

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER** Page 1 of 2  
**DOCKET NO.: 2007-0900-PST-E TCEQ ID: RN101728350 CASE NO.: 33702**  
**RESPONDENT NAME: LORENZO HERNANDEZ**

<b>ORDER TYPE:</b>		
<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	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 539 North Pine Street, Woodville, Tyler County</p> <p><b>TYPE OF OPERATION:</b> Non-operational former convenience store with retail sales of gasoline</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on December 10, 2007. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019  Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873  <b>TCEQ Enforcement Coordinator:</b> Mr. Tom Greimel, Waste Enforcement Section, MC 128, (512) 239-5690  <b>TCEQ Regional Contact:</b> Mr. Derek Eades, Beaumont Regional Office, MC R-10, (409) 898-3838  <b>Respondent:</b> Mr. Lorenzo Hernandez, 1011 East Gibson, Jasper, Texas 75951  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter.</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaints Relating to this Case:</b> None</p> <p><b>Dates of Investigation Relating to this Case:</b>                      January 23, 2007, through February 21, 2007</p> <p><b>Date of NOE Relating to this Case:</b>                      April 19, 2007</p> <p><b>Background Facts:</b> The EDPRP was filed on August 20, 2007. It was sent 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 August 22, 2007, as evidenced by the signature on the card. The Respondent failed to respond to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p><b>PST:</b></p> <p>1. Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, four USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, or ensure that any residue from stored regulated substances which remained in the temporarily out-of-service UST system did not exceed a depth of 2.5centimeters at the deepest point and did not exceed 0.3 by weight of the system at full capacity; and failed to maintain all piping, pump, man-ways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons [30 TEX. ADMIN. CODE §§ 334.47(a)(2), and 334.54(b) and (d)(2)].</p> <p>2. Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change [30 TEX. ADMIN. CODE § 334.7(d)(3)].</p> <p>3. Failed to investigate a suspected release within 30 days of discovery [30 TEX. ADMIN. CODE § 334.74)].</p>	<p><b>Total Assessed:</b> \$38,475</p> <p><b>Total Deferred:</b> \$0</p> <p><b>Total Due to General Revenue:</b> \$38,475</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 order</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions:</b></p> <p>The Executive Director recognizes that Mr. Hernandez no longer owns the Facility as of April 13, 2007.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 25, 2007

DATES	Assigned	21-Apr-2007	Screening	21-Apr-2007	EPA Due	
	PCW	25-May-2007				

RESPONDENT/FACILITY INFORMATION			
Respondent	Lorenzo Hernandez		
Reg. Ent. Ref. No.	RN101728350		
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	33702	No. of Violations	3
Docket No.	2007-0900-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Thomas Greimel
Multi-Media		EC's Team	EnforcementTeam 6
Admin. Penalty \$	Limit Minimum	\$0	Maximum
			\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** Subtotal 1 \$28,500

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History** 35% Enhancement Subtotals 2, 3, & 7 \$9,975

Notes: Enhancement due to poor performer classification, for one NOV with same or similar violations, and one 1660 order.

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

Notes: The respondent does not meet the culpability criteria.

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

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

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

**Total EB Amounts** \$1,613 0% Enhancement\* Subtotal 6 \$0  
 \*Capped at the Total EB \$ Amount  
**Approx. Cost of Compliance** \$15,100

**SUM OF SUBTOTALS 1-7** Final Subtotal \$38,475

**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** \$38,475

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty \$38,475

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

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

Notes: No deferral since this is not an expedited case.

**PAYABLE PENALTY** \$38,475

Screening Date 21-Apr-2007

Docket No. 2007-0900-PST-E

PCW

Respondent Lorenzo Hernandez

Policy Revision 2 (September 2002)

Case ID No. 33702

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN101728350

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

### Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<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) 25%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Poor Performer

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance History Notes

Enhancement due to poor performer classification, for one NOV with same or similar violations, and one 1660 order.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 35%

Screening Date 21-Apr-2007

Docket No. 2007-0900-PST-E

PCW

Respondent Lorenzo Hernandez

Policy Revision 2 (September 2002)

Case ID No. 33702

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN101728350

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

Violation Number

Rule Cite(s)

Violation Description

Failed to either permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, four USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, or ensure that any residue from stored regulated substances which remained in the temporarily out-of-service UST system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity. Specifically, four USTs at the Facility were not brought into timely compliance with the upgrade requirements, and it was documented that tank number 1 contained two inches of a regulated substance mixed with water and tank number 2 contained 14 inches of a regulated substance mixed with water. Failed to maintain all piping, pump, man-ways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="25%"/>
Potential	<input type="text" value="x"/>	<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" value="0%"/>

Matrix Notes

Human health or the environment could be exposed to significant amounts of pollutants which would exceed levels that are protective of human health or environmental receptors.

Adjustment

Violation Events

Number of Violation Events   Number of violation days

mark only one with an x

daily	<input type="text"/>
monthly	<input type="text" value="x"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Eight monthly events are recommended (two months per tank) from the February 21, 2007 investigation date to the April 21, 2007 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** Lorenzo Hernandez  
**Case ID No.** 33702  
**Reg. Ent. Reference No.** RN101728350  
**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
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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	1-Nov-2005	31-Dec-2007	2.2	\$1,082	n/a	\$1,082

Notes for DELAYED costs

Estimated cost to permanently remove the UST system from service. Date Required is the date of ownership change. Final Date is the date the respondent is projected to come into compliance.

**Avoided Costs**

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$1,082

<b>Screening Date</b> 21-Apr-2007	<b>Docket No.</b> 2007-0900-PST-E	<b>PCW</b>
<b>Respondent</b> Lorenzo Hernandez		<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b> 33702		<i>PCW Revision May 25, 2007</i>
<b>Reg. Ent. Reference No.</b> RN101728350		
<b>Media [Statute]</b> Petroleum Storage Tank		
<b>Enf. Coordinator</b> Thomas Greimel		
<b>Violation Number</b> <input type="text" value="2"/>		
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 334.7(d)(3)"/>	
<b>Violation Description</b>	<input type="text" value="Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change. Specifically, the registration was not updated to reflect the out-of-service status of the USTs.."/>	
	<b>Base Penalty</b>	<input type="text" value="\$10,000"/>

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

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

**>> Programmatic Matrix**

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

**Violation Base Penalty**

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b> <input type="text" value="\$11"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$1,350"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$1,350"/>	

## Economic Benefit Worksheet

**Respondent** Lorenzo Hernandez  
**Case ID No.** 33702  
**Reg. Ent. Reference No.** RN101728350  
**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
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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	1-Dec-2005	15-Jan-2008	2.1	\$11	n/a	\$11

Notes for DELAYED costs

Estimated cost to update the UST registration. Date Required is 30 days after the date of change in ownership.  
Final Date is the date the respondent is projected to come into compliance.

**Avoided Costs**

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$11

<b>Screening Date</b>	21-Apr-2007	<b>Docket No.</b>	2007-0900-PST-E	<b>PCW</b>
<b>Respondent</b>	Lorenzo Hernandez			<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b>	33702			<i>PCW Revision May 25, 2007</i>
<b>Reg. Ent. Reference No.</b>	RN101728350			
<b>Media [Statute]</b>	Petroleum Storage Tank			
<b>Enf. Coordinator</b>	Thomas Greimel			
<b>Violation Number</b>	3			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 334.74			
<b>Violation Description</b>	Failed to investigate a suspected release within 30 days of discovery. Specifically, Mr. Hernandez became aware on or about November 1, 2005, that the UST system at the Facility may have released regulated substances, and as of the January 23, 2007, no release investigation had been conducted..			
		<b>Base Penalty</b>	\$10,000	

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

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

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

Adjustment

Violation Events

Number of Violation Events   Number of violation days

mark only one with an x

daily	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input checked="" type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Three semiannual events are recommended from the release investigation due date of December 1, 2005 (30 days after change in ownership) to the April 21, 2007 screening date.

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
Estimated EB Amount <input type="text" value="\$521"/>	Violation Final Penalty Total <input type="text" value="\$10,125"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$10,125"/>	

## Economic Benefit Worksheet

**Respondent** Lorenzo Hernandez  
**Case ID No.** 33702  
**Reg. Ent. Reference No.** RN101728350  
**Media** Petroleum Storage Tank  
**Violation No.** 3

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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)	\$5,000	1-Dec-2005	31-Dec-2007	2.1	\$521	n/a	\$521

Notes for DELAYED costs

Estimated cost to investigate a suspected release of regulated substances. The Date Required is date the release investigation was due (30 days after change in ownership) 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

\$5,000

TOTAL

\$521

## Compliance History

Customer/Respondent/Owner-Operator:	CN603156951	HERNANDEZ, LORENZO	Classification: POOR	Rating: 80.00
Regulated Entity:	RN101728350	RPM KWIC STOP 3	Classification: POOR	Site Rating: 80.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	32416
Location:	539 N PINE ST, WOODVILLE, TX, 75979		Rating Date: 9/1/2006 Repeat Violator: NO	
TCEQ Region:	REGION 10 - BEAUMONT			
Date Compliance History Prepared:	June 06, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	June 06, 2002 to June 06, 2007			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Thomas Greimel		Phone:	(512) 239-5690

### Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? Yes
3. If Yes, who is the current owner? Lorenzo Hernandez
4. If Yes, who was/were the prior owner(s)? Washington Mutual Bank  
Sobhani Traders, Inc./Gull M. Noor  
Texas Transeastern, Inc.
5. When did the change(s) in ownership occur? 11/01/2005  
03/09/2004  
01/02/2003

### Components (Multimedia) for the Site :

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

<p style="text-align: center;">Effective Date: 04/13/2003</p> <p>Classification: Moderate</p> <p>Citation: 2D TWC Chapter 26, SubChapter A 26.3467(a) 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(A)(i)</p> <p>Description: Failed to make available to a common carrier a valid, current TCEQ delivery certificate before delivery of a regulated substance into the USTs can be accepted.</p> <p>Classification: Moderate</p> <p>Citation: 2D TWC Chapter 26, SubChapter A 26.3475[G] 30 TAC Chapter 334, SubChapter C 334.50(b)(2)(A)(i)(III)</p> <p>Description: Failure to test a line leak detector at least once per year for performance and operational reliability.</p> <p>Classification: Moderate</p> <p>Citation: 2D TWC Chapter 26, SubChapter A 26.3475[G] 30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)  30 TAC Chapter 334, SubChapter C 334.50(b)(2)[G]</p> <p>Description: Failure to monitor USTs and piping for releases at a frequency of at least once per month.</p> <p>Classification: Moderate</p> <p>Citation: 2D TWC Chapter 26, SubChapter A 26.346(a) 30 TAC Chapter 334, SubChapter A 334.8(c)(4)(B)</p> <p>Description: Failure to ensure that the UST registration and self certification form is fully and accurately completed and submitted.</p> <p>Classification: Minor</p> <p>Citation: 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(C)</p> <p>Description: Failure to physically label all tank pipes according to the registration/self certification forms for Kwic Stop #1 and #3.</p> <p>Classification: Moderate</p> <p>Citation: 30 TAC Chapter 334, SubChapter C 334.49(e)[G]</p>	<p style="text-align: center;">ADMINORDER 2002-0784-PST-E</p>
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Description: Failure to maintain records of bi-monthly impressed current rectifier checks to verify system operation.

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

N/A

C. Chronic excessive emissions events.

N/A

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

1 02/28/2006 (451132)

N/A

2 03/23/2007 (538336)

3 04/20/2007 (555529)

4 04/20/2007 (542277)

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

Date: 01/26/2007 (451132)

Self Report? NO Classification Moderate

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

Description: At the time of the investigation, no documentation was available to verify the UST system is in compliance with upgrade requirements for corrosion protection, release detection, financial assurance, and self-certification.

Self Report? NO Classification Moderate

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

Description: Failure to ensure that any residue from stored regulated substances which remain in a temporarily out of service UST shall not exceed 2.5 centimeters at the deepest point and shall not exceed 0.3 percent by weight of the system at full capacity.

Self Report? NO Classification Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.54(b)[G]

Description: Failure to assure that, with the exception of vent lines, all piping, pumps, manways, and ancillary equipment shall be capped, plugged, locked, and/or otherwise secured to prevent access, tampering, or vandalism by unauthorized persons no later three months after the UST system service ended.

Self Report? NO Classification Moderate

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

Description: Failure to provide amended registration for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first became aware of the change or addition, as applicable.

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  
LORENZO HERNANDEZ;  
RN101728350

§  
§  
§  
§  
§

BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

**DEFAULT ORDER**  
**DOCKET NO. 2007-0900-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. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty. The respondent made the subject of this Order is Lorenzo Hernandez ("Mr. Hernandez").

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

**FINDINGS OF FACT**

1. From November 1, 2005, until April 13, 2007, Mr. Hernandez owned a non-operational former convenience store with retail sales of gasoline located at 539 North Pine Street, Woodville, Tyler County, Texas (the "Facility").
2. Mr. Hernandez's four underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Hernandez's USTs contain a regulated petroleum substance as defined in the rules of the Commission.
3. During an investigation conducted on January 23, 2007, a TCEQ Beaumont Regional Office investigator documented that Mr. Hernandez:
  - a. Failed to either permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, four USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, or ensure that any residue from stored regulated substances which remained in the temporarily out-of-service UST system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity; and failed to maintain all piping, pump, man-ways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured

manner to prevent access, tampering, or vandalism by unauthorized persons. Specifically four USTs at the Facility were not brought into timely compliance with the upgrade requirements, and it was documented that tank number 1 contained two inches of a regulated substance mixed with water and tank number 2 contained 14 inches of a regulated substance mixed with water;

- b. Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change. Specifically, the registration was not updated to reflect the out-of-service status of the USTs; and
  - c. Failed to investigate a suspected release within 30 days of discovery. Specifically, Mr. Hernandez became aware on or about November 1, 2005, that the UST system at the Facility may have released regulated substances, and as of January 23, 2007, no release investigation had been conducted.
4. Mr. Hernandez received notice of the violations on or about April 24, 2007.
  5. 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 Lorenzo Hernandez" (the "EDPRP") in the TCEQ Chief Clerk's office on August 20, 2007.
  6. By letter dated August 20, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Hernandez with notice of the EDPRP. According to the return receipt "green card," Mr. Hernandez received notice of the EDPRP on August 22, 2007, as evidenced by the signature on the card.
  7. More than 20 days have elapsed since Mr. Hernandez received notice of the EDPRP, provided by the Executive Director. Mr. Hernandez failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.
  8. The Executive Director recognizes that Mr. Hernandez no longer owns the Facility as of April 13, 2007.

#### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Hernandez is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.

2. As evidenced by Finding of Fact No. 3.a., Mr. Hernandez failed to either permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, four USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, or ensure that any residue from stored regulated substances which remained in the temporarily out-of-service UST system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity; and failed to maintain all piping, pump, man-ways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons, in violation of 30 TEX. ADMIN. CODE §§ 334.47(a)(2), and 334.54(b) and (d)(2).
3. As evidenced by Finding of Fact No. 3.b., Mr. Hernandez failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3).
4. As evidenced by Finding of Fact No. 3.c., Mr. Hernandez failed to investigate a suspected release within 30 days of discovery, in violation of 30 TEX. ADMIN. CODE § 334.74.
5. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. Hernandez with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
6. As evidenced by Finding of Fact No. 7, Mr. Hernandez 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. Hernandez and assess the penalty recommended by the Executive Director.
7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Hernandez for violations of the Texas Water 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.
8. An administrative penalty in the amount of thirty eight thousand four hundred seventy-five dollars (\$38,475.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
9. 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.

### ORDERING PROVISIONS

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

1. Mr. Hernandez is assessed an administrative penalty in the amount of thirty eight thousand four hundred seventy-five dollars (\$38,475.00) for violations of the Texas Water Code and the rules of the TCEQ. The payment of this administrative penalty and Mr. Hernandez'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: Lorenzo Hernandez; Docket No. 2007-0900-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. All relief not expressly granted in this Order is denied.
3. The provisions of this Order shall apply to and be binding upon Mr. Hernandez.
4. If Mr. Hernandez fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Hernandez's failure to comply is not a violation of this Order. Mr. Hernandez shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Hernandez shall notify the Executive Director within seven days after Mr. Hernandez 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 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. Hernandez shall be made in writing to the Executive Director. Extensions are not effective until Mr. Hernandez receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. 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. Hernandez if the Executive Director determines that Mr. Hernandez has not complied with one or more of the terms or conditions in this Order.
7. 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.
8. 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.

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF LENA ROBERTS**

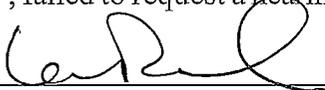
STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Lena Roberts. 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 Lorenzo Hernandez” (the “EDPRP”) was filed with the Office of the Chief Clerk on August 20, 2007.

The EDPRP was mailed to Mr. Hernandez at his last known address on August 20, 2007, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Hernandez received notice of the EDPRP on August 22, 2007, as evidenced by the signature on the card.

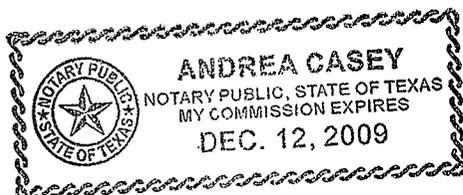
More than 20 days have elapsed since Mr. Hernandez received notice of the EDPRP. Mr. Hernandez failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”



\_\_\_\_\_  
Lena Roberts, Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Lena Roberts, 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 12<sup>th</sup> day of September, A.D., 2007.



\_\_\_\_\_  
Notary Signature