EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2005-1711-MLM-E TCEQ ID: RN100612456 CASE NO.: 27012
RESPONDENT NAME: JOSEPH PIAZZA DBA EXXON NORTHGATE

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:		
X AIR	X MULTI-MEDIA (check all that apply)	__INDUSTRIAL 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 VIOLATIONS OCCURRED: 5221 Wren Avenue, El Paso, El Paso County

TYPE OF OPERATION: convenience store with retail sales of gasoline.

SMALL BUSINESS: _X_ Yes ___ No ___ 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 November 9, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Gary K. Shiu, Litigation Division, MC R-12, (713) 422-8916
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Ms. Elvia Maske, Waste Enforcement Section, MC 149, (512) 239-0789

TCEQ Regional Contact: Mr. Kent Waggoner, El Paso Regional Office, MC R-6, (915) 834-4957

Respondent: Mr. Joseph Piazza, Owner, 5221 Wren Avenue, El Paso, Texas 79924

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

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION

Type of Investigation:

___ Complaint
_X_ Routine
___ Enforcement Follow-up
___ Records Review

Date of Complaint Relating to this Case:
None

Dates of Investigation Relating to this Case:
July 14, 2005; October 12, 2005

Dates of NOEs Relating to this Case:
August 15, 2005; November 30, 2005

Background Facts:
The EDPRP for TCEQ Docket 2005-1711-PST-E was filed on February 17, 2006. The EDPRP for TCEQ Docket 2005-2057-AIR-E was filed on May 30, 2006. Respondent filed answers requesting hearings for each case. Both cases were referred to SOAH. The two cases were consolidated into a single enforcement action under the current TCEQ Docket No. 2005-1711-MLM-E.

The parties agreed on a discovery schedule and an evidentiary hearing date, so the preliminary hearing was waived. Respondent failed to respond to the ED's requests for discovery, and the ED filed a Motion to Compel and Motion for Sanctions, which was granted. Respondent also failed to appear at the evidentiary hearing on September 9, 2009. The ALJ found that Respondent was served with proper notice of the evidentiary hearing, and granted the ED's request that the matter be remanded to the ED so that a default order may be entered and the case dismissed from the SOAH docket.

Current Compliance Status:
Respondent has not yet submitted documentation to certify compliance with the technical requirements. Subsequent investigations conducted by the El Paso City-County Health & Environmental District on December 22, 2005, October 4, 2006, August 6, 2008, January 28, 2009, and August 25, 2009, indicate that Respondent was compliant with the minimum oxygen content requirements on those dates. Respondent's delivery certificate expires in June 2010.

MLM:
1. Failed to test the cathodic protection system for operability and adequacy of protection at a frequency of at least once every three years [30 TEX. ADMIN. CODE § 334.49(c)(4)(C) and TEX. WATER CODE § 26.3475(d)].

PENALTY CONSIDERATIONS

Total Assessed: $10,800

Total Deferred: $0
___ Expedited Order
___ Financial Inability to Pay
___ SEP Conditional Offset

Total Due to General Revenue: $10,800

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.

(PCW 1 - PST)
Site Compliance History Classification:
__ High _X_ Average __ Poor

Person Compliance History Classification:
__ High _X_ Average __ Poor

Major Source: ___ Yes _X_ No

(PCW 2 - AIR)
Site Compliance History Classification:
__ High _X_ Average __ Poor

Person Compliance History Classification:
__ High _X_ Average __ Poor

Major Source: ___ Yes _X_ No

Applicable Penalty Policy: September 2002

CORRECTIVE ACTIONS TAKEN/REQUIRED

Corrective Action Taken:

The Executive Director recognizes that Respondent implemented the following corrective measures at the Station:

1. On October 27, 2005, submitted documentation that demonstrates acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and

2. On August 27, 2005, conducted triennial testing of the cathodic protection system with passing results.

Ordering Provisions:

Respondent's UST delivery certificate is revoked immediately upon the effective date of this Order. Within 10 days after the effective date of this Order, Respondent shall send his UST delivery certificate to the Order Compliance Team.

The Respondent shall undertake the following technical requirements:

1. Within 30 days:

   a. Begin reconciling inventory control records on a monthly basis; and

   b. Establish and implement a process which will ensure the oxygen for gasoline dispensed between October 1 and March 31 shall meet the minimum oxygen content of 2.7% by weight.

2. Within 45 days, submit written certification demonstrating compliance.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
2. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)]. 3. Failed to reconcile inventory control records on a monthly basis which equals or exceeds the sum of 1% of the flow through plus 130 gallons [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and (d)(1)(b)(ii), and TEX. WATER CODE § 26.3475(c)(1)]. 4. Dispensed fuel without the required minimum oxygen content of 2.7% by weight [30 TEX. ADMIN. CODE § 114.100(a) and TEX. HEALTH & SAFETY CODE § 382.085(b).		

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision May 19, 2005*

TCEQ

DATES						
Assigned	06-Sep-2005					
PCW	08-Dec-2005	Screening	22-Sep-2005	EPA Due		

RESPONDENT/FACILITY INFORMATION

Respondent	Joseph Piazza dba Exxon Northgate		
Reg. Ent. Ref. No.	RN100612456		
Facility/Site Region	6-El Paso	Major/Minor Source	Minor Source

CASE INFORMATION

Enf./Case ID No.	27012	No. of Violations	3
Docket No.	2005-1711-MLM-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Elvia Maske
Multi-Media		EC's Team	Enforcement Team 6
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1*: $8,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 20% Enhancement — *Subtotals 2, 3, & 7*: $1,600

Notes: Enhancement for one prior 1660 order.

Culpability: No — 0% Enhancement — *Subtotal 4*: $0

Notes: The Respondent does not meet the culpability criteira.

Good Faith Effort to Comply — 0% Reduction — *Subtotal 5*: $0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	*(mark with a small x)*

Notes: The Respondent is not yet in compliance.

Economic Benefit — 0% Enhancement* — *Subtotal 6*: $0

**Capped at the Total EB $ Amount*

Total EB Amounts	$2,053
Approx. Cost of Compliance	$2,350

SUM OF SUBTOTALS 1-7 — Final Subtotal: $9,600

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: $9,600

STATUTORY LIMIT ADJUSTMENT — Final Assessed Penalty: $9,600

DEFERRAL — Reduction — Adjustment: $0

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

Notes: This is not an expedited case.

PAYABLE PENALTY: $9,600

EXHIBIT

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PCW-1

PST

Screening Date 22-Sep-2005 **Docket No.** 2005-1711-MLM-E **PCW**

Respondent Joseph Piazza dba Exxon Northgate *Policy Revision 2 (September 2002)*

Case ID No. 27012 *PCW Revision May 19, 2005*

Reg. Ent. Reference No. RN100612456

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

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)*	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability *(number of orders meeting criteria)*	1	20%
	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*	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) **20%**

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) **0%**

>> Compliance History *Person* Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) **0%**

>> Compliance History Summary

Compliance History Notes

Enhancement for one prior 1660 order.

Total Adjustment Percentage (Subtotals 2, 3, & 7) **20%**

Screening Date 22-Sep-2005 **Docket No.** 2005-1711-MLM-E **PCW**

Respondent Joseph Piazza dba Exxon Northgate *Policy Revision 2 (September 2002)*

Case ID No. 27012 *PCW Revision May 19, 2005*

Reg. Ent. Reference No. RN100612456

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 1

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.49(c)(4)(C)

Secondary Rule Cite(s) Tex. Water Code § 26.3475(d)

Violation Description Failure to test the cathodic protection system for operability and adequacy of protection at a frequency of at least once every three years.

Base Penalty $10,000

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

	Harm		
Release	Major	Moderate	Minor
Actual			
Potential	x		

OR

Percent 25%

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor

Percent

Matrix Notes: Failure to test the cathodic protection system could result in a release of significant amount of product which would exceed protective levels for human health and environmental receptors.

Adjustment -$7,500

Base Penalty Subtotal $2,500

Violation Events

Number of Violation Events: 1

mark only one use a small x	
daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $2,500

One single event is recommended based on the three year period prior to the July 14, 2005 investigation date.

Economic Benefit (EB) for this violation

Estimated EB Amount $2

Statutory Limit Test

Violation Final Penalty Total $3,000

This violation Final Assessed Penalty (adjusted for limits) $3,000

Economic Benefit Worksheet

Respondent Joseph Piazza dba Exxon Northgate
Case ID No. 27012
Reg. Ent. Reference No. RN100612456
Media [Statute] Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	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)	$300	14-Jul-2005	27-Aug-2005	0.1	$2	n/a	$2
Notes for DELAYED costs	Estimated cost to test the cathodic protection system for the UST system. Date Required is the investigation date. Final Date is the compliance date.						
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	$0	$0	$0
Personnel				0.0	$0	$0	$0
Inspection/Reporting/Sampling				0.0	$0	$0	$0
Supplies/equipment				0.0	$0	$0	$0
Financial Assurance [2]				0.0	$0	$0	$0
ONE-TIME avoided costs [3]				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Notes for AVOIDED costs							

Approx. Cost of Compliance $300

TOTAL $2

Screening Date 22-Sep-2005 **Docket No.** 2005-1711-MLM-E **PCW**

Respondent Joseph Piazza dba Exxon Northgate *Policy Revision 2 (September 2002)*

Case ID No. 27012 *PCW Revision May 19, 2005*

Reg. Ent. Reference No. RN100612456

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 2

Primary Rule Cite(s) 30 Tex. Admin. Code § 37.815(a) and (b)

Secondary Rule Cite(s)

Violation Description Failure to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs. Specifically, financial assurance expired on January 13, 2005.

Base Penalty $10,000

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

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

OR

Percent

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor
	x		

Percent 10%

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

Adjustment -$9,000

Base Penalty Subtotal $1,000

Violation Events

Number of Violation Events: 3

mark only one use a small x	
daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $3,000

Three single events (one for each tank) are recommended based on documentation of the violation during the July 14, 2005 investigation.

Economic Benefit (EB) for this violation

Estimated EB Amount $2,048

Statutory Limit Test

Violation Final Penalty Total $3,600

This violation Final Assessed Penalty (adjusted for limits) $3,600

Economic Benefit Worksheet

Respondent Joseph Piazza dba Exxon Northgate
Case ID No. 27012
Reg. Ent. Reference No. RN100612456
Media [Statute] Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	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							
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]	$1,950	13-Jan-2005	09-Sep-2005	1.0	$98	$1,950	$2,048
ONE-TIME avoided costs [3]				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Notes for AVOIDED costs	Estimated cost to provide financial assurance for three petroleum USTs ($650 per tank). Date Required is the expiration date of the financial assurance. Final Date is the renewed policy date.						

Approx. Cost of Compliance $1,950

TOTAL $2,048

Screening Date 22-Sep-2005 **Docket No.** 2005-1711-MLM-E **PCW**

Respondent Joseph Piazza dba Exxon Northgate *Policy Revision 2 (September 2002)*

Case ID No. 27012 *PCW Revision May 19, 2005*

Reg. Ent. Reference No. RN100612456

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 3

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A) and 334.50(d)(1)(B)(ii)

Secondary Rule Cite(s) Tex. Water Code § 26.3475(c)(1)

Violation Description Failure to provide proper release detection for the UST system. Specifically, the respondent failed to reconcile inventory control records on a monthly basis which equals or exceeds the sum of 1% of the flow through plus 130 gallons.

Base Penalty $10,000

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

Release	Harm: Major	Moderate	Minor
Actual			
Potential	x		

OR

Percent 25%

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor

Percent

Matrix Notes: Failure to reconcile inventory control records could result in a release of significant amount of product which would exceed protective levels for human health and environmental receptors.

Adjustment -$7,500

Base Penalty Subtotal $2,500

Violation Events

Number of Violation Events: 1

mark only one use a small x	
daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $2,500

One quarterly event is recommend based on documentation of the violation from the July 14, 2005 investigation date to the September 22, 2005 screening date.

Economic Benefit (EB) for this violation

Estimated EB Amount $4

Statutory Limit Test

Violation Final Penalty Total $3,000

This violation Final Assessed Penalty (adjusted for limits) $3,000

Economic Benefit Worksheet

Respondent Joseph Piazza dba Exxon Northgate
Case ID No. 27012
Reg. Ent. Reference No. RN100612456
Media [Statute] Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	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	14-Jul-2005	05-May-2006	0.8	$4	n/a	$4
Notes for DELAYED costs	Estimated cost to reconcile inventory control records on a monthly basis for the UST system. Date Required is the investigation date. Final Date is the estimated compliance date.						
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	$0	$0	$0
Personnel				0.0	$0	$0	$0
Inspection/Reporting/Sampling				0.0	$0	$0	$0
Supplies/equipment				0.0	$0	$0	$0
Financial Assurance [2]				0.0	$0	$0	$0
ONE-TIME avoided costs [3]				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Notes for AVOIDED costs							

Approx. Cost of Compliance $100

TOTAL $4

Compliance History

Customer/Respondent/Owner-Operator:	CN601266620	Plazza, Joseph	Classification: AVERAGE	Rating: 3.210
Regulated Entity:	RN100612456	Exxon Northgate	Classification: AVERAGE	Site Rating: 3.21

ID Number(s):	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	EE1001L
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	EE1001L
	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	23635

Location: 5221 WREN AVE, EL PASO, TX, 79924 Rating Date: 9/1/05 Repeat Violator: NO

TCEQ Region: REGION 06 - EL PASO

Date Compliance History Prepared: October 18, 2005

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: September 22, 2000 to September 22, 2005

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Elvia Maske Phone: (512) 239-4575

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? Plazza, Joseph
4. If Yes, who was/were the prior owner(s)? Charles J. Engle dba Fabens Oil Company
5. When did the change(s) in ownership occur? 10/11/2002
6. Comments:

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

Effective Date: 8/28/04 ADMINORDER 2004-0062-AIR-E
Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.252(2)
5C THC Chapter 382, SubChapter A 382.085(b)
Description: Failure to comply with the 7.0 psia. Maximum Reid Vapor Pressure requirement during the control period of June 1, 2002 thru September 16, 2002 for El Paso County.

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 12/04/2000 (73273)
2 03/23/2001 (73274)
3 06/13/2001 (73275)
4 09/12/2001 (73276)
5 11/08/2001 (73277)
6 03/26/2002 (73278)
7 10/22/2002 (11246)
8 08/31/2005 (404659)
9 06/27/2005 (397655)
10 11/08/2002 (9147)
11 12/12/2002 (19038)
12 06/28/2002 (3703)
13 09/07/2002 (6698)

EXHIBIT
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E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A

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

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision May 19, 2005*

TCEQ

DATES					
Assigned	05-Dec-2005				
PCW	20-Dec-2005	Screening	12-Dec-2005	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Joe Piazza dba Exxon Northgate		
Reg. Ent. Ref. No.	RN100612456		
Facility/Site Region	6-El Paso	Major/Minor Source	Minor Source

CASE INFORMATION

Enf./Case ID No.	27012	No. of Violations	1
Docket No.	2005-1711-MLM-E	Order Type	1660
Media Program(s)	Air Quality	Enf. Coordinator	Elvia Maske
Multi-Media		EC's Team	Enforcement Team 6
Admin. Penalty $ Limit	Minimum $0	Maximum	$10,000

Penalty Calculation Section

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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 20% Enhancement — *Subtotals 2, 3, & 7*: $200

Notes: The Respondent had one (1) agreed final enforcement order containing a denial of liability.

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 a small x)*

Notes: The Respondent is not yet in compliance.

Economic Benefit — 0% Enhancement* — *Subtotal 6*: $0

**Capped at the Total EB $ Amount*

Total EB Amounts	$525
Approx. Cost of Compliance	$500

SUM OF SUBTOTALS 1-7 — Final Subtotal: $1,200

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: $1,200

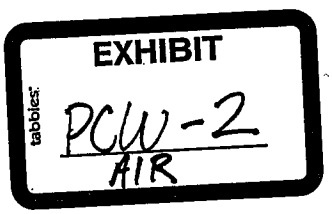
STATUTORY LIMIT ADJUSTMENT — Final Assessed Penalty: $1,200

DEFERRAL — 0% Reduction — Adjustment: $0

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

Notes: No deferral offered for non-expedited settlement.

PAYABLE PENALTY: $1,200



Screening Date 12-Dec-2005 **Docket No.** 2005-1711-MLM-E **PCW**

Respondent Joe Piazza dba Exxon Northgate *Policy Revision 2 (September 2002)*

Case ID No. 27012 *PCW Revision May 19, 2005*

Reg. Ent. Reference No. RN100612456

Media [Statute] Air Quality

Enf. Coordinator Elvia Maske

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)*	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability *(number of orders meeting criteria)*	1	20%
	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*	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) **20%**

>> 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

The Respondent had one (1) agreed final enforcement order containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) **20%**

Screening Date 12-Dec-2005 **Docket No.** 2005-1711-MLM-E **PCW**

Respondent Joe Piazza dba Exxon Northgate *Policy Revision 2 (September 2002)*

Case ID No. 27012 *PCW Revision May 19, 2005*

Reg. Ent. Reference No. RN100612456

Media [Statute] Air Quality

Enf. Coordinator Elvia Maske

Violation Number 1

Primary Rule Cite(s) 30 Tex. Admin. Code § 114.100(a)

Secondary Rule Cite(s) Tex. Health & Safety Code § 382.085(b)

Violation Description Dispensed fuel without the minimum oxygen content of 2.7% by weight, as documented by an investigation conducted on October 12, 2005. Specifically, a sample taken from the regular gasoline at pump no.1 was found to be 2.01% oxygen content by weight.

Base Penalty $10,000

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

	Harm		
Release	Major	Moderate	Minor
Actual			X
Potential			

OR

Percent 10%

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor

Percent

Matrix Notes: Human health or the environment was exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment -$9,000

Base Penalty Subtotal $1,000

Violation Events

Number of Violation Events 1

mark only one use a small x	
daily	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty $1,000

One single event is recommended based on the investigation conducted on October 12, 2005.

Economic Benefit (EB) for this violation

Estimated EB Amount $525

Statutory Limit Test

Violation Final Penalty Total $1,200

This violation Final Assessed Penalty (adjusted for limits) $1,200

Economic Benefit Worksheet

Respondent Joe Piazza dba Exxon Northgate
Case ID No. 27012
Reg. Ent. Reference No. RN100612456
Media [Statute] Air Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	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							
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)	$500	12-Oct-2005	31-Mar-2006	1.0	$25	$500	$525
Notes for AVOIDED costs	The avoided cost is based on the price difference between compliant and noncompliant fuel. The date required is the date of investigation. The final date is the date of projected compliance.						

Approx. Cost of Compliance $500

TOTAL $525

Compliance History

Customer/Respondent/Owner-Operator:	CN601266620	Piazza, Joseph	Classification: AVERAGE	Rating: 3.21
Regulated Entity:	RN100612456	Exxon Northgate	Classification: AVERAGE	Site Rating: 3.21
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	23635
	AIR NEW SOURCE PERMITS		ACCOUNT NUMBER	EE1001L
	AIR NEW SOURCE PERMITS		ACCOUNT NUMBER	EE1001L
Location:	5221 WREN AVE, EL PASO, TX, 79924		Rating Date: 9/1/2005	Repeat Violator: NO
TCEQ Region:	REGION 06 - EL PASO			
Date Compliance History Prepared:	December 16, 2005			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	December 09, 2000 to December 09, 2005			

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

Name: Elvia Maske Phone: 239-0789

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? Piazza, Joseph
4. If Yes, who was/were the prior owner(s)? Charles J. Engle dba Fabens Oil Company
5. When did the change(s) in ownership occur? 10/11/2002

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 Effective Date: 08/28/2004 ADMINORDER 2004-0062-AIR-E

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.252(2)
5C THC Chapter 382, SubChapter A 382.085(b)

Description: Failure to comply with the 7.0 psia. Maximum Reid Vapor Pressure requirement during the control period of June 1, 2002 thru September 16, 2002 for El Paso County.

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 03/23/2001 (73274)
2 06/13/2001 (73275)
3 09/12/2001 (73276)
4 11/08/2001 (73277)
5 03/26/2002 (73278)
6 10/22/2002 (11246)
7 08/31/2005 (404659)
8 06/27/2005 (397655)
9 11/28/2005 (438345)
10 11/08/2002 (9147)
11 12/12/2002 (19038)
12 06/28/2002 (3703)
13 09/07/2002 (6698)

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

N/A

EXHIBIT
tabbies
CH-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 ENFORCEMENT ACTION CONCERNING JOSEPH PIAZZA DBA EXXON NORTHGATE; RN100612456	**§ § § § § §**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

DEFAULT ORDER
DOCKET NO. 2005-1711-MLM-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition for TCEQ Docket No. 2005-1711-PST-E filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, and the Executive Director's Preliminary Report and Petition for TCEQ Docket No. 2005-2057-AIR-E filed pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the TCEQ. Both Executive Director's Preliminary Reports and Petitions request appropriate relief, including the imposition of administrative penalties, corrective action of the respondent, and revocation of the respondent's delivery certificate. The respondent made the subject of this Order is Joseph Piazza dba Exxon Northgate (the "Respondent").

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

FINDINGS OF FACT

1. Respondent owns and operates a convenience store with retail sales of gasoline located at 5221 Wren Avenue, El Paso, El Paso County, Texas (the "Station").

2. Respondent's underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Respondent's USTs contain a regulated petroleum substance as defined in the rules of the Commission. Furthermore, the Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).

3. During an inspection on July 14, 2005, a TCEQ El Paso Regional Office investigator documented that Respondent:

   a. Failed to test the cathodic protection system for operability and adequacy of protection at a frequency of at least once every three years;

b. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and

c. Failed to reconcile inventory control records on a monthly basis which equals or exceeds the sum of 1% of the flow through plus 130 gallons.

4. Respondent received notice of the violations in paragraph 3 on or about August 20, 2005.

5. During an inspection on October 12, 2005, an El Paso City-County Health & Environmental District investigator documented that Respondent dispensed fuel without the required minimum oxygen content of 2.7% by weight.

6. Respondent received notice of the violation in paragraph 5 on or about December 5, 2005.

7. The Executive Director recognizes that Respondent implemented the following corrective measures at the Station:

a. On October 27, 2005, Respondent submitted documentation that demonstrates acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and

b. On August 27, 2005, Respondent conducted triennial testing of the cathodic protection system with passing results.

8. 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 Joseph Piazza dba Exxon Northgate" for TCEQ Docket No. 2005-1711-PST-E ("EDPRP-PST") in the TCEQ Chief Clerk's office on February 17, 2006.

9. By letter dated February 17, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP-PST. According to the return receipt "green card", Respondent received notice of the EDPRP-PST on March 21, 2006, as evidenced by the signature on the card.

10. 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 Joseph

Piazza dba Exxon Northgate" for TCEQ Docket No. 2005-2057-AIR-E ("EDPRP-AIR"), in the TCEQ Chief Clerk's office on May 30, 2006.

11. By letter dated May 30, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP-AIR. According to the return receipt "green card", Respondent received notice of the EDPRP-AIR on June 21, 2006, as evidenced by the signature on the card.

12. Respondent filed answers requesting hearings for TCEQ Docket No. 2005-1711-PST-E and for TCEQ Docket No. 2005-2057-AIR-E (collectively, the "cases").

13. Pursuant to 30 TEX. ADMIN. CODE § 70.709, the cases were referred to the State Office of Administrative Hearings ("SOAH"). Subsequently, the cases were consolidated into a single enforcement action under the current TCEQ Docket No. 2005-1711-MLM-E.

14. On February 27, 2009, the TCEQ Chief Clerk mailed the Notice of the April 9, 2009, preliminary hearing for the consolidated enforcement action via certified mail, return receipt requested, and via first class mail, postage prepaid to Respondent. According to the return receipt "green card," Respondent received notice of the preliminary hearing on March 17, 2009, as evidenced by the signature on the card.

15. On April 1, 2009, the Executive Director filed the "Joint Motion to Waive Appearance at the Preliminary Hearing and Submission of Agreed Hearing Schedule" ("Motion"), agreed to and signed by Respondent and the Executive Director, to waive the scheduled April 9, 2009, preliminary hearing.

16. On April 20, 2009, the Administrative Law Judge ("ALJ") granted the Motion and set the evidentiary hearing for September 9, 2009, with SOAH Order No. 1, Granting Motion to Waive Preliminary Hearing and Approving Schedule ("SOAH Order No. 1").

17. SOAH Order No. 1 was sent by the ALJ to the Respondent on April 20, 2009.

18. On September 9, 2009, the ALJ convened the evidentiary hearing at SOAH, but Respondent failed to appear.

19. At the September 9, 2009, evidentiary hearing, the ALJ made a finding that the Respondent was served with proper notice of the evidentiary hearing.

20. After the ALJ found that proper notice of the evidentiary hearing was provided to Respondent, 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.

21. The ALJ remanded the case by SOAH Order No. 4, Granting Motion to Dismiss and Remand, on September 9, 2009, so that TCEQ may dispose of the case on a default basis.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the Commission.

2. As evidenced by Finding of Fact No. 3.a., Respondent failed to test the cathodic protection system for operability and adequacy of protection at a frequency of at least once every three years, in violation of 30 TEX. ADMIN. CODE § 334.49(c)(4)(C) and TEX. WATER CODE § 26.3475(d).

3. As evidenced by Finding of Fact No. 3.b., Respondent failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b).

4. As evidenced by Finding of Fact No. 3.c., Respondent failed to reconcile inventory control records on a monthly basis which equals or exceeds the sum of 1% of the flow through plus 130 gallons, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and (d)(1)(B)(ii), and TEX. WATER CODE § 26.3475(c)(1).

5. As evidenced by Finding of Fact No. 5, Respondent dispensed fuel without the required minimum oxygen content of 2.7% by weight, in violation of 30 TEX. ADMIN. CODE § 114.100(a) and TEX. HEALTH & SAFETY CODE § 382.085(b).

6. As evidenced by Finding of Fact Nos. 8 and 9, the Executive Director timely served Respondent with proper notice of the EDPRP-PST, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).

7. As evidenced by Finding of Fact Nos. 10 and 11, the Executive Director timely served Respondent with proper notice of the EDPRP-AIR, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).

8. As evidenced by Finding of Fact No. 12, Respondent filed answers requesting hearings for TCEQ Docket No. 2005-1711-PST-E and TCEQ Docket No. 2005-2057-AIR-E, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105, and the cases were referred to SOAH pursuant to 30 TEX. ADMIN. CODE § 70.109.

9. As evidenced by Finding of Fact No. 14, Respondent was provided proper notice of the preliminary hearing 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. 15, 17, and 19, Respondent had full knowledge and received proper notice of the evidentiary hearing.

11. As evidenced by Finding of Fact No. 18, Respondent failed to appear for the evidentiary hearing on September 9, 2009. 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 Respondent and assess the penalty recommended by the Executive Director.

12. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

13. An administrative penalty in the amount of ten thousand eight hundred dollars ($10,800.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

14. 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.

15. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Respondent's UST delivery certificate if the Commission finds that good cause exists.

16. Good cause for revocation of Respondent's UST delivery certificate exists as justified by Findings of Fact Nos. 2, 3, 5, 8 through 12, and 15 through 19, and Conclusions of Law Nos. 1 through 7 and 9 through 11.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of ten thousand eight hundred dollars ($10,800.00) for violations of state statutes and TCEQ rules. The payment of this administrative penalty and Respondent'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: Joseph Piazza dba Exxon Northgate, Docket No. 2005-1711-MLM-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. Respondent's UST delivery certificate is revoked immediately upon the effective date of this Order. Respondent may submit an application for a new delivery certificate only after Respondent has complied with all of the requirements of this Order.

3. Within 10 days after the effective date of this Order, Respondent shall send his UST delivery certificate to:

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

4. Respondent shall undertake the following technical requirements:

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

      i. Begin reconciling inventory control records on a monthly basis in accordance with 30 TEX. ADMIN. CODE § 334.50; and

ii. Establish and implement a process which will ensure the oxygen for gasoline dispensed between October 1 and March 31 shall meet the minimum oxygen content of 2.7% by weight in accordance with 30 TEX. ADMIN. CODE § 114.100.

b. Within 45 days after the effective date of this Order, Respondent 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. 4.a.i. and 4.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."

Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 4.a.i. and 4.a.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:

Kent Waggoner, Air and Waste Section Manger
El Paso Regional Office
Texas Commission on Environmental Quality
401 East Franklin Avenue, Suite 560
El Paso, Texas 79901-1206

and:

Albert Melero, Air Quality Code Compliance Supervisor
Air Quality Program
El Paso City-County Health & Environmental District
7968 San Paulo
El Paso, Texas 79907-1246

5. All relief not expressly granted in this Order is denied.

6. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Station operations referenced in this Order.

7. If Respondent 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, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

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

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

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

11. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date this 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 GARY K. SHIU

STATE OF TEXAS §
§
COUNTY OF HARRIS §

"My name is Gary K. Shiu. 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, Robert R. Mosley 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 Joseph Piazza dba Exxon Northgate" for TCEQ Docket No. 2005-1711-PST-E ("EDPRP-PST") in the TCEQ Chief Clerk's office on February 17, 2006.

Robert R. Mosley sent the EDPRP-PST to Joseph Piazza dba Exxon Northgate (the "Respondent") at his last known address on February 17, 2006 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card", Respondent received notice of the EDPRP-PST on March 21, 2006, as evidenced by the signature on the card.

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Robert R. Mosley sent the EDPRP-AIR to Respondent at his last known address on May 30, 2006 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card", Respondent received notice of the EDPRP-AIR on June 21, 2006, as evidenced by the signature on the card.

Respondent filed answers requesting hearings for TCEQ Docket No. 2005-1711-PST-E and for TCEQ Docket No. 2005-2057-AIR-E.

Pursuant to 30 TEX. ADMIN. CODE § 70.709, the cases were referred to the State Office of Administrative Hearings ("SOAH"). Subsequently, the cases were consolidated into a single enforcement action under TCEQ Docket No. 2005-1711-MLM-E.

On February 27, 2009, the TCEQ Chief Clerk mailed the Notice of the April 9, 2009, preliminary hearing for the consolidated enforcement action via certified mail, return receipt requested, and via first class mail, postage prepaid to Respondent. According to the return receipt "green card," Respondent received notice of the preliminary hearing on March 17, 2009, as evidenced by the signature on the card.

On April 1, 2009, the Executive Director filed the "Joint Motion to Waive Appearance at the Preliminary Hearing and Submission of Agreed Hearing Schedule" ("Motion") with the SOAH Administrative Law Judge ("ALJ") to waive the scheduled April 9, 2009 preliminary hearing.

On April 20, 2009, the ALJ granted the Motion and set the evidentiary hearing for September 9, 2009, with SOAH Order No. 1, Granting Motion to Waive Preliminary Hearing and Approving Schedule ("SOAH Order No. 1").

Respondent failed to appear at the evidentiary hearing on September 9, 2009. At that hearing, I requested and received a finding that Respondent was served with proper notice of the evidentiary hearing. I also requested and received a remand from the ALJ 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 Respondent and assess the penalty recommended by the Executive Director.

Gary K. Shiu
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Gary K. Shiu, proved to me through Texas Driver's License No.16425331 to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 22 day of September, A.D., 2009.

Nara Ann Lemoine
Notary Signature

Notary Stamp

NARA ANN LEMOINE
Notary Public, State of Texas
My Commission Expires
JANUARY 15, 2013