# EXECUTIVE SUMMARY - ENFORCEMENT MATTER
## DOCKET NO.: 2006-2066-PST-E TCEQ ID: RN102271350 CASE NO.: 31848
## RESPONDENT NAME: DENNIS SPARKS

| ORDER TYPE: | | |
|---|---|---|
| __1660 AGREED ORDER | __FINDINGS AGREED ORDER | __FINDINGS ORDER FOLLOWING SOAH HEARING |
| X FINDINGS DEFAULT ORDER | __SHUTDOWN ORDER | __IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER |
| __AMENDED ORDER | __EMERGENCY ORDER | |

| CASE TYPE: | | |
|---|---|---|
| __AIR | __MULTI-MEDIA (check all that apply) | __INDUSTRIAL AND HAZARDOUS WASTE |
| __PUBLIC WATER SUPPLY | X PETROLEUM STORAGE TANKS | __OCCUPATIONAL CERTIFICATION |
| __WATER QUALITY | __SEWAGE SLUDGE | __UNDERGROUND INJECTION CONTROL |
| __MUNICIPAL SOLID WASTE | __RADIOACTIVE WASTE | __DRY CLEANER REGISTRATION |

SITE WHERE VIOLATION(S) OCCURRED: 13985 South Farm-to-Market 4, Santo, Palo Pinto County

TYPE OF OPERATION: Non-operating convenience store with retail sales of gasoline

SMALL BUSINESS: X Yes ___ No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on April 7, 2008. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019
Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873
TCEQ Enforcement Coordinator: Mr. Tom Greimel, Water Enforcement Division, MC 128, (512) 239-5690
TCEQ Regional Contact: Mr. Sid Slocum, DFW Regional Office, MC R-4, (817) 588-5901
Respondent: Mr. Dennis Sparks, P.O. Box 195, Santo, Texas 76472-0195
Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

| VIOLATION INFORMATION | PENALTY CONSIDERATIONS | CORRECTIVE ACTIONS TAKEN/REQUIRED |
|---|---|---|
| Type of Investigation:<br><br>__ Complaint<br>X Routine<br>__ Enforcement Follow-up<br>__ Records Review<br><br>Date of Complaints Relating to this Case:<br>None<br><br>Dates of Investigation Relating to this Case:<br>November 9, 2006<br><br>Date of NOE Relating to this Case:<br>November 13, 2006 (NOE)<br><br>Background Facts:<br><br>The EDPRP was filed on May 1, 2007. It was mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The Respondent received notice of the EDPRP on May 9, 2007, as evidenced by the signature on the return receipt "green card." The Respondent has failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.<br><br>A Default Order was set to be considered at the Commission's December 5, 2007 agenda. Respondent's bankruptcy attorney contacted the TCEQ attorney on December 4, 2007, stating that the Respondent wished to sign an Agreed Order. On December 27, 2007, a proposed Agreed Order was sent to Respondent's bankruptcy attorney. The TCEQ attorney left messages with the Respondent's bankruptcy attorney on January 7, January 24, and February 5, 2008, inquiring as to the status of the Agreed Order. However, neither the Respondent nor his bankruptcy attorney responded to the TCEQ attorney's inquiries and as of this date no signed Agreed Order has been received.<br><br>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report. | Total Assessed: $7,875<br><br>Total Due to General Revenue: $7,875<br><br>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 upon judicial determination specifically holding that the debt is non-dischargeable under Federal bankruptcy laws (11 USC § 523(a)(7)), or until the bankruptcy case has been dismissed.<br><br>Site Compliance History Classification<br>__ High X Average __ Poor<br><br>Person Compliance History Classification<br>__ High X Average __ Poor<br><br>Major Source: __ Yes X No<br><br>Applicable Penalty Policy: September 2002 | Ordering Provisions:<br><br>The Respondent shall undertake the following technical requirements:<br><br>1. Within 30 days:<br><br>a. Permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55, and submit to the TCEQ an updated UST registration form reflecting the permanent removal of the UST system from service; and<br><br>b. Pay all outstanding past due UST fees, including penalties and interest, for TCEQ Financial Account No. 0015196U for fiscal years 1990 through 2007 (contingent upon judicial determination under Federal bankruptcy laws).<br><br>2. Within 45 days submit written certification demonstrating compliance. |

VIOLATION SUMMARY CHART:

| VIOLATION INFORMATION | PENALTY CONSIDERATIONS | CORRECTIVE ACTIONS TAKEN/REQUIRED |
|---|---|---|
| PST:<br><br>1. Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, three USTs for which applicable components of the system were not brought into timely compliance with the upgrade requirements [30 TEX. ADMIN. CODE § 334.47(a)(2)].<br><br>2. Failed to pay outstanding UST fees for TCEQ Financial Account No. 0015196U for fiscal years 1990 through 2007 [30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702]. | | |

# Penalty Calculation Worksheet (PCW)

*Policy Revision 2 (September 2002)* — *PCW Revision December 8, 2006*

TCEQ

DATES — Assigned: 20-Nov-2006 | PCW: 9-Mar-2007 | Screening: 4-Dec-2006 | EPA Due:

RESPONDENT/FACILITY INFORMATION

| | |
|---|---|
| Respondent | Dennis Sparks |
| Reg. Ent. Ref. No. | RN102271350 |
| Facility/Site Region | 4-Dallas/Fort Worth |
| Major/Minor Source | Minor |

CASE INFORMATION

| | | | |
|---|---|---|---|
| Enf./Case ID No. | 31848 | No. of Violations | 2 |
| Docket No. | 2006-2066-PST-E | Order Type | 1660 |
| Media Program(s) | Petroleum Storage Tank | Enf. Coordinator | Thomas Greimel |
| Multi-Media | | EC's Team | Enforcement Team 7 |
| Admin. Penalty $ Limit | Minimum $0 | Maximum | $10,000 |

## Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1*: $7,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 5% Enhancement — *Subtotals 2, 3, & 7*: $375

Notes: Enhancement for one NOV with the same violation.

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.

0% Enhancement* — *Subtotal 6*: $0

**Capped at the Total EB $ Amount*

| | |
|---|---|
| Total EB Amounts | $6,028 |
| Approx. Cost of Compliance | $10,000 |

SUM OF SUBTOTALS 1-7 — *Final Subtotal*: $7,875

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*: $7,875

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty*: $7,875

DEFERRAL — 0% Reduction — *Adjustment*: $0

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

Notes: Deferral not offered for non-expedited settlement

PAYABLE PENALTY: $7,875

Screening Date 4-Dec-2006 Docket No. 2006-2066-PST-E PCW

Respondent Dennis Sparks

Case ID No. 31848

Reg. Ent. Reference No. RN102271350

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

Policy Revision 2 (September 2002)

PCW Revision December 8, 2006

# 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 NOV with the same violation.

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

Screening Date 4-Dec-2006 | Docket No. 2006-2066-PST-E | PCW

Policy Revision 2 (September 2002)
PCW Revision December 8, 2006

Respondent Dennis Sparks
Case ID No. 31848
Reg. Ent. Reference No. RN102271350
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Thomas Greimel

Violation Number: 1

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

Violation Description: Failed to permanently remove from service, no later than 60 days after the prescribed 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: $10,000

>> Environmental, Property and Human Health Matrix

| | Release | Harm: Major | Moderate | Minor |
|---|---|---|---|---|
| OR | Actual | | | |
| | Potential | x | | |

Percent: 25%

>>Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---|---|---|---|
| | | | |

Percent: 0%

Matrix Notes: Human health or the environment 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: 3

75 Number of violation days

mark only one with an x

| | |
|---|---|
| daily | |
| monthly | x |
| quarterly | |
| semiannual | |
| annual | |
| single event | |

Violation Base Penalty: $7,500

Three monthly events are recommended (one per tank) from the November 9, 2006 investigation date to the December 4, 2006 screening date.

Economic Benefit (EB) for this violation

Estimated EB Amount: $6,028

Statutory Limit Test

Violation Final Penalty Total: $7,875

This violation Final Assessed Penalty (adjusted for limits): $7,875

# Economic Benefit Worksheet

Respondent Dennis Sparks
Case ID No. 31648
Reg. Ent. Reference No. RN102271350
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) | $10,000 | 22-Dec-1998 | 31-Jul-2007 | 8.6 | $287 | $5,741 | $6,028 |
| 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 | Estimated expense to permanently remove the UST system from service. The Date Required is the date the UST system upgrade was required. The Final Date is the date the respondent is projected to come into compliance. | | | | | | |
| **Avoided Costs** | ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs) | | | | | | |
| Disposal | | | | 0.0 | $0 | $0 | $0 |
| Personnel | | | | 0.0 | $0 | $0 | $0 |
| Inspection/Reporting/Sampling | | | | 0.0 | $0 | $0 | $0 |
| Supplies/equipment | | | | 0.0 | $0 | $0 | $0 |
| Financial Assurance [2] | | | | 0.0 | $0 | $0 | $0 |
| ONE-TIME avoided costs [3] | | | | 0.0 | $0 | $0 | $0 |
| Other (as needed) | | | | 0.0 | $0 | $0 | $0 |
| Notes for AVOIDED costs | | | | | | | |

| Approx. Cost of Compliance | $10,000 | TOTAL | $6,028 |
|---|---|---|---|

Screening Date 4-Dec-2006

Docket No. 2006-2066-PST-E

PCW

Policy Revision 1 (September 2002)

PCW Revision December 8, 2006

Respondent Dennis Sparks

Case ID No. 31848

Reg. Ent. Reference No. RN102271350

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

Violation Number 2

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

Violation Description Failed to pay outstanding underground storage tank fees for TCEQ Financial Account No. 0015196U for fiscal years 1990 through 2007.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

| Release | Harm: Major | Moderate | Minor |
|---|---|---|---|
| Actual | | | |
| Potential | | | |

OR

Percent 0%

>>Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---|---|---|---|
| | | | |

Percent 0%

Matrix Notes

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 | |

Please Select One

Violation Base Penalty $0

No penalty is recommended because penalty and interest will be assessed at the next billing.

Economic Benefit (EB) for this violation

Estimated EB Amount $0

Statutory Limit Test

Violation Final Penalty Total $0

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

# Economic Benefit Worksheet

Respondent Dennis Sparks
Case ID No. 31848
Reg. Ent. Reference No. RN102271350
Media Petroleum Storage Tank
Violation No. 2

| | Percent Interest | Years of Depreciation |
|---|---|---|
| | 5.0 | 15 |

| Item Description (No commas or $) | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|---|---|---|---|---|---|---|---|
| **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 | N/A | | | | | | |
| **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 $0

TOTAL $0

# Compliance History

Customer/Respondent/Owner-Operator: CN601207566 SPARKS, DENNIS Classification: AVERAGE Rating: 1.50

Regulated Entity: RN102271350 DENNIS SPARKS Classification: AVERAGE Site Rating: 1.50

ID Number(s): PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 32033

Location: 13985 S FM 4, SANTO, TX, 76472 Rating Date: September 01 06 Repeat Violator: NO

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: November 29, 2006

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: November 29, 2001 to November 29, 2006

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? 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 05/15/2006 (463361)
2 11/13/2006 (519269)

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

Date: 05/15/2006 (463361)
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.

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 DENNIS SPARKS; RN102271350 | § § § § § | BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY |

DEFAULT ORDER
DOCKET NO. 2006-2066-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. 5, 7, and 26, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Dennis Sparks ("Mr. Sparks").

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

FINDINGS OF FACT

1. Mr. Sparks owns property on which a non-operating convenience store with retail sales of gasoline is located, at 13985 South Farm-to-Market 4, Santo, Palo Pinto County, Texas (the "Facility").

2. Mr. Sparks's three underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Sparks's USTs contain a regulated substance as defined in the rules of the Commission.

3. During an investigation conducted on November 9, 2006, a TCEQ Dallas-Fort Worth Regional Office investigator documented that Mr. Sparks:

   a. Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, three USTs for which applicable components of the system were not brought into timely compliance with the upgrade requirements; and

   b. Failed to pay outstanding UST fees for TCEQ Financial Account No. 0015196U for fiscal years 1990 through 2007.

4. Mr. Sparks received notice of the violations on or about November 18, 2006.

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 Dennis Sparks" (the "EDPRP") in the TCEQ Chief Clerk's office on May 1, 2007.

6. By letter dated May 1, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Sparks with notice of the EDPRP. According to the return receipt "green card," Mr. Sparks received notice of the EDPRP on May 9, 2007, as evidenced by the signature on the card.

7. More than 20 days have elapsed since Mr. Sparks received notice of the EDPRP, provided by the Executive Director. Mr. Sparks failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

8. On or about February 8, 2007, Mr. Sparks filed a petition for bankruptcy relief pursuant to Chapter 7 of the United States Code. The Automatic Stay imposed by the Bankruptcy Code (specifically, 11 USC § 362(a)) does not apply to the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power, by virtue of the exception set out at 11 USC § 362(b)(4). Accordingly, TCEQ (a governmental unit as defined under 11 USC § 101(27)) is expressly excepted from the automatic stay in pursuing enforcement of the State's environmental protection laws, and in seeking to liquidate its damages for such violations. This assessed administrative penalty is a civil fine or penalty payable to a governmental unit and not for pecuniary compensation. Therefore, the assessed penalty is a non-dishchargeable debt under 11 USC § 523(a)(7). So long as Mr. Sparks' bankruptcy case is not dismissed, the TCEQ will, however, not seek to execute upon any monetary judgment obtained without first obtaining a judicial determination specifically holding that the debt is non-dischargeable under Federal bankruptcy laws.

## CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact Nos. 1 and 2, Mr. Sparks 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 Findings of Fact No. 3.a., Mr. Sparks failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, three USTs for which applicable components of the system were not brought into timely compliance with the upgrade requirements, in violation of 30 TEX. ADMIN. CODE § 334.47(a)(2).

3. As evidenced by Findings of Fact No. 3.b., Mr. Sparks failed to pay outstanding UST fees for TCEQ Financial Account No. 0015196U for fiscal years 1990 through 2007, in violation of 30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702.

4. As evidenced by Findings of Fact Nos. 5 and 6, the Executive Director timely served Mr. Sparks with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).

5. As evidenced by Findings of Fact No. 7, Mr. Sparks 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. Sparks and assess the penalty recommended by the Executive Director.

6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Sparks 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.

7. An administrative penalty in the amount of seven thousand eight hundred seventy-five dollars ($7,875.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

8. 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. Sparks is assessed an administrative penalty in the amount of seven thousand eight hundred seventy-five dollars ($7,875.00) for violations of the Texas Water Code and the rules of the TCEQ. The assessment of this administrative penalty and Mr. Sparks'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 assessed by this Order shall be made out to the "Texas Commission on Environmental Quality" and shall include the notation "Re: Dennis Sparks; Docket No. 2006-2066-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. Sparks shall undertake the following technical requirements:

a. Within 30 days after the effective date of this Order, Mr. Sparks shall:

i. Permanently remove the UST system from service, in accordance with of 30 TEX. ADMIN. CODE § 334.55, and submit to the TCEQ an updated UST registration form reflecting the permanent removal of the UST system from service, in accordance with 30 TEX. ADMIN CODE § 334.7;

ii. Pay all outstanding UST fees, including penalties and interest, for TCEQ Financial Account No. 0015196U for fiscal years 1990 through 2007.

b. Within 45 days after the effective date of this Order, Mr. Sparks shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a.i. and ii. 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. Sparks shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a.i. and ii. 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:

Sid Slocum, Water Section Manager
Texas Commission on Environmental Quality
Dallas/Fort Worth Regional Office
2309 Gravel Drive
Fort Worth, Texas 76118-6951

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. Sparks.

5. If Mr. Sparks 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. Sparks's failure to comply is not a violation of this Order. Mr. Sparks shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Sparks shall notify the Executive Director within seven days after Mr. Sparks 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. Sparks shall be made in writing to the Executive Director. Extensions are not effective until Mr. Sparks 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. Sparks if the Executive Director determines that Mr. Sparks 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.

# SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____

For the Commission

# AFFIDAVIT OF LENA ROBERTS

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

"My name is Lena Roberts. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Dennis Sparks" (the "EDPRP") was filed with the Office of the Chief Clerk on May 1, 2007.

The EDPRP was mailed to Mr. Sparks at his last known address on May 1, 2007, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Mr. Sparks received notice of the EDPRP on May 9, 2007, as evidenced by the signature on the card.

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

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

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

Given under my hand and seal of office this 5th day of February, A.D., 2008.

Mehgan Taack
Notary Public
State of Texas
My Commission Expires
April 25, 2011

Notary Signature