# EXECUTIVE SUMMARY - ENFORCEMENT MATTER



**DOCKET NO.:** 2007-1685-PST-E **TCEQ ID:** RN101820793 **CASE NO.:** 34784

**RESPONDENT NAME:** Walter Lloyd Smith, Sr.

| ORDER TYPE: | | |
|---|---|---|
| X 1660 AGREED ORDER | __FINDINGS AGREED ORDER | __FINDINGS ORDER FOLLOWING SOAH HEARING |
| __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:** 711 Broadway, Roscoe, Nolan County

**TYPE OF OPERATION:** Property with five inactive underground storage tanks

**SMALL BUSINESS:** ____ **Yes** X **No**

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

**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 June 2, 2008. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney/SEP Coordinator:** None
**TCEQ Enforcement Coordinator:** Mr. Wallace Myers, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-6580; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171
**Respondent:** Mrs. Ordra F. Smith, P.O. Box 238, Roscoe, Texas 79545
**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>__ Complaint<br>__ Routine<br>__ Enforcement Follow-up<br>X Records Review<br><br>**Date(s) of Complaints Relating to this Case:** None<br><br>**Date of Record Review Relating to this Case:** August 2, 2007<br><br>**Date of NOE Relating to this Case:** August 29, 2007 (NOE)<br><br>**Background Facts:** This was a routine record review.<br><br>**WASTE**<br><br>1) Failure to register with the Commission, on authorized Commission forms, underground storage tanks ("USTs") in existence on or after September 1, 1987 [30 TEX. ADMIN. CODE § 334.7(a)(1)].<br><br>2) Failure to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, five 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)]. | **Total Assessed:** $28,600<br><br>**Total Deferred:** $27,400<br>__Expedited Settlement<br><br>X Financial Inability to Pay<br><br>**SEP Conditional Offset:** $0<br><br>**Total Paid (Due) to General Revenue:** $100 (remaining $1,100 due in 11 monthly payments of $100 each)<br><br>The Financial Assurance Section of the Commission's Financial Administration Division reviewed financial documentation submitted by Mr. Smith and determined that Mr. Smith is unable to pay part of the administrative penalty.<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 Order will require the Respondent to:<br><br>a) Within 30 days after the effective date of this Agreed Order, permanently remove the UST system from service;<br><br>b) Within 45 days after the effective date of this Agreed Order, submit registration to indicate the current operational status of the UST system; and<br><br>c) Within 60 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. a. and b. |

Additional ID No(s).: PST ID No. 49552

# Penalty Calculation Worksheet (PCW)

*Policy Revision 2 (September 2002)* — *PCW Revision September 19, 2007*

TCEQ

| DATES | | | | | |
|---|---|---|---|---|---|
| Assigned | 1-Oct-2007 | | | | |
| PCW | 17-Oct-2007 | Screening | 1-Oct-2007 | EPA Due | |

**RESPONDENT/FACILITY INFORMATION**

| | | | |
|---|---|---|---|
| Respondent | Walter Lloyd Smith, Sr. | | |
| Reg. Ent. Ref. No. | RN101820793 | | |
| Facility/Site Region | 3-Abilene | Major/Minor Source | Minor |

**CASE INFORMATION**

| | | | |
|---|---|---|---|
| Enf./Case ID No. | 34784 | No. of Violations | 2 |
| Docket No. | 2007-1685-PST-E | Order Type | 1660 |
| Media Program(s) | Petroleum Storage Tank | Enf. Coordinator | Wallace Myers |
| Multi-Media | | EC's Team | EnforcementTeam 6 |
| Admin. Penalty $ Limit Minimum | $0 | Maximum | $10,000 |

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** — *Subtotal 1* $26,000

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

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

**Compliance History** — 10% Enhancement — *Subtotals 2, 3, & 7* $2,600

Notes: Enhancement for two NOVs with same or similar violations.

**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 | $4,726 |
| Approx. Cost of Compliance | $10,100 |

**SUM OF SUBTOTALS 1-7** — *Final Subtotal* $28,600

**OTHER FACTORS AS JUSTICE MAY REQUIRE** — 0% — *Adjustment* $0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

*Final Penalty Amount* $28,600

**STATUTORY LIMIT ADJUSTMENT** — *Final Assessed Penalty* $28,600

**DEFERRAL** — 20% Reduction — *Adjustment* -$5,720

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

Notes: Deferral offered for expedited settlement.

**PAYABLE PENALTY** $22,880

| | | | |
|---|---|---|---|
| **Screening Date** | 1-Oct-2007 | **Docket No.** 2007-1685-PST-E | **PCW** |
| **Respondent** | Walter Lloyd Smith, Sr. | | *Policy Revision 2 (September 2002)* |
| **Case ID No.** | 34784 | | *PCW Revision September 19, 2007* |
| **Reg. Ent. Reference No.** | RN101820793 | | |
| **Media [Statute]** | Petroleum Storage Tank | | |
| **Enf. Coordinator** | Wallace Myers | | |

# 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*) | 2 | 10% |
| | 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)*** 10%

## >> 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 two NOVs with same or similar violations.

***Total Adjustment Percentage (Subtotals 2, 3, & 7)*** 10%

| | | | |
|---|---|---|---|
| **Screening Date** | 1-Oct-2007 | **Docket No.** 2007-1685-PST-E | **PCW** |
| **Respondent** | Walter Lloyd Smith, Sr. | | *Policy Revision 2 (September 2002)* |
| **Case ID No.** | 34784 | | *PCW Revision September 19, 2007* |
| **Reg. Ent. Reference No.** | RN101820793 | | |
| **Media [Statute]** | Petroleum Storage Tank | | |
| **Enf. Coordinator** | Wallace Myers | | |

**Violation Number** 1

**Rule Cite(s)** 30 Tex. Admin. Code § 334.7(a)(1)

**Violation Description** Failed to register with the Commission, on authorized Commission forms, USTs in existence on or after September 1, 1987.

**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 | 60 Number of violation days

*mark only one with an x*

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

**Violation Base Penalty** $1,000

One single event is recommended based on documentation of the violation during the August 2, 2007 record review.

## Economic Benefit (EB) for this violation

**Estimated EB Amount** $4

## Statutory Limit Test

**Violation Final Penalty Total** $1,100

**This violation Final Assessed Penalty (adjusted for limits)** $1,100

# Economic Benefit Worksheet

**Respondent** Walter Lloyd Smith, Sr.
**Case ID No.** 34784
**Reg. Ent. Reference No.** RN101820793
**Media** Petroleum Storage Tank
**Violation No.** 1

| 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) | $100 | 2-Aug-2007 | 15-May-2008 | 0.8 | $4 | n/a | $4 |
| Notes for DELAYED costs | Estimated cost to submit a completed UST registration form. The Date Required is the date of the record review 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 | $4 |

**PCW**

*Policy Revision 2 (September 2002)*

*PCW Revision September 19, 2007*

| | |
|---|---|
| **Screening Date** | 1-Oct-2007 |
| **Docket No.** | 2007-1685-PST-E |
| **Respondent** | Walter Lloyd Smith, Sr. |
| **Case ID No.** | 34784 |
| **Reg. Ent. Reference No.** | RN101820793 |
| **Media [Statute]** | Petroleum Storage Tank |
| **Enf. Coordinator** | Wallace Myers |
| **Violation Number** | 2 |
| **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, five 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

OR

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

**Percent** 25%

## >>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: 10

60 Number of violation days

*mark only one, with an x*

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

**Violation Base Penalty** $25,000

Ten monthly events events (two months per UST) are recommended based on documentation of the violation during the August 2, 2007 record review to the October 1, 2007 screening date.

## Economic Benefit (EB) for this violation

**Estimated EB Amount** $4,722

## Statutory Limit Test

**Violation Final Penalty Total** $27,500

**This violation Final Assessed Penalty (adjusted for limits)** $27,500

# Economic Benefit Worksheet

**Respondent** Walter Lloyd Smith, Sr.
**Case ID No.** 34784
**Reg. Ent. Reference No.** RN101820793
**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) | $10,000 | 22-Dec-1998 | 30-May-2008 | 9.4 | $4,722 | n/a | $4,722 |

**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** $10,000

**TOTAL** $4,722

# Compliance History

| | | | | |
|---|---|---|---|---|
| Customer/Respondent/Owner-Operator: | CN600989677 | Walter Lloyd Smith, Sr. | Classification: AVERAGE | Rating: 3.00 |
| Regulated Entity: | RN101820793 | SMITH, WALTER LLOYD SR. | Classification: AVERAGE | Site Rating: 3.00 |
| ID Number(s): | PETROLEUM STORAGE TANK REGISTRATION | REGISTRATION | 49552 | |
| Location: | 711 BROADWAY, ROSCOE, TX, 79545 | | Rating Date: September 01 07 Repeat Violator: NO | |
| TCEQ Region: | REGION 03 - ABILENE | | | |
| Date Compliance History Prepared: | October 10, 2007 | | | |
| Agency Decision Requiring Compliance History: | Enforcement | | | |
| Compliance Period: | October 10, 2002 to October 10, 2007 | | | |

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

Name: Wallace Myers Phone: 512-239-6580

## 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 11/07/2006 (458225)
2 02/05/2007 (538593)
3 08/30/2007 (570954)

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

Date: 11/07/2006 (458225)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.7(a)(1)
Description: Failure to register all underground storage tanks according to 334.7(a)(1) with the TCEQ on or before September 1, 1987.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)
Description: Failure to perform the temporary or permanent removal of a UST system according to 30 TAC 334.47(a)(2).

Date: 02/05/2007 (538593)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.7(a)(1)
Description: Failure to register all underground storage tanks according to 334.7(a)(1) with the TCEQ on or before September 1, 1987.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)
Description: Failure to perform the temporary or permanent removal of a UST system according to 30 TAC 334.47(a)(2).

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** | § | **BEFORE THE** |
| **ENFORCEMENT ACTION** | § | |
| **CONCERNING** | § | **TEXAS COMMISSION ON** |
| **WALTER LLOYD SMITH, SR.** | § | |
| **RN101820793** | § | **ENVIRONMENTAL QUALITY** |

**AGREED ORDER**
**DOCKET NO. 2007-1685-PST-E**

## I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Walter Lloyd Smith, Sr. ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns property with five inactive underground storage tanks ("USTs") at 711 Broadway in Roscoe, Nolan County, Texas (the "Facility").

2. The Respondent's five USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.

3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.

4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about September 3, 2007.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Twenty-Eight Thousand Six Hundred Dollars ($28,600) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Financial Assurance Section of the Commission's Financial Administration

Division reviewed financial documentation submitted by the Respondent and determined that the Respondent is unable to pay part of the administrative penalty. Therefore, Twenty-Seven Thousand Four Hundred Dollars ($27,400) of the penalty is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The Respondent has paid One Hundred Dollars ($100) of the undeferred administrative penalty. The remaining amount of One Thousand One Hundred Dollars ($1,100) of the administrative penalty shall be payable in 11 monthly payments of One Hundred Dollars ($100) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.

10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner of the Facility, the Respondent is alleged to have:

1. Failed to register with the Commission, on authorized Commission forms, USTs in existence on or after September 1, 1987, in violation of 30 TEX. ADMIN. CODE § 334.7(a)(1), as documented during a record review conducted on August 2, 2007.

2. Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, five 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), as documented during a record review conducted on August 2, 2007.

## III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

## IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Walter Lloyd Smith, Sr., Docket No. 2007-1685-PST-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:

   a. Within 30 days after the effective date of this Agreed Order, 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 Agreed Order, submit registration to indicate 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, MC138
      Texas Commission on Environmental Quality
      P.O. Box 13087
      Austin, Texas 78711-3087

   c. Within 60 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.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."

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:

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

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent.

4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

# SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

For the Executive Director

6/2/2008
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

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

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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

x Walter Lloyd Smith
Signature

5-20-08
Date

x Ordra F Smith
Name (Printed or typed)
Authorized Representative of
Walter Lloyd Smith, Sr.

5-20-08
Title

**Instructions.** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.