

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

Page 1 of 3

DOCKET NO.: 2007-0959-PST-E **TCEQ ID:** RN103098067 **CASE NO.:** 33812**RESPONDENT NAME:** Billy Derouen

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: 460 Highway 96 South, Silsbee, Hardin County</p> <p>TYPE OF OPERATION: Closed gasoline service station</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 5, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Thomas Greimel, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-5690; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Billy Derouen, 810 Bryan Lane, Lumberton, Texas 77657 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 checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: March 16, 2007</p> <p>Date of NOV/NOE Relating to this Case: April 23, 2007 (NOE)</p> <p>Background Facts: This was a routine investigation. Four violations were documented.</p> <p>WASTE</p> <p>1) Failure to legibly and permanently label underground storage tanks ("USTs") no later than 24 hours after removal from the ground with the name of the former contents, with a flammability warning, and a warning that the tank is unsuitable for the storage of drinking water or the storage of human or animal food products. Specifically, a 4,000-gallon UST was not properly labeled [30 TEX. ADMIN. CODE § 334.55(b)(4)(D)].</p> <p>2) Failed to comply with UST removal requirements by failing to empty USTs intended for permanent removal of all regulated substances and accumulated sludges or residues. Specifically, used oil was observed leaking from a 250-gallon used oil tank which had been crushed and placed in a roll-away dumpster for removal [30 TEX. ADMIN. CODE §§ 30.301(b), 334.55(a)(4), and TEX WATER CODE § 37.013].</p> <p>3) Failed to properly plug or cap removed USTs prior to transporting from the Facility. Specifically, it was observed that all the holes and openings were not properly plugged or capped on the 4,000 gallon steel UST and the tank was placed in a trailer for transportation [30 TEX. ADMIN. CODE § 34.55(b)(5)(C)(iii)].</p>	<p>Total Assessed: \$2,000</p> <p>Total Deferred: \$400 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$100 (remaining \$1,500 due in 15 monthly payments of \$100 each)</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input 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, plug or cap all holes or openings, properly label, empty regulated substances from all removed USTs, and maintain the residual vapor levels in the removed tanks to nonexplosive and nonignitable levels prior to transport; and</p> <p>b. Within 45 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 Provision a.</p>

<p>4) Failed to maintain the residual vapor levels in removed tanks at nonexplosive and nonignitable levels for the entire time the tank is stored at the Facility prior to transportation and during the entire period of transportation. Specifically, the investigator noted that the tanks had not been properly cleaned and there was a very strong odor of residual vapors from the tanks and excavation site, and no vapor monitoring was being conducted [30 TEX. ADMIN. CODE §§ 334.55(b)(4)(E) and 334.55(b)(5)(C)(ii)].</p>		
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Additional ID No(s): 61799



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

TCEQ DATES	Assigned	30-Apr-2007	Screening	30-Apr-2007	EPA Due	
	PCW	14-Jun-2007				

RESPONDENT/FACILITY INFORMATION			
Respondent	Billy Derouen		
Reg. Ent. Ref. No.	RN103098067		
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	33812	No. of Violations	2	
Docket No.	2007-0959-PST-E	Order Type	1660	
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Thomas Greimel	
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) Subtotal 1 \$2,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 0% Enhancement Subtotals 2, 3, & 7 \$0

Notes No adjustment for compliance history.

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.

Subtotal 6 \$0

0% Enhancement*
*Capped at the Total EB \$ Amount

Total EB Amounts	\$48
Approx. Cost of Compliance	\$1,100

SUM OF SUBTOTALS 1-7 Final Subtotal \$2,000

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 \$2,000

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$2,000

DEFERRAL 20% Reduction Adjustment -\$400

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 \$1,600

Screening Date 30-Apr-2007

Docket No. 2007-0959-PST-E

PCW

Respondent Billy Derouen

Policy Revision 2 (September 2002)

Case ID No. 33812

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN103098067

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

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 30-Apr-2007 **Docket No.** 2007-0959-PST-E **PCW**
Respondent Billy Derouen *Policy Revision 2 (September 2002)*
Case ID No. 33812 *PCW Revision June 26, 2007*
Reg. Ent. Reference No. RN103098067
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Thomas Greimel
Violation Number 1
Rule Cite(s) 30 Tex. Admin. Code § 334.55(b)(4)(D)
Violation Description Failed to legibly and permanently label USTs no later than 24 hours after removal from the ground with the name of the former contents, with a flammability warning, and a warning that the tank is unsuitable for the storage of drinking water or the storage of human or animal food products. Specifically, a 4,000-gallon UST was not properly labeled.
Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	X			10%

Matrix Notes: 100% of the rule requirement has not been met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 45 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the March 16, 2007 investigation.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount \$4	Violation Final Penalty Total \$1,000
This violation Final Assessed Penalty (adjusted for limits) \$1,000	

Economic Benefit Worksheet

Respondent: Billy Derouen
 Case ID No: 33812
 Reg. Ent. Reference No: RN103098067
 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)	\$100	16-Mar-2007	31-Jan-2008	0.9	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to properly label USTs which have been removed from the ground. Date Required is the investigation date. 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

\$4

Screening Date 30-Apr-2007

Docket No. 2007-0959-PST-E

PCW

Respondent Billy Derouen

Policy Revision 2 (September 2002)

Case ID No. 33812

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN103098067

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 30.301(b), 334.55(a)(4), 334.55(b)(4)(E), 334.55(b)(5)(C)(ii) and 334.55(b)(5)(C)(iii), and Tex. Water Code § 37.013

Violation Description

Failed to comply with UST removal requirements by failing to empty USTs intended for permanent removal of all regulated substances and accumulated sludges or residues. Specifically, oil was observed leaking from a 250-gallon used oil tank which had been crushed and placed in a roll-away dumpster for removal. Failed to properly plug or cap any removed tank prior to transporting from the Facility. Specifically, it was observed that all holes and openings were not properly plugged or capped on the 4,000-gallon steel UST and the tank was placed in a trailer for transportation. Failed to maintain the residual vapor levels in removed tanks at nonexplosive and nonignitable levels for the entire time the tank is stored at the Facility prior to transportation and during the entire period of transportation. Specifically, the investigator noted that the tanks had not been properly cleaned and there was a very strong odor of residual vapors from the tanks and excavation site, and no vapor monitoring was being conducted.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

The environment was exposed to insignificant amounts of pollutants which did not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

45 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,000

One quarterly event is recommended from the March 16, 2007 investigation date to the April 30, 2007 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$44

Violation Final Penalty Total \$1,000

This violation Final Assessed Penalty (adjusted for limits) \$1,000

Economic Benefit Worksheet

Respondent: Billy Derouen
 Case ID No: 33812
 Reg. Ent. Reference No: RN103098067
 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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	\$1,000	16-Mar-2007	31-Jan-2008	0.9	\$44	n/a	\$44

Notes for DELAYED costs

Estimated cost to adequately empty removed USTs of petroleum substances, properly plug all the holes and openings, and to maintain residual vapor levels in any removed tank at nonexplosive and nonignitable levels. Date Required is the investigation date. 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)

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

\$1,000

TOTAL

\$44

Compliance History

Customer/Respondent/Owner-Operator: CN601633449 DEROUEN, BILLY Classification: Rating:
Regulated Entity: RN103098067 DEROUEN, BILLY Classification: Site Rating:
ID Number(s): UNDERGROUND STORAGE TANK LICENSE ILP002301
LICENSING
Location: 810 Bryan Lane, Lumberton, TX 77657
TCEQ Region: REGION 10 - BEAUMONT
Date Compliance History Prepared: June 15, 2007
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: June 15, 2002 to June 15, 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? | No |
| 3. If Yes, who is the current owner? | <u>N/A</u> |
| 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 04/23/2007 (555692)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- 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
BILLY DEROUEN
RN103098067**

**§ BEFORE THE
§ TEXAS COMMISSION ON
§ ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-0959-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 Billy Derouen ("Mr. Derouen") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Mr. Derouen appear before the Commission and together stipulate that:

1. Mr. Derouen owns and operates a underground storage tank ("UST") installation/removal contractor business at 810 Bryan Lane in Lumberton, Hardin County, Texas. Mr. Derouen removed USTs from the ground at 460 Highway 96 South in Silsbee, Hardin County, Texas (the "Facility").
2. The five USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Commission and Mr. Derouen agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Derouen is subject to the Commission's jurisdiction.
4. Mr. Derouen received notice of the violations alleged in Section II ("Allegations") on or about April 28, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Derouen of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Two Thousand Dollars (\$2,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Derouen has paid One Hundred Dollars (\$100) of the administrative penalty and Four Hundred Dollars (\$400) is deferred contingent upon Mr. Derouen's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Mr. Derouen fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require Mr. Derouen to pay all or part of the deferred penalty.

The remaining amount of One Thousand Five Hundred Dollars (\$1,500) of the administrative penalty shall be payable in 15 monthly payments of One Hundred Dollars (\$100) 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. Derouen 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 Mr. Derouen to meet the payment schedule of this Agreed Order constitutes the failure by Mr. Derouen 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 Mr. Derouen 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 Mr. Derouen 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 a licensed UST contractor for the Facility, Mr. Derouen is alleged to have:

1. Failed to legibly and permanently label USTs no later than 24 hours after removal from the ground with the name of the former contents, with a flammability warning, and a warning that the tank is unsuitable for the storage of drinking water or the storage of human or animal food products, in violation of 30 TEX. ADMIN. CODE § 334.55(b)(4)(D), as documented during an investigation conducted on March 16, 2007. Specifically, a 4,000-gallon UST was not properly labeled.

2. Failed to comply with UST removal requirements by failing to empty USTs intended for permanent removal of all regulated substances and accumulated sludges or residues, in violation of 30 TEX. ADMIN. CODE §§ 30.301(b), 334.55(a)(4), and TEX WATER CODE § 37.013, as documented during an investigation conducted on March 16, 2007. Specifically, used oil was observed leaking from a 250-gallon used oil tank which had been crushed and placed in a roll-away dumpster for removal.
3. Failed to properly plug or cap removed USTs prior to transporting from the Facility, in violation of 30 TEX. ADMIN. CODE § 334.55(b)(5)(C)(iii), as documented during an investigation conducted on March 16, 2007. Specifically, it was observed that all the holes and openings were not properly plugged or capped on the 4,000-gallon steel UST and the tank was placed in a trailer for transportation.
4. Failed to maintain the residual vapor levels in removed tanks at nonexplosive and nonignitable levels for the entire time the tank is stored at the Facility prior to transportation and during the entire period of transportation, in violation of 30 TEX. ADMIN. CODE §§ 334.55(b)(4)(E) and 334.55(b)(5)(C)(ii), as documented during an investigation conducted on March 16, 2007. Specifically, the investigator noted that the tanks had not been properly cleaned and there was a very strong odor of residual vapors from the tanks and excavation site, and no vapor monitoring was being conducted.

III. DENIALS

Mr. Derouen generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Derouen pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Derouen'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: Billy Derouen, Docket No. 2007-0959-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 Mr. Derouen shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, plug or cap all holes or openings, properly label, empty regulated substances from all removed USTs, and

maintain the residual vapor levels in the removed tanks to nonexplosive and nonignitable levels prior to transport, in accordance with 30 TEX. ADMIN. CODE § 334.55; and

- b. Within 45 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 No. 2.a.

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:

Mr. Derek Eades, Manager, Waste Section
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1830

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

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

Date 11/13/2007

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

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

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



Signature

Date 8-25-07

Billy Derouen

Name (Printed or typed)
Authorized Representative of
Billy Derouen

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.

