

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER** Page 1 of 2  
**DOCKET NO.: 2007-0606-PST-E TCEQ ID: RN101572832 CASE NO.: 33231**  
**RESPONDENT NAME: JAKE DAVIS**

|   |   |   |
|---|---|---|
| <b>ORDER TYPE:</b>  |   |   |
| <input type="checkbox"/> 1660 AGREED ORDER  | <input type="checkbox"/> FINDINGS AGREED ORDER              | <input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING        |
| <input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER  | <input type="checkbox"/> SHUTDOWN ORDER                     | <input type="checkbox"/> IMMEDIATE AND SUBSTANTIAL ENDANGERMENT ORDER |
| <input type="checkbox"/> AMENDED ORDER  | <input type="checkbox"/> EMERGENCY ORDER                    |   |
| <b>CASE TYPE:</b>   |   |   |
| <input type="checkbox"/> AIR  | <input type="checkbox"/> MULTI-MEDIA (check all that apply) | <input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE               |
| <input type="checkbox"/> PUBLIC WATER SUPPLY  | <input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS | <input type="checkbox"/> OCCUPATIONAL CERTIFICATION                   |
| <input type="checkbox"/> WATER QUALITY  | <input type="checkbox"/> SEWAGE SLUDGE                      | <input type="checkbox"/> UNDERGROUND INJECTION CONTROL                |
| <input type="checkbox"/> MUNICIPAL SOLID WASTE  | <input type="checkbox"/> RADIOACTIVE WASTE                  | <input type="checkbox"/> DRY CLEANER REGISTRATION                     |
| <p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 1005 South Oak Avenue, Mineral Wells, Palo Pinto County</p> <p><b>TYPE OF OPERATION:</b> Underground storage tanks</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on October 20, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b><br/> <b>TCEQ Attorney:</b> Mr. Rudy Calderon, Litigation Division, MC 175, (512) 239-0205<br/> Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019<br/> <b>TCEQ Enforcement Coordinator:</b> Mr. Samuel Short, Waste Enforcement Division, MC 149, (512) 239-5363<br/> <b>TCEQ Regional Contact:</b> Mr. Sam Barrett, DFW Regional Office, MC R-4, (817) 588-5903<br/> <b>Respondent:</b> Mr. Jake Davis, 1005 South Oak Ave., Mineral Wells, Texas 76067<br/> <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter.</p> |   |   |

**VIOLATION SUMMARY CHART:**

| VIOLATION INFORMATION  | PENALTY CONSIDERATIONS  | CORRECTIVE ACTIONS TAKEN/REQUIRED   |
|--|---|---|
| <p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint<br/> <input type="checkbox"/> Routine<br/> <input type="checkbox"/> Enforcement Follow-up<br/> <input checked="" type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b><br/>None</p> <p><b>Date of Investigation Relating to this Case:</b><br/>April 5, 2007</p> <p><b>Date of NOE Relating to this Case:</b><br/>May 8, 2007</p> <p><b>Background Facts:</b> The case was referred to the Litigation Division on December 27, 2007. The EDPRP was filed on March 7, 2008. It was sent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on March 13, 2008, as evidenced by the signature on the card. The Respondent has failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Current Compliance Status:</b><br/>The Respondent is not yet in compliance.</p> <p><b>PST:</b></p> <p>Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, three UST's for which any applicable component of the system is not brought into time compliance with the upgrade requirements [30 TEX. ADMIN. CODE § 334.47(a)(2)].</p> | <p><b>Total Assessed:</b> \$2,625</p> <p><b>Total Deferred:</b> \$0<br/> <input type="checkbox"/> Expedited Settlement<br/> <input type="checkbox"/> Financial Inability to Pay<br/> <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$2,625</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this order</p> <p><b>Site Compliance History Classification</b><br/> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b><br/> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> | <p><b>Ordering Provisions:</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. Within 30 days, permanently remove the UST system from service.</li> <li>2. Within 45 days, submit written certification to demonstrate compliance with the above Ordering Provision.</li> </ol> |



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision December 8, 2006

**TCEQ**

|              |          |             |           |             |         |  |
|--------------|----------|-------------|-----------|-------------|---------|--|
| <b>DATES</b> | Assigned | 9-Apr-2007  | Screening | 16-Apr-2007 | EPA Due |  |
|              | PCW      | 19-Nov-2007 |           |             |         |  |

|  |                     |                    |       |
|--|---------------------|--------------------|-------|
| <b>RESPONDENT/FACILITY INFORMATION</b> |                     |                    |       |
| Respondent                             | Jake Davis          |                    |       |
| Reg. Ent. Ref. No.                     | RN101572832         |                    |       |
| Facility/Site Region                   | 4-Dallas/Fort Worth | Major/Minor Source | Minor |

|                         |                        |                   |                    |          |
|-------------------------|------------------------|-------------------|--------------------|----------|
| <b>CASE INFORMATION</b> |                        |                   |                    |          |
| Enf./Case ID No.        | 33231                  | No. of Violations | 1                  |          |
| Docket No.              | 2007-0606-PST-E        | Order Type        | 1660               |          |
| Media Program(s)        | Petroleum Storage Tank | Enf. Coordinator  | Philip DeFrancesco |          |
| 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* **\$2,500**

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

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

**Compliance History** *Subtotals 2, 3, & 7* **\$125**

5% Enhancement

Notes: Enhancement for one prior NOV with same or similar violations.

**Culpability** *Subtotal 4* **\$0**

0% Enhancement

Notes: The respondent does not meet the culpability criteria.

**Good Faith Effort to Comply** *Subtotal 5* **\$0**

0% Reduction

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.

*Subtotal 6* **\$0**

0% Enhancement\*

\*Capped at the Total EB \$ Amount

|                            |         |
|----------------------------|---------|
| Total EB Amounts           | \$2,258 |
| Approx. Cost of Compliance | \$5,000 |

**SUM OF SUBTOTALS 1-7** *Final Subtotal* **\$2,625**

**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* **\$2,625**

**STATUTORY LIMIT ADJUSTMENT** *Final Assessed Penalty* **\$2,625**

**DEFERRAL** *Adjustment* **\$0**

0% Reduction

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

Notes

Deferral not offered for non-expedited settlement

**PAYABLE PENALTY** **\$2,625**

Screening Date 16-Apr-2007

Docket No. 2007-0606-PST-E

PGW

Respondent Jake Davis

Policy Revision 2 (September 2002)

Case ID No. 33231

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN101572832

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Phillip DeFrancesco

### Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

| Component                     | Number of...   | Enter Number Here | Adjust. |
|-------------------------------|--|-------------------|---------|
| NOVs                          | Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)  | 1                 | 5%      |
|                               | Other written NOVs   | 0                 | 0%      |
| Orders                        | Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)   | 0                 | 0%      |
|                               | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 0                 | 0%      |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of 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 prior NOV with same or similar violations.

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

Screening Date 16-Apr-2007

Docket No. 2007-0606-PST-E

PCW

Respondent Jake Davis

Policy Revision 2 (September 2002)

Case ID No. 33231

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN101572832

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Philip DeFrancesco

Violation Number 1

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

Violation Description Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Table with columns: Release, Major, Harm (Moderate, Minor), Actual, Potential. Potential Major has an 'x'.

Percent 25%

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor. All cells are empty.

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

11 Number of violation days

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

Violation Base Penalty \$2,500

One monthly events is recommended based on the April 5, 2007 record review date to the April 16, 2007 screening date.

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount \$2,258

Violation Final Penalty Total \$2,625

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

## Economic Benefit Worksheet

**Respondent** Jake Davis  
**Case ID No.** 33231  
**Reg. Ent. Reference No.** RN101572832  
**Media** Petroleum Storage Tank  
**Violation No.** 1

|                         |                              |
|-------------------------|------------------------------|
| <b>Percent Interest</b> | <b>Years of Depreciation</b> |
| 5.0                     | 15                           |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|

### 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 | 22-Dec-1998 | 1-Jan-2008 | 9.0 | \$2,258 | n/a | \$2,258 |

Notes for DELAYED costs

Estimated minimum cost permanently remove the three USTs from service. The Date Required is the date when the respondent was required to upgrade the UST system and the Final Date is based on the 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 \$5,000

**TOTAL** \$2,258

# Compliance History

|   |  |                 |              |
|---|--|-----------------|--------------|
| Customer/Respondent/Owner-Operator:           | CN603103185     DAVIS, JAKE              | Classification: | Rating:      |
| Regulated Entity:                             | RN101572832     JAKE DAVIS PROPERTY      | Classification: | Site Rating: |
| ID Number(s):                                 | PETROLEUM STORAGE TANK<br>REGISTRATION   | REGISTRATION    | 56997        |
| Location:                                     | 1005 S OAK AVE, MINERAL WELLS, TX, 76067 |                 |              |
| TCEQ Region:                                  | REGION 04 - DFW METROPLEX                |                 |              |
| Date Compliance History Prepared:             | May 01, 2007                             |                 |              |
| Agency Decision Requiring Compliance History: | Enforcement                              |                 |              |
| Compliance Period:                            | May 01, 2002 to May 01, 2007             |                 |              |

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

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

## Site Compliance History Components

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

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- |   |            |          |  |
|---|------------|----------|--|
| 1 | 10/05/2006 | (514598) |  |
| 2 | 04/06/2007 | (556207) |  |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |              |  |                 |          |
|--------------|--|-----------------|----------|
| Date:        | 10/05/2006   | (514598)        |          |
| Self Report? | NO   | Classification: | Moderate |
| Citation:    | 30 TAC Chapter 334, SubChapter C 334.47(a)(2)  |                 |          |
| Description: | Failure to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements. |                 |          |
- F. Environmental audits.  
N/A
- G. Type of environmental management systems (EMSs).  
N/A
- H. Voluntary on-site compliance assessment dates.  
N/A
- I. Participation in a voluntary pollution reduction program.  
N/A
- J. Early compliance.  
N/A

Sites Outside of Texas

N/A



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
JAKE DAVIS;  
RN101572832

§  
§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**DEFAULT ORDER**  
**DOCKET NO. 2007-0606-PST-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Jake Davis ("Mr. Davis").

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

**FINDINGS OF FACT**

1. Mr. Davis owns property located at 1005 South Oak Avenue, Mineral Wells, Palo Pinto County, Texas (the "Property").
2. Mr. Davis' three underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Davis' USTs contain a regulated substance as defined in the rules of the Commission.
3. During a record review conducted on April 5, 2007, TCEQ Dallas / Fort Worth Regional Office investigator documented that Mr. Davis failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.
4. Mr. Davis received notice of the violations on or about May 13, 2007.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement

Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Jake Davis” (the “EDPRP”) in the TCEQ Chief Clerk’s office on March 7, 2008.

6. By letter dated March 7, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Davis with notice of the EDPRP. According to the return receipt “green card,” Mr. Davis received notice of the EDPRP on March 13, 2008, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Mr. Davis received notice of the EDPRP, provided by the Executive Director. Mr. Davis failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Davis is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Davis failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, in violation of 30 TEX. ADMIN. CODE § 334.47(a)(2).
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. Davis with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 7, Mr. Davis failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Davis and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Davis 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.
6. An administrative penalty in the amount of two thousand six hundred twenty-five dollars (\$2,625.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

7. 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. Davis is assessed an administrative penalty in the amount of two thousand six hundred twenty-five dollars (\$2,625.00) for violations of TEX. WATER CODE ch. 26 and the rules of the TCEQ. The payment of this administrative penalty and Mr. Davis' 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: Jake Davis; Docket No. 2007-0606-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. Davis shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Order, Mr. Davis shall permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55.
  - b. Within 45 days after the effective date of this Order, Mr. Davis shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision No. 2a. 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. Davis shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision No. 2.a. to:

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

with a copy to:

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

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. Davis. Mr. Davis is ordered to give notice of this Order to personnel who maintain day-to-day control over the Property's operations referenced in this Order.
5. If Mr. Davis 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. Davis' failure to comply is not a violation of this Order. Mr. Davis shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Davis shall notify the Executive Director within seven days after Mr. Davis 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. Davis shall be made in writing to

the Executive Director. Extensions are not effective until Mr. Davis 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. Davis if the Executive Director determines that Mr. Davis 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.

Jake Davis  
Docket No. 2007-0606-PST-E  
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## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF RUDY CALDERON**

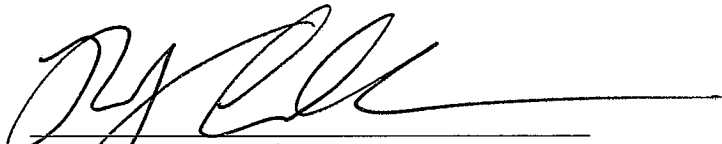
STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Rudy Calderon. 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 Jake Davis” (the “EDPRP”) was filed with the Office of the Chief Clerk on March 7, 2008.

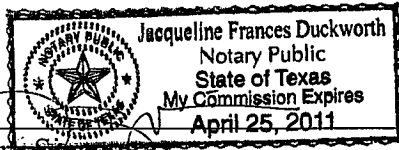
The EDPRP was mailed to Mr. Davis at his last known address on March 7, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Davis received notice of the EDPRP on March 13, 2008, as evidenced by the signature on the card.

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

  
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Rudy Calderon, Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Rudy Calderon, known to me 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 15<sup>th</sup> day of August A.D., 2008.

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