID No. 35331

PCW Revision January 29, 2008

Reg. Ent. Reference No. RN101679876

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 <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 submitted)</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%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

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

No

Adjustment Percentage (Subtotal 3) 0%

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

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for one previous NOV with same or similar violations.

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

Screening Date 29-Jan-2008	Docket No. 2008-0197-PST-E	PCW
Respondent Alberto Lopez		<small>Policy Revision 2 (September 2002)</small>
Case ID No. 35331		<small>PCW Revision January 29, 2008</small>
Reg. Ent. Reference No. RN101679876		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Steven Lopez		
Violation Number	1	
Rule Cite(s)	30 Tex. Admin. Code § 334.47(a)(2)	
Violation Description	Failed to permanently remove from service, no later than 60 days after the prescribed implementation date, two USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.	
	Base Penalty	\$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Potential	x	<input type="checkbox"/>	<input type="checkbox"/>
			Percent	25%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Percent
					0%

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events Number of violation days

	daily	<input type="checkbox"/>
	monthly	x
	quarterly	<input type="checkbox"/>
	semiannual	<input type="checkbox"/>
	annual	<input type="checkbox"/>
	Single event	<input type="checkbox"/>

mark only one with an x

Violation Base Penalty \$5,000

Two monthly events (one per tank) are recommended from the January 16, 2008 record review to the January 29, 2008 screening date.

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 Alberto Lopez
Case ID No. 35331
Reg. Ent. Reference No. RN101679876
Media 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
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)	\$10,000	22-Dec-1998	29-Sep-2008	9.8	\$4,889	n/a	\$4,889

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.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$4,889

Screening Date 29-Jan-2008	Docket No. 2008-0197-PST-E	PCW
Respondent Alberto Lopez	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 35331	<i>PCW Revision January 29, 2008</i>	
Reg. Ent. Reference No. RN101679876		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Steven Lopez		
Violation Number <input type="text" value="2"/>		
Rule Cite(s)	30 Tex. Admin. Code § 334.7(d)(3)	
Violation Description	Failed to notify the agency of any change or additional information regarding 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 current operational status of the UST system.	
Base Penalty		<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

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

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an 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 checked="" type="text" value="x"/>

Violation Base Penalty

One single event is recommended based on the documentation of the violation during the January 16, 2008 record review.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$4"/>	Violation Final Penalty Total <input type="text" value="\$1,050"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,050"/>	

Economic Benefit Worksheet

Respondent Alberto Lopez
Case ID No. 35331
Reg. Ent. Reference No. RN101679876
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
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)	\$100	16-Jan-2008	14-Oct-2008	0.7	\$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

Compliance History

Customer/Respondent/Owner-Operator:	CN603202052 LOPEZ, ALBERTO	Classification: AVERAGE	Rating: 2.00
Regulated Entity:	RN101679876 Property located at 4306 Lopez Drive, Edinburg, TX 78539	Classification: AVERAGE	Site Rating: 2.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	53317
Location:	4306 Lopez Drive, Edinburg, TX 78539	Rating Date: 9/1/2007 Repeat Violator: NO	
TCEQ Region:	REGION 15 - HARLINGEN		
Date Compliance History Prepared:	January 31, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	January 31, 2003 to January 31, 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? | <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> |

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 06/29/2007 (565905)
 - 2 10/01/2007 (595511)
 - 3 01/23/2008 (614840)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - Date: 06/29/2007 (565905)
 - Self Report? NO Classification: Minor
 - 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.
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)
 - Description: Failure to perform the permanent removal of an underground storage tank (UST) that has not met upgrade requirements.
- 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
ALBERTO LOPEZ
RN101679876

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2008-0197-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 Alberto Lopez ("the Respondent") under the authority of TEX. WATER CODE chs. 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 4306 Lopez Drive in Edinburg, Hidalgo 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 January 26, 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 Financial Assurance Section of the Commission's Financial Administration Division reviewed financial documents submitted by the Respondent and determined that the Respondent

has the ability to pay the full amount of the administrative penalty. 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 January 16, 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 January 16, 2008. Specifically, the registration was not updated to reflect the correct ownership information and current operational status of the UST system.

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: Alberto Lopez, Docket No. 2008-0197-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; and
 - b. 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

- c. 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. and 2.b. 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
Harlingen Regional Office
Texas Commission on Environmental Quality
1804 West Jefferson Avenue
Harlingen, Texas 78550-5247

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

John S. ...
For the Executive Director

10/30/2008
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.

Alberto Lopez
Signature

8-28-08
Date

Alberto LOPEZ
Name (Printed or typed)
Authorized Representative of
Alberto Lopez

OWNER
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.

