

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2007-1596-PST-E TCEQ ID: RN103141180 CASE NO.: 34743**  
**RESPONDENT NAME: JAMES CARTER**

<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> Southwest corner of Highway 77 and Dunaway Street, Italy, Ellis County</p> <p><b>TYPE OF OPERATION:</b> Former gasoline service station</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 April 7, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Ms. Anna M. Cox, Litigation Division, MC 175, (512) 239-0974  Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873  <b>TCEQ Enforcement Coordinator:</b> Mr. Steven Lopez, Waste Enforcement Section, MC 128, (512) 239-1896  <b>TCEQ Regional Contact:</b> Mr. Sam Barrett, DFW Regional Office, MC R-4, (817) 588-5903  <b>Respondent:</b> Mr. James Carter, Owner, P.O. Box 213, Italy, Texas 76651  <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 type="checkbox"/> Routine  <input checked="" type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaints Relating to this Case:</b>                      N/A</p> <p><b>Date of Investigation Relating to this Case:</b>                      July 18, 2007</p> <p><b>Date of NOV/NOE Relating to this Case:</b>                      March 27, 2007 (NOV)                      September 21, 2007 (NOE)</p> <p><b>Background Facts:</b>                      The EDPRP was filed and mailed on December 21, 2007. The Respondent has not filed an answer.</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, three 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 notify the TCEQ of any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition, as applicable [30 TEX. ADMIN. CODE § 334.7(d)(3)].</p> <p>3. Failed to prevent an unauthorized discharge of motor oil [30 TEX. ADMIN. CODE § 334.48(a)].</p>	<p><b>Total Assessed:</b> \$11,550</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>Ordering Provisions</b></p> <p>1. Respondent's UST delivery certificate is revoked immediately upon the effective date of this Order. Respondent may submit an application for a new delivery certificate only after Respondent has complied with all of the requirements of this Order.</p> <p>2. Within 10 days, send UST delivery certificate to TCEQ.</p> <p><b>Technical Requirements</b></p> <p>Respondent shall undertake the following technical requirements:</p> <p>1. Within 30 days, permanently remove the UST system from service.</p> <p>2. Within 45 days, submit a completed registration to reflect the current operational status of the UST system.</p> <p>3. Within 60 days, submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provisions.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision September 19, 2007

<b>DATES</b>	Assigned	24-Sep-2007	Screening	1-Oct-2007	EPA Due
	PCW	3-Oct-2007			

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	James Carter		
Reg. Ent. Ref. No.	RN103141180		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	34743	No. of Violations	3
Docket No.	2007-1596-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Philip DeFrancesco
Multi-Media		EC's Team	Enforcement Team 6
Admin. Penalty \$	Limit Minimum \$0	Maximum	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<i>Subtotal 1</i>	<b>\$11,000</b>
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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	<i>Subtotals 2, 3, &amp; 7</i>	<b>\$550</b>
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Notes: Enhancement for one prior NOV with same or similar violations.

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

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

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

Total EB Amounts	\$4,977	0% Enhancement*	<i>Subtotal 6</i>	<b>\$0</b>
Approx. Cost of Compliance	\$15,100	*Capped at the Total EB \$ Amount		

<b>SUM OF SUBTOTALS 1-7</b>	<i>Final Subtotal</i>	<b>\$11,550</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0%	<i>Adjustment</i>	<b>\$0</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<i>Final Penalty Amount</i>	<b>\$11,550</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<i>Final Assessed Penalty</i>	<b>\$11,550</b>
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<b>DEFERRAL</b>	0% Reduction	<i>Adjustment</i>	<b>\$0</b>
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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>	<b>\$11,550</b>
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Screening Date 1-Oct-2007

Docket No. 2007-1596-PST-E

PCW

Respondent James Carter

Policy Revision 2 (September 2002)

Case ID No. 34743

PCW Revision September 19, 2007

Reg. Ent. Reference No. RN103141180

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Philip DeFrancesco

**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%
<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) 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 prior NOV with same or similar violations.

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

**Screening Date** 1-Oct-2007 **Docket No.** 2007-1596-PST-E **PCW**  
**Respondent** James Carter *Policy Revision 2 (September 2002)*  
**Case ID No.** 34743 *PCW Revision September 19, 2007*  
**Reg. Ent. Reference No.** RN103141180  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Philip DeFrancesco  
**Violation Number**   
**Rule Cite(s)**   
**Violation Description** Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.  
**Base Penalty**

>> Environmental, Property and Human Health Matrix

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

>> 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 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**

Violation Events

Number of Violation Events   Number of violation days

mark only one with an x

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

**Violation Base Penalty**

Three monthly events (one month per UST) are recommended from the September 18, 2007 investigation date to the October 1, 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:** James Carter  
**Case ID No.:** 34743  
**Reg. Ent. Reference No.:** RN103141180  
**Media:** Petroleum Storage Tank  
**Violation No.:** 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$10,000	22-Dec-1998	1-Jul-2008	9.5	\$4,766	n/a	\$4,766

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 based on the expected compliance date.

### Avoided Costs

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

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

Notes for AVOIDED costs:

Approx. Cost of Compliance	\$10,000	TOTAL	\$4,766
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<b>Screening Date</b> 1-Oct-2007	<b>Docket No.</b> 2007-1596-PST-E	<b>PCW</b>
<b>Respondent</b> James Carter		<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b> 34743		<i>PCW Revision September 19, 2007</i>
<b>Reg. Ent. Reference No.</b> RN103141180		
<b>Media [Statute]</b> Petroleum Storage Tank		
<b>Enf. Coordinator</b> Philip DeFrancesco		
<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>	Failed to notify the agency of any change or additional information regarding UST within 30 days from the date of the occurrence of the change or addition, as applicable. Specifically, the registration was not updated to reflect the current 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>			
	<b>Release</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
				<b>Percent</b> <input type="text" value="0%"/>

**>> Programmatic Matrix**

	<b>Falsification</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	
	<input type="text"/>	<input checked="" type="text" value="x"/>	<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="text" value="x"/>

**Violation Base Penalty**

One single event is recommended from the September 18, 2007 investigation date to the October 1, 2007 screening date.

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
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Estimated EB Amount       Violation Final Penalty Total

**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** James Carter  
**Case ID No.** 34743  
**Reg. Ent. Reference No.** RN103141180  
**Media** Petroleum Storage Tank  
**Violation No.** 2

<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)	\$100	18-Sep-2007	16-Jul-2008	0.8	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to submit an amended UST registration form to the TCEQ. The date required is the investigation date and the final date is the expected date of compliance.

**Avoided Costs**

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

**TOTAL**

\$4

<b>Screening Date</b> 1-Oct-2007	<b>Docket No.</b> 2007-1596-PST-E	<b>PCW</b>
<b>Respondent</b> James Carter		<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b> 34743		<i>PCW Revision September 19, 2007</i>
<b>Reg. Ent. Reference No.</b> RN103141180		
<b>Media [Statute]</b> Petroleum Storage Tank		
<b>Enf. Coordinator</b> Philip DeFrancesco		
<b>Violation Number</b> <input type="text" value="3"/>		
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 334.48(a)"/>	
<b>Violation Description</b>	Failed to prevent an unauthorized discharge of motor oil. Specifically, petroleum product spillage was observed in the soils around steel drums and an aboveground storage tank on the property.	
	<b>Base Penalty</b>	<input type="text" value="\$10,000"/>

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

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

**>> Programmatic Matrix**

		Major	Moderate	Minor	
<b>Falsification</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>
<b>Matrix Notes</b>	Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.				
	<b>Adjustment</b>	<input type="text" value="\$7,500"/>			

**Violation Events**

Number of Violation Events <input type="text" value="1"/>	<input type="text" value="13"/>	Number of violation days													
mark only one with an x <table border="1" style="border-collapse: collapse;"> <tr><td style="padding: 2px;">daily</td><td style="text-align: center;"><input type="text"/></td></tr> <tr><td style="padding: 2px;">monthly</td><td style="text-align: center;"><input checked="" type="checkbox"/></td></tr> <tr><td style="padding: 2px;">quarterly</td><td style="text-align: center;"><input type="text"/></td></tr> <tr><td style="padding: 2px;">semiannual</td><td style="text-align: center;"><input type="text"/></td></tr> <tr><td style="padding: 2px;">annual</td><td style="text-align: center;"><input type="text"/></td></tr> <tr><td style="padding: 2px;">single event</td><td style="text-align: center;"><input type="text"/></td></tr> </table>	daily	<input type="text"/>	monthly	<input checked="" type="checkbox"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input type="text"/>		<b>Violation Base Penalty</b>	<input type="text" value="\$2,500"/>
daily	<input type="text"/>														
monthly	<input checked="" type="checkbox"/>														
quarterly	<input type="text"/>														
semiannual	<input type="text"/>														
annual	<input type="text"/>														
single event	<input type="text"/>														

One monthly event is recommended from the September 18, 2007 investigation date to the October 1, 2007 screening date.

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
Estimated EB Amount <input type="text" value="\$207"/>	Violation Final Penalty Total <input type="text" value="\$2,625"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$2,625"/>	

## Economic Benefit Worksheet

**Respondent** James Carter  
**Case ID No.** 34743  
**Reg. Ent. Reference No.** RN103141180  
**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
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	18-Sep-2007	16-Jul-2008	0.8	\$207	n/a	\$207

Notes for DELAYED costs

Estimated cost to remove petroleum product and properly dispose of contaminated soils. Date required is the investigation date and the final date is the expected 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

\$207

## Compliance History

Customer/Respondent/Owner-Operator:	CN601673791    CARTER, JAMES	Classification: AVERAGE	Rating: 5.50
Regulated Entity:	RN103141180    RAYS GULF	Classification: AVERAGE	Site Rating: 5.50
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	30007
Location:	HWY 77	Rating Date: 9/1/2007 Repeat Violator: NO	
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	October 03, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	October 03, 2002 to October 03, 2007		

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

Name: Philip DeFrancesco Phone: (817) 588-5933

### Site Compliance History Components

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

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- |   |            |          |  |
|---|------------|----------|--|
| 1 | 03/27/2007 | (542100) |  |
| 2 | 09/20/2007 | (595043) |  |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |              |   |                 |          |
|--------------|---|-----------------|----------|
| Date:        | 03/27/2007  | (542100)        |          |
| Self Report? | NO  | Classification: | Moderate |
| Citation:    | 30 TAC Chapter 334, SubChapter C 334.47(a)(2)   |                 |          |
| Description: | Failure to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.                                    |                 |          |
| 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. |                 |          |
| Self Report? | NO  | Classification: | Major    |
| Citation:    | 2D TWC Chapter 26, SubChapter A 26.121(a)   |                 |          |
| Description: | Except as authorized by the commission, no person may discharge sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to any water in the state.  |                 |          |
- 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  
JAMES CARTER;  
RN103141180

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**DEFAULT ORDER**  
**DOCKET NO. 2007-1596-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 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 James Carter ("Mr. Carter").

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

**FINDINGS OF FACT**

1. Mr. Carter owns a former gasoline service station located on the southwest corner of Highway 77 and Dunaway Street, Italy, Ellis County, Texas (the "Facility").
2. Mr. Carter's three underground storage tank(s) ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Carter's USTs contain a regulated substance as defined in the rules of the Commission.
3. During an investigation conducted on February 21, 2007 and September 18, 2007, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Mr. Carter:
  - a. Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and
  - b. Failed to notify the TCEQ of any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition, as applicable. Specifically, the registration was not updated to reflect the current out of service status of the USTs.

- c. Failed to prevent an unauthorized discharge of motor oil. Specifically, petroleum product was observed in the soils around steel drums and an aboveground storage tank on the property.
4. Mr. Carter received notice of the violations on or about September 21, 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 James Carter" (the "EDPRP") in the TCEQ Chief Clerk's office on December 21, 2007.
6. By letter dated December 21, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Carter with notice of the EDPRP. According to the return receipt "green card," Mr. Carter received notice of the EDPRP on January 4, 2008, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Mr. Carter received notice of the EDPRP, provided by the Executive Director. Mr. Carter failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

#### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Carter 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. Carter failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, three 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. Carter failed to notify the TCEQ of any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition, as applicable. Specifically, the registration was not updated to reflect the current out of service status of the USTs, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3).
4. As evidenced by Finding of Fact No. 3.c., Mr. Carter failed to prevent an unauthorized discharge of motor oil. Specifically, petroleum product was observed in the soils around steel drums and an aboveground storage tank on the property, in violation of 30 TEX. ADMIN. CODE § 334.48(a).

5. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. Carter 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. Carter 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. Carter 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. Carter 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 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.
10. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Mr. Carter's UST delivery certificate if the Commission finds that good cause exists.
11. Good cause for revocation of Mr. Carter's UST delivery certificate exists as justified by Findings of Fact Nos. 3, 5, 6, and 7, and Conclusions of Law Nos. 2, 3, 4, 5, and 6.

### **ORDERING PROVISIONS**

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

1. Mr. Carter is assessed an administrative penalty in the amount of eleven thousand five hundred fifty dollars (\$11,550.00) for violations of the TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ. The payment of this administrative penalty and Mr. Carter'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: James Carter; Docket No. 2007-1596-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. Carter's UST delivery certificate is revoked immediately upon the effective date of this Order. Mr. Carter may submit an application for a new delivery certificate only after Mr. Carter has complied with all of the requirements of this Order.
3. Within 10 days after the effective date of this Order, Mr. Carter shall send his UST delivery certificate to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

4. Mr. Carter shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Order, Mr. Carter shall permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55.
  - b. Within 45 days after the effective date of this Order, Mr. Carter shall submit a completed registration to reflect the current operational status of the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

Registration and Reporting Section  
Permitting & Remediation Support Division, MC 138  
Texas Commission on Environmental Quality  
P. O. Box 13087  
Austin, Texas 78711-3087

- c. Within 60 days after the effective date of this Order, Mr. Carter shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 4.a.

through 4.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Mr. Carter shall submit the written certification and copies of documentation necessary 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:

Sam Barrett, Waste Section Manager  
Texas Commission on Environmental Quality  
Dallas/Fort Worth Regional Office  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

5. All relief not expressly granted in this Order is denied.
6. The provisions of this Order shall apply to and be binding upon Mr. Carter. Mr. Carter is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
7. If Mr. Carter 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. Carter's failure to comply is not a violation of this Order. Mr. Carter shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Carter shall notify the Executive Director within seven days after Mr. Carter becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

8. 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. Carter shall be made in writing to the Executive Director. Extensions are not effective until Mr. Carter receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
9. 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. Carter if the Executive Director determines that Mr. Carter has not complied with one or more of the terms or conditions in this Order.
10. 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.
11. 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.

James Carter  
Docket No. 2007-1596-PST-E  
Page 7

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF ANNA M. COX**

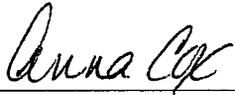
STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Anna M. Cox. 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 James Carter” (the “EDPRP”) was filed with the Office of the Chief Clerk on December 21, 2007.

The EDPRP was mailed to Mr. Carter at his last known address on December 21, 2007, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Carter received notice of the EDPRP on January 4, 2008, as evidenced by the signature on the card.

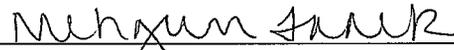
More than 20 days have elapsed since Mr. Carter received notice of the EDPRP. Mr. Carter failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”

  
\_\_\_\_\_  
Anna M. Cox, Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Anna M. Cox, 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 15<sup>th</sup> day of FEBRUARY, A.D., 2008.



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