



**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date of Complaints Relating to this Case:</b> N/A</p> <p><b>Dates of Investigation Relating to this Case:</b>                      January 25, 2007 and February 7, 2007</p> <p><b>Date of NOE Relating to this Case:</b>                      February 5, 2007</p> <p><b>Background Facts:</b>                      The EDPRP was filed on July 16, 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 signed and received notice of the EDPRP on July 18, 2007, as evidenced by the signature on the card.</p> <p>The EDFARP was filed on September 25, 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 EDFARP on or about October 14, 2007, as evidenced by the signature on the card.</p> <p>The Respondent failed to file an answer to either the EDPRP or the EDFARP, 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 the USTs from service no later than 60 days after the prescribed implementation date, for 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. Failed to provide an amended UST registration to the TCEQ for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)].</p> <p>3. Failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0023105U for fiscal years 1998 through 2007 [TEX. WATER CODE § 5.702 and 30 TEX. ADMIN. CODE § 334.22(a)].</p>	<p><b>Total Assessed:</b> \$11,550</p> <p><b>Total Deferred:</b> \$0</p> <p><b>Total Due to General Revenue:</b>                      \$11,550</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 checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input 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>Technical Requirements</b></p> <p>The Respondent shall:</p> <p>1) Immediately submit payment for all outstanding fees, including any associated penalties and interest.</p> <p>2) Within 30 days:</p> <p>a. Ensure that the UST system has been protected from corrosion and emptied of all regulated substances; or</p> <p>b. Permanently remove the UST system from service.</p> <p>3) Within 45 days, submit an amended registration to indicate the operational status of the UST system.</p> <p>4) Within 60 days, submit written certification of compliance with these Ordering Provisions.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision January 9, 2007

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	5-Feb-2007	<b>Screening</b>	7-Feb-2007	<b>EPA Due</b>	
	<b>PCW</b>	4-Jun-2007				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Charles O. Cullins dba Thelbert Elkins Texaco
<b>Reg. Ent. Ref. No.</b>	RN101902039
<b>Facility/Site Region</b>	3-Abilene
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	32682	<b>No. of Violations</b>	3
<b>Docket No.</b>	2007-0236-PST-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Enf. Coordinator</b>	Shontay Wilcher
<b>Multi-Media</b>		<b>EC's Team</b>	EnforcementTeam 6
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$11,000
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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.

<b>Compliance History</b>	5% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$550
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Notes: Enhancement for one Notice of Violation with same or similar violations.

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

<b>Good Faith Effort to Comply</b>	0% Reduction	<b>Subtotal 5</b>	\$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.

	0% Enhancement*	<b>Subtotal 6</b>	\$0
<b>Total EB Amounts</b>	\$5,262	<i>*Capped at the Total EB \$ Amount</i>	
<b>Approx. Cost of Compliance</b>	\$12,100		

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$11,550
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>		<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

<b>Final Penalty Amount</b>	\$11,550
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$11,550
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<b>DEFERRAL</b>	0% Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral not offered for non-expedited settlement.

<b>PAYABLE PENALTY</b>	\$11,550
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Screening Date 7-Feb-2007

Docket No. 2007-0236-PST-E

PCW

Respondent Charles O. Cullins dba Thelbert Elkins Texaco

Policy Revision 2 (September 2002)

Case ID No. 32682

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN101902039

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Shontay Wilcher

### 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)	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%
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 Notice of Violation with same or similar violations.

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

5%

Screening Date 7-Feb-2007

Docket No. 2007-0236-PST-E

PCW

Respondent Charles O. Cullins dba Theibert Elkins Texaco

Policy Revision 2 (September 2002)

Case ID No. 32682

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN101902039

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Shontay Wilcher

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.47(a)(2)

Violation Description Failed to permanently remove the USTs from service no later than 60 days after the prescribed implementation date, four 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

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	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 4 Number of violation days 13

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

Violation Base Penalty \$10,000

Four monthly events are recommended (one per UST) based on documentation of the violation during the January 25, 2007 investigation date to the February 7, 2007 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$5,259

Violation Final Penalty Total \$10,500

This violation Final Assessed Penalty (adjusted for limits) \$10,500

## Economic Benefit Worksheet

Respondent: Charles O. Cullins dba Thelbert Elkins Texaco

Case ID No. 32682

Reg. Ent. Reference No. RN101902039

Media: Petroleum Storage Tank

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Item Description 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)	\$12,000	22-Dec-1998	25-Sep-2007	8.8	\$5,259	\$5,259

Notes for DELAYED costs

Estimated cost to permanently remove the UST system from service. The Date Required is the date when 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

\$12,000

TOTAL

\$5,259

Screening Date 7-Feb-2007

Docket No. 2007-0236-PST-E

PCW

Respondent Charles O. Cullins dba Thelbert Elkins Texaco

Policy Revision 2 (September 2002)

Case ID No. 32682

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN101902039

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Shontay Wilcher

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.7(d)(3)

Violation Description

Failed to provide an amended UST registration to the TCEQ for any change or additional information regarding USTs within 30 days from the date of occurrence of the change or addition. Specifically, the registration had not been updated to reflect the current out-of-service status of the USTs.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

13 Number of violation days

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the January 25, 2007 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3

Violation Final Penalty Total \$1,050

This violation Final Assessed Penalty (adjusted for limits) \$1,050

## Economic Benefit Worksheet

Respondent Charles O. Cullins dba Thelbert Elkins Texaco

Case ID No. 32682

Reg. Ent. Reference No. RN101902039

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	25-Jan-2007	25-Aug-2007	0.6	\$3	n/a	\$3

Notes for DELAYED costs

Estimated cost to accurately prepare and submit an updated UST registration. The Date Required is the date of investigation 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

\$3

Screening Date 7-Feb-2007

Docket No. 2007-0236-PST-E

PCW

Respondent Charles O. Cullins dba Theibert Elkins Texaco

Policy Revision 2 (September 2002)

Case ID No. 32682

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN101902039

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Shontay Wilcher

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.22(a) and Tex. Water Code § 5.702

Violation Description Failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0023105U for fiscal years 1998 through 2007.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0%

Adjustment \$10,000

\$0

Violation Events

Number of Violation Events [ ] Number of violation days [ ]

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

Violation Base Penalty \$0

No additional administrative penalty was calculated for this violation as penalties and interest will be assessed on the next fee billing.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$0

This violation Final Assessed Penalty (adjusted for limits) \$0

## Economic Benefit Worksheet

**Respondent:** Charles O. Cullins dba Thelbert Elkins Texaco  
**Case ID No.** 32682  
**Reg. Ent. Reference No.** RN101902039  
**Media:** Petroleum Storage Tank  
**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Not Applicable

### 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

Not Applicable

Approx. Cost of Compliance

\$0

TOTAL

\$0

## Compliance History

Customer/Respondent/Owner-Operator:	CN601038821 CULLINS, CHARLES O	Classification: AVERAGE	Rating: 2.50
Regulated Entity:	RN101902039 THELBERT ELKINS TEXACO	Classification: AVERAGE	Site Rating: 2.50
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	36318
Location:	602 COMMERCIAL ST, COLEMAN, TX, 76834	Rating Date: September 01 06	Repeat Violator: NO
TCEQ Region:	REGION 03 - ABILENE		
Date Compliance History Prepared:	February 19, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	February 19, 2002 to February 19, 2007		

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

Name: Shontay Wilcher Phone: (512) 239-2136

### Site Compliance History Components

- |  |     |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | No  |
| 3. If Yes, who is the current owner?   | N/A |
| 4. If Yes, who was/were the prior owner(s)?  | N/A |
| 5. When did the change(s) in ownership occur?  | N/A |

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 

1	07/31/2006	(488068)
2	01/31/2007	(538015)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 

Date:	07/26/2006	(488058)		
Self Report?	NO		Classification:	Moderate
Citation:	30 TAC Chapter 334, SubChapter C 334.49[G]			
Description:	Failure to provide corrosion protection to a steel underground storage tank system.			
Self Report?	NO		Classification:	Minor
Citation:	30 TAC Chapter 334, SubChapter C 334.47(a)(2)			
Description:	Failure to upgrade UST system to meet all technical standards.			
Self Report?	NO		Classification:	Minor
Citation:	30 TAC Chapter 334, SubChapter A 334.7(d)(3)			
Description:	Failure to amend, update or change registration information, as required.			
- 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 CHARLES O.  
CULLINS DBA THELBERT  
ELKINS TEXACO,  
RN101902039

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BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**DEFAULT ORDER**  
**DOCKET NO. 2007-0236-PST-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's First Amended Report and Petition filed pursuant to TEX. WATER CODE chs. 5, 7, and 26, and the rules of the TCEQ, which requests appropriate relief, including the revocation of the Respondent's underground storage tank delivery certificate, the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Charles O. Cullins dba Theibert Elkins Texaco ("Mr. Cullins").

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

**FINDINGS OF FACT**

1. Mr. Cullins owns property with four underground storage tanks located at 602 Commercial Street, Coleman, Coleman County, Texas (the "Facility").
2. Mr. Cullins' four underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Cullins' USTs contain a regulated petroleum substance as defined in the rules of the Commission.
3. During an inspection conducted on January 25, 2007, a TCEQ Abilene Regional Office investigator documented that Mr. Cullins:
  - a. Failed to permanently remove the USTs from service no later than 60 days after the prescribed implementation date, for USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.

- b. Failed to provide an amended UST registration to the TCEQ for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition. Specifically, the registration had not been updated to reflect the current out-of-service status of the USTs.
4. During a record review conducted on February 7, 2007, TCEQ Financial Administration Division Staff documented that Mr. Cullins failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0023105U for fiscal years 1998 through 2007.
5. Mr. Cullins received notice of violations 3.a. and 3.b. on or about February 5, 2007.
6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Charles O. Cullins dba Thelbert Elkins Texaco" (the "EDPRP") in the TCEQ Chief Clerk's office on July 16, 2007.
7. By letter dated July 16, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Cullins with notice of the EDPRP. According to the return receipt "green card", Mr. Cullins received notice of the EDPRP on July 18, 2007, as evidenced by the signature on the card.
8. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Charles O. Cullins dba Thelbert Elkins Texaco" (the "EDFARP") in the TCEQ Chief Clerk's office on September 25, 2007.
9. By letter dated September 25, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Cullins with notice of the EDFARP. According to the return receipt "green card", Mr. Cullins received notice of the EDFARP on or about October 14, 2007, as evidenced by the signature on the card.
10. More than 20 days have elapsed since Mr. Cullins received notice of the EDPRP and the EDFARP, provided by the Executive Director. Mr. Cullins failed to file an answer to either the EDPRP or the EDFARP, failed to request a hearing, and failed to schedule a settlement conference.

### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Cullins is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 5, 7, and 26, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Cullins failed to permanently remove the USTs from service no later than 60 days after the prescribed implementation date, for 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).
3. As evidenced by Finding of Fact No. 3.b., Mr. Cullins failed to provide an amended UST registration to the TCEQ for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3).
4. As evidenced by Finding of Fact No. 4, Mr. Cullins failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0023105U for fiscal years 1998 through 2007, in violation of TEX. WATER CODE § 5.702 and 30 TEX. ADMIN. CODE § 334.22(a).
5. As evidenced by Finding of Fact Nos. 6, 7, 8, and 9 the Executive Director has timely served Mr. Cullins with proper notice of the EDPRP and the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
6. As evidenced by Finding of Fact No. 10, Mr. Cullins has failed to file a timely answer to either the EDPRP or the EDFARP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Cullins 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. Cullins for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
8. An administrative penalty in the amount of eleven thousand five hundred fifty dollars (\$11,550.00) 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. Cullins is assessed an administrative penalty in the amount of eleven thousand five hundred fifty dollars (\$11,550.00) for violations of TEX. WATER CODE chs. 5, 7, and 26, and rules of the TCEQ. The payment of this administrative penalty and Mr. Cullins' 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: Charles O. Cullins dba Thelbert Elkins Texaco; Docket No. 2007-0236-PST-E" to:

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

2. Mr. Cullins shall under take the following technical requirements:
  - a. Immediately upon the effective date of this Order, Mr. Cullins shall submit payment for all outstanding fees, including any associated penalties and interest and with the notation "Charles O. Cullins dba Thelbert Elkins Texaco, TCEQ Financial Account No. 0023105U" to:

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

- b. Within 30 days after the effective date of this Order, Mr. Cullins shall either:

- i. Ensure that the UST system has been protected from corrosion and emptied of all regulated substances, in accordance with 30 TEX. ADMIN. CODE § 334.54; or
  - ii. Permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55.
- c. Within 45 days after the effective date of this Order, Mr. Cullins shall submit an amended registration to indicate the operational status of the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.7.
  - d. Within 60 days after the effective date of this Order, Mr. Cullins shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions 2.a. through 2.c.

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:

Mike Taylor, Waste Section Manager  
Abilene Regional Office  
Texas Commission on Environmental Quality  
1977 Industrial Boulevard  
Abilene, Texas 79602-7833

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. Cullins. Mr. Cullins is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. If Mr. Cullins 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. Cullins' failure to comply is not a violation of this Order. Mr. Cullins shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Cullins shall notify the Executive Director within seven days after Mr. Cullins becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. 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. Cullins shall be made in writing to the Executive Director. Extensions are not effective until Mr. Cullins receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. 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. Cullins if the Executive Director determines that Mr. Cullins has not complied with one or more of the terms or conditions in this Order.
8. 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.
9. 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.

Charles O. Cullins dba Thelbert Elkins Texaco  
DOCKET NO. 2007-0236-PST-E  
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## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF PATRICK N. JACKSON**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Patrick N. Jackson. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

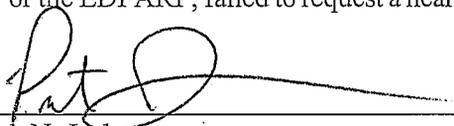
On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Charles O. Cullins dba Thelbert Elkins Texaco” (the “EDPRP”) with the Office of the Chief Clerk on July 16, 2007.

I sent the EDPRP to Mr. Cullins at his last known address on July 16, 2007 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card”, Mr. Cullins received notice of the EDPRP on July 18, 2007, as evidenced by the signature on the card.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the “Executive Director’s First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Charles O. Cullins dba Thelbert Elkins Texaco” (the “EDFARP”) with the Office of the Chief Clerk on September 25, 2007.

I sent the EDFARP to Mr. Cullins at his last known address on September 25, 2007 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card”, Mr. Cullins received notice of the EDFARP on or about October 13, 2007, as evidenced by the signature on the card.

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

  
\_\_\_\_\_  
Patrick N. Jackson  
Attorney  
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 8 day of November, 2007.



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