

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2006-1845-PST-E TCEQ ID: RN101806420 CASE NO.: 31760
RESPONDENT NAME: EULALIO TREVINO

ORDER TYPE:		
<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	

CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL 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

SITE WHERE VIOLATION(S) OCCURRED: 306 West Comal Street, Pearsall, Frio County

TYPE OF OPERATION: former service station

SMALL BUSINESS: N/A

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 expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired October 5, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Dinniah C. Tadema, Litigation Division, MC 175, (512) 239-0617
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Ms. Rosetta Foard, Waste Enforcement Section, MC 224, (512) 239-2554

TCEQ Regional Contact: Mr. Joel Anderson, San Antonio Regional Office, MC R-13, (210) 403-4010

Respondent: Mr. Eulalio Trevino, 405 East Rio Grande Street, Pearsall, Texas 78061

Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: September 20, 2006</p> <p>Date of NOE Relating to this Case September 29, 2006</p> <p>Background Facts: The EDPRP was filed against Eulalio Trevino and Roberto L. Chavera dba ABC Kidz Playhouse and dba Licha's Curio Shop on August 30, 2007, and mailed to Mr. Trevino and Mr. Chavera via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green cards," Mr. Trevino received notice of the EDPRP on September 1, 2007, and Mr. Chavera received notice of the EDPRP on September 4, 2007. Mr. Chavera filed an answer and the case was referred to SOAH. Mr. Trevino failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference. Mr. Chavera submitted documentation showing that he did not own the PSTs, and was non-suited from the case. Preliminary hearings were convened on February 20, 2009, and June 18, 2009. Mr. Trevino was provided proper notice of both hearings but failed to appear at either hearing, thus, the matter was remanded to the Executive Director for default proceedings.</p> <p>Current Compliance Status: Not yet in compliance. The Respondent does not have a delivery certificate.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to submit a completed construction notification form for UST removal [30 TEX. ADMIN. CODE § 334.6 and 334.6(b)(2)(C)]. Failed to ensure that an individual supervising the installation, repair, or removal of a UST holds an on-site supervisor license issued by the TCEQ [30 TEX. ADMIN. CODE §§ 30.301(b) and 334.55(a)(3)]. Failed to conduct the required release determination for the permanent removal of the UST system from service [30 TEX. ADMIN. CODE § 334.55(a)(6)]. Failed to provide an amended registration for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)]. 	<p>Total Assessed: \$5,775</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$5,775</p> <p>This is a Default Order. Mr. Trevino has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Within 30 days: <ol style="list-style-type: none"> Submit an Affected Property Assessment Report to the Executive Director for approval. If response actions are necessary, comply with all applicable requirements of the Texas Risk Reduction Program which may include: plans, reports, and notices; financial assurance; and Institutional Controls; and Submit an amended UST registration form to indicate the current operational status of the UST system. Within 45 days submit written certification to demonstrate compliance.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision December 8, 2006

TCEQ

DATES	Assigned	9-Oct-2006	Screening	17-Nov-2006	EPA Due	
	PCW	25-Jun-2007				

RESPONDENT/FACILITY INFORMATION			
Respondent	Eulalio Trevino		
Reg. Ent. Ref. No.	RN101806420		
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	31760	No. of Violations	4	
Docket No.	2006-1845-PST-E	Order Type	1660	
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Shontay Wilcher	
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 \$5,500

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 \$275

Notes: Enhancement for one Notice of Violation 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.

Total EB Amounts \$4,504 0% Enhancement Subtotal 6 \$0
Approx. Cost of Compliance \$8,150 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal \$5,775

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 \$5,775

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$5,775

DEFERRAL 0% Reduction Adjustment \$0
 Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: This is not an expedited case.

PAYABLE PENALTY \$5,775

Screening Date 17-Nov-2006

Docket No. 2006-1845-PST-E

PCW

Respondent Eulalio Trevino

Policy Revision 2 (September 2002)

Case ID No. 31760

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN101806420

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Shontay Wilcher

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one Notice of Violation with same or similar violations.

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

Screening Date 17-Nov-2006

Docket No. 2006-1845-PST-E

PCW

Respondent Eulallo Trevino

Policy Revision 2 (September 2002)

Case ID No. 31760

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN101806420

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Shontay Wilcher

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 334.6 and 334.6(b)(2)(C)

Violation Description

Failed to submit a completed construction notification form for UST removal. Specifically, one UST was removed from the ground without construction notification. Also the respondent failed to schedule the UST removal activity with the TCEQ.

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

30 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 September 20, 2006 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$53

Violation Final Penalty Total \$1,050

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

Economic Benefit Worksheet

Respondent Eulalio Trevino
Case ID No. 31760
Reg. Ent. Reference No. RN101806420
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
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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)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

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)	\$50	1-Dec-2003	31-Dec-2003	1.0	\$3	\$50	\$53

Notes for AVOIDED costs

Estimated cost to submit a completed UST construction notification form. The Date Required is 30 days prior to initiating the UST removal. The Final Date is the approximate date the USTs were removed from the ground.

Approx. Cost of Compliance

\$50

TOTAL

\$53

Screening Date 17-Nov-2006

Docket No. 2006-1845-PST-E

PCW

Respondent Eulalio Trevino

Policy Revision 2 (September 2002)

Case ID No. 31760

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN101806420

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Shontay Wilcher

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.55(a)(3) and 30.301(b)

Violation Description Failed to ensure that an individual supervising the installation, repair, or removal of an UST holds an on-site supervisor license issued by the TCEQ. Specifically, one UST was removed from the ground without the use of a registered contractor and without the supervision of a licensed on-site supervisor.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (25%).

>> Programmatic Matrix

Table with columns: 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 1 Number of violation days 1

Table for frequency: daily, monthly, quarterly, semiannual, annual, single event (marked with x).

Violation Base Penalty \$2,500

One single event is recommended based on documentation of the violation during the September 20, 2006 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3,546

Violation Final Penalty Total \$2,625

This violation Final Assessed Penalty (adjusted for limits) \$2,625

Economic Benefit Worksheet

Respondent Eulalio Trevino
Case ID No. 31760
Reg. Ent. Reference No. RN101806420
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

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

Notes for DELAYED costs

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)	\$3,000	31-Dec-2003	20-Sep-2006	3.6	\$546	\$3,000	\$3,546

Notes for AVOIDED costs

Estimated cost to use a registered contractor and a licensed on-site supervisor to conduct UST removal. The Date Required is the approximate date of the UST removal. The Final Date is the date of the investigation.

Approx. Cost of Compliance	\$3,000	TOTAL	\$3,546
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Screening Date 17-Nov-2006

Docket No. 2006-1845-PST-E

PCW

Respondent Eulalio Trevino

Policy Revision 2 (September 2002)

Case ID No. 31760

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN101806420

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Shontay Wilcher

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.55(a)(6)

Violation Description

Failed to conduct the required release determination for the permanent removal of the UST system from service. Specifically, the Fire Marshall of the City of Pearsall Volunteer Fire Department reported that strong fuel vapors were coming from the tank excavation and no release determination report has been submitted to the TCEQ.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

59 Number of violation days

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

Violation Base Penalty \$1,000

One quarterly event is recommended for the period from the September 20, 2006 investigation date to the November 17, 2006 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$888

Violation Final Penalty Total \$1,050

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

Economic Benefit Worksheet

Respondent: Eulalio Trevino
Case ID No.: 31760
Reg. Ent. Reference No.: RN101806420
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
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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)	\$5,000	31-Dec-2003	20-Jul-2007	3.6	\$888	n/a	\$888

Notes for DELAYED costs

Estimated cost to conduct release determination and implement appropriate corrective measures. The Date Required is the approximate date of UST removal. 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	\$5,000	TOTAL	\$888
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Screening Date 17-Nov-2006

Docket No. 2006-1845-PST-E

PCW

Respondent Eulalio Trevino

Policy Revision 2 (September 2002)

Case ID No. 31760

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN101806420

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Shontay Wilcher

Violation Number 4

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

Violation Description Failed to provide an amended registration for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current operational status of the USTs at the Facility.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	x			10%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 1022

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 September 20, 2006 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$17

Violation Final Penalty Total \$1,050

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

Economic Benefit Worksheet

Respondent Eulalio Trevino
Case ID No. 31760
Reg. Ent. Reference No. RN101806420
Media Petroleum Storage Tank
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$100	30-Jan-2004	20-Jul-2007	3.5	\$17	n/a	\$17

Notes for DELAYED costs

Estimated cost to accurately prepare and submit an updated UST registration. The Date Required is the date the UST registration form was due. 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 \$17

Compliance History

Customer/Respondent/Owner-Operator:	CN603068487 TREVINO, EULALIO	Classification: AVERAGE	Rating: 7.50
Regulated Entity:	RN101806420 SHAMROCK SERVICE CENTER	Classification: AVERAGE	Site Rating: 7.50
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	34606
Location:	306 W COMAL ST, PEARSALL, TX, 78061	Rating Date: 9/1/2006 Repeat Violator: NO	
TCEQ Region:	REGION 13 - SAN ANTONIO		
Date Compliance History Prepared:	June 25, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	June 25, 2002 to June 25, 2007		

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

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

Site Compliance History Components

- | | |
|--|--------------------------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | Yes |
| 3. If Yes, who is the current owner? | <u>Roberto L. Chavera</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>Shamrock Service Center</u> |
| 5. When did the change(s) in ownership occur? | <u>07/27/2006</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 | 08/29/2006 | (483205) | |
| 2 | 09/29/2006 | (513485) | |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | |
|--------------|---|----------|--------------------------|
| Date: | 08/03/2006 | (483205) | |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 334, SubChapter A 334.6[G] | | |
| Description: | Failure to submit a UST construction notification. | | |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 334, SubChapter A 334.6(b)(2)(C) | | |
| Description: | Failure to schedule a UST construction activity. | | |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 334, SubChapter C 334.55(a)(3) | | |
| Description: | Failure to use a registered UST contractor and licensed UST on-site supervisor for the removal of USTs. | | |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 334, SubChapter C 334.55(a)(6)[G] | | |
| Description: | Failure to conduct a release determination. | | |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 334, SubChapter A 334.7(d)[G] | | |
| Description: | Failure to amend the registration to show accurate information. | | |
- 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
EULALIO TREVINO,
RN101806420**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2006-1845-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, 26, and 37, 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 Eulalio Trevino ("Mr. Trevino").

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

FINDINGS OF FACT

1. Mr. Trevino owns petroleum storage tanks at a former service station located at 306 West Comal Street, Pearsall, Frio County, Texas (the "Site").
2. Mr. Trevino's four underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Trevino's USTs contain a regulated substance as defined in the rules of the Commission.
3. During a record review on September 20, 2006, a TCEQ San Antonio Regional Office investigator documented that Mr. Trevino:
 - a. Failed to submit a completed construction notification form for UST removal. Specifically, one UST was removed from the ground without a construction notification. In addition, Mr. Trevino failed to schedule the UST removal activity with the TCEQ.
 - b. Failed to ensure that an individual supervising the installation, repair, or removal of a UST holds an on-site supervisor license issued by the TCEQ. Specifically, one UST

was removed from the ground without the use of a registered contractor and without the supervision of a licensed on-site supervisor.

- c. Failed to conduct the required release determination for the permanent removal of the UST system from service. Specifically, on December 22, 2003, the Fire Marshall of the City of Pearsall Volunteer Fire Department reported that strong fuel vapors were coming from the tank excavation and no release determination report has been submitted to the TCEQ.
 - d. Failed to provide an amended registration for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current operational status of the USTs at the Facility.
4. Mr. Trevino received notice of the violations on or about October 4, 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 Eulalio Trevino and Roberto L. Chavera dba ABC Kidz Playhouse and dba Licha's Curio Shop" (the "EDPRP") in the TCEQ Chief Clerk's office on August 30, 2007.
 6. By letter dated August 30, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Trevino with notice of the EDPRP. According to the return receipt "green card", Mr. Trevino received notice of the EDPRP on September 1, 2007, as evidenced by the signature on the card.
 7. More than 20 days have elapsed since Mr. Trevino received notice of the EDPRP, provided by the Executive Director. Mr. Trevino failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.
 8. Roberto L. Chavera dba ABC Kidz Playhouse and dba Licha's Curio Shop ("Mr. Chavera") filed an answer requesting a hearing on September 20, 2007, and, pursuant to 30 TEX. ADMIN. CODE § 70.109, the matter was referred to the State Office of Administrative Hearings ("SOAH") on October 30, 2008.
 9. On November 18, 2008, the TCEQ Chief Clerk mailed the Notice of the January 22, 2009 preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Mr. Trevino and Mr. Chavera. According to the return receipt "green

card,” Mr. Trevino received notice of the January 22, 2009 preliminary hearing on December 12, 2008, as evidenced by the signature on the card.

10. On January 20, 2009, Mr. Chavera filed a Motion for Continuance to continue the January 22, 2009 preliminary hearing.
11. On January 28, 2009, Judge Thomas H. Walston (the “ALJ”), issued Order No. 1 granting the Request for Continuance and Notice of Preliminary Hearing and mailed Order No. 1 via first class mail, postage prepaid to Mr. Chavera and Mr. Trevino.
12. On February 19, 2009, the Executive Director filed a Joint Motion Between the Executive Director and Roberto L. Chavera dba ABC Kidz Playhouse and dba Licha’s Curio Shop to Waive Appearance a the Preliminary Hearing and Submission of the Proposed Agreed Hearing Schedule. Mr. Trevino was not a party to the Joint Motion to Waive Appearance.
13. On February 20, 2009, the ALJ convened the preliminary hearing, but Mr. Trevino failed to appear.
14. On February 25, 2009, the ALJ issued Order No. 2 Documenting the Preliminary Hearing; Approving Procedural Schedule; and Notice of Hearing.
15. On June 4, 2009, the ALJ issued Order No. 4 giving notice of a second preliminary hearing and mailed Order No. 4 via first class mail, postage prepaid to Mr. Chavera and Mr. Trevino.
16. On June 18, 2009, the ALJ convened a second preliminary hearing, but Mr. Trevino failed to appear. The Executive Director requested that the matter be remanded to the Executive Director so that a Default Order may be entered and the case may be dismissed from the SOAH Docket.
17. Mr. Chavera submitted documentation to the TCEQ that he did not own the USTs, and Mr. Chavera was non-suited from the proceeding.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Trevino is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7, 26, and 37 and the rules of the Commission.

2. As evidenced by Finding of Fact No. 3.a., Mr. Trevino failed to submit a completed construction notification form for UST removal, in violation of 30 TEX. ADMIN. CODE § 334.6 and 334.6(b)(2)(C).
3. As evidenced by Finding of Fact No. 3.b., Mr. Trevino failed to ensure that an individual supervising the installation, repair, or removal of a UST holds an on-site supervisor license issued by the TCEQ, in violation of 30 TEX. ADMIN. CODE §§ 30.301(b) and 334.55(a)(3).
4. As evidenced by Finding of Fact No. 3.c., Mr. Trevino failed to conduct the required release determination for the permanent removal of the UST system from service, in violation of 30 TEX. ADMIN. CODE § 334.55(a)(6).
5. As evidenced by Finding of Fact No. 3.d., Mr. Trevino failed to provide an amended registration for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3).
6. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. Trevino with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
7. As evidenced by Finding of Fact No. 7, Mr. Trevino failed to file a timely answer 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. Trevino and assess the penalty recommended by the Executive Director.
8. As evidenced by Finding of Fact No. 8, Mr. Chavera filed an answer requesting a hearing as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105, and the matter was referred to SOAH pursuant to 30 TEX. ADMIN. CODE § 70.109.
9. As evidenced by Finding of Fact Nos. 9 and 15, Mr. Trevino was provided proper notice of the preliminary hearings pursuant to TEX. GOV'T CODE §§ 2001.051(1) and 2001.052, TEX. WATER CODE § 7.058 and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.425, 70.104, and 80.6(b)(3).
10. As evidenced by Finding of Fact Nos. 13 and 16, Mr. Trevino failed to appear for the preliminary hearing. Pursuant to TEX. GOV'T CODE § 2001.056, TEX. WATER CODE § 7.057, and 30 TEX. ADMIN. CODE § 70.106(b), the Commission may enter a Default Order against Mr. Trevino and assess the penalty recommended by the Executive Director.

11. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Trevino 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.
12. An administrative penalty in the amount of five thousand seven hundred seventy-five dollars (\$5,775.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
13. 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. Trevino is assessed an administrative penalty in the amount of five thousand seven hundred seventy-five dollars (\$5,775.00) for violations of state statutes and TCEQ rules. The payment of this administrative penalty and Mr. Trevino'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: Eulalio Trevino; Docket No. 2006-1845-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. Trevino shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order, Mr. Trevino shall:

- i. Submit an Affected Property Assessment Report, pursuant to 30 TEX. ADMIN. CODE § 350.91, to the Executive Director for approval. If response actions are necessary, Mr. Trevino shall comply with all applicable requirements of the Texas Risk Reduction Program found in 30 TEX. ADMIN. CODE ch. 350 which may include: plans, reports, and notices under Subchapter E (30 TEX. ADMIN. CODE §§ 350.92 to 350.96); financial assurance (30 TEX. ADMIN. CODE § 350.33(1)); and Institutional Controls under Subchapter F (30 TEX. ADMIN. CODE § 350.111); and
 - ii. Submit an amended UST registration form to indicate the current operational status of the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.7.
- b. Within 45 days after the effective date of this Order, Mr. Trevino shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a.i. through 2.a.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. Trevino shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a.i. through 2.a.ii. to:

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

and

Joel Anderson, Waste Section Manager
Texas Commission on Environmental Quality
San Antonio Regional Office
14250 Judson Road
San Antonio, Texas 78233-4480

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. Trevino. Mr. Trevino is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
5. If Mr. Trevino 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. Trevino's failure to comply is not a violation of this Order. Mr. Trevino shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Trevino shall notify the Executive Director within seven days after Mr. Trevino 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. Trevino shall be made in writing to the Executive Director. Extensions are not effective until Mr. Trevino 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. Trevino if the Executive Director determines that Mr. Trevino 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.

Eulalio Trevino
Docket No. 2006-1845-PST-E
Page 8

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF DINNIAH C. TADEMA

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Dinniah C. Tadema. 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 Eulalio Trevino and Roberto L. Chavera dba ABC Kidz Playhouse and dba Licha’s Curio Shop” (the “EDPRP”) was filed with the Office of the Chief Clerk on August 30, 2007.

I sent the EDPRP to Mr. Trevino at his last known address on August 30, 2007 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card”, Mr. Trevino received notice of the EDPRP on September 1, 2007, as evidenced by the signature on the card.

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

Roberto L. Chavera dba ABC Kidz Playhouse and dba Licha’s Curio Shop (“Mr. Chavera”) filed an answer requesting a hearing on September 20, 2007, and the matter was referred to the State Office of Administrative Hearings (“SOAH”) on October 30, 2008.

Notice of the January 22, 2009 preliminary hearing was mailed to Mr. Trevino and Mr. Chavera by the TCEQ Chief Clerk on November 18, 2008. The notice was sent to Mr. Trevino and Mr. Chavera via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Trevino received notice of the January 22, 2009 preliminary hearing on December 12, 2008.

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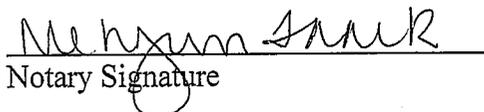
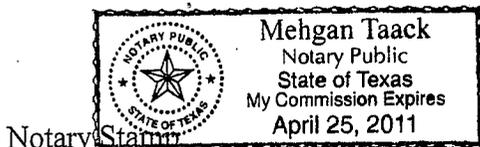
Mr. Trevino failed to appear at the preliminary hearing on June 18, 2009. I requested and received a remand from the Administrative Law Judge pursuant to 1 TEX. ADMIN. CODE § 155.501(e)(1), which gives an ALJ the authority to remand the case back to the agency "to allow the agency to dispose of the case on a default basis under TEX. GOV'T CODE § 2001.056 and the referring agency's rules." Pursuant to TEX. GOV'T CODE § 2001.056, TEX. WATER CODE § 7.057, and 30 TEX. ADMIN. CODE § 70.106(b), the Commission may enter a Default Order against Mr. Trevino and assess the penalty recommended by the Executive Director. Mr. Chavera submitted documentation to the TCEQ that he did not own the USTs, and Mr. Chavera was non-suited from the proceeding.



Dinniah C. Tadema
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Dinniah C. Tadema, 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 14th day of August, A.D., 2009.



Notary Signature