

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2007-1552-PST-E TCEQ ID: RN102220761 CASE NO.: 34681**  
**RESPONDENT NAME: RICHARD BRANNAN**

<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"/> IMMINENT 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 VIOLATIONS OCCURRED:</b> 1001 Wallis Avenue, Santa Anna, Coleman County</p> <p><b>TYPE OF OPERATION:</b> Inactive underground storage tank ("UST")</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 location.</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 September 22, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Mr. Gary Shiu, Litigation Division, MC R-12, (713) 422-8916  Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019  <b>TCEQ Enforcement Coordinator:</b> Mr. Wallace Myers, Waste Enforcement Section, MC 128, (512) 239-6580  <b>TCEQ Regional Contact:</b> Mr. Mike Taylor, Abilene Regional Office, R-3, (325) 698-6125  <b>Respondent:</b> Mr. Richard Brannan, 921 North Road, Baytown, Texas 77521  <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  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> August 22, 2007</p> <p><b>Date of NOE Relating to this Case:</b> August 30, 2007</p> <p><b>Background Facts:</b></p> <p>The EDPRP was filed on February 14, 2008. The certified mail receipt has not been returned to the TCEQ. However, the United States Postal Service's Internet "Track &amp; Confirm" service indicates the EDPRP was delivered on March 27, 2008. The United States Postal Service did not return the wrapper sent by certified mail. The first class mail also has not been returned, indicating that Respondent received notice of the EDPRP. The Respondent failed to file an Answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Compliance Status:</b> Not in compliance</p> <p><b>PST:</b></p> <p>1. Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, one UST for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, [30 TEX. ADMIN. CODE § 334.47(a)(2)].</p> <p>2. Failed to pay outstanding UST fees and associated late fees for Financial Account No. 0049072U for fiscal years 1996 through 2007 [30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702].</p>	<p><b>Total Assessed:</b> \$2,600</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$2,600</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 proposed Order.</p> <p><b>Site Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b>  <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's UST delivery certificate is revoked immediately. The Respondent may submit an application for a new delivery certificate only after complying with all requirements of this Order.</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. Within 10 days, send his UST delivery certificate to the TCEQ.</li> <li>2. Within 30 days, submit payment for all outstanding fees, including any associated penalties and interest.</li> <li>3. Within 45 days, permanently remove the UST system from service.</li> <li>4. Within 60 days, submit written certification to demonstrate compliance with these Ordering Provisions.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision September 19, 2007

<b>DATES</b>	Assigned	4-Sep-2007	Screening	17-Sep-2007	EPA Due	
	PCW	17-Dec-2007				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	Richard Brannan
Reg. Ent. Ref. No.	RN102220761
Facility/Site Region	3-Abilene
Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	34681	No. of Violations	2
Docket No.	2007-1552-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Wallace Myers
Multi-Media		EC's Team	EnforcementTeam 6
Admin. Penalty \$	Limit Minimum	\$0	Maximum
			\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<i>Subtotal 1</i>	\$2,500
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<b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>		
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>		
<b>Compliance History</b>	4% Enhancement	<i>Subtotals 2, 3, &amp; 7</i>
		\$100

Notes	Enhancement for two NOV's without same or similar violations.
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<b>Culpability</b>	No	0% Enhancement	<i>Subtotal 4</i>	\$0
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Notes	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply</b>	0% Reduction	<i>Subtotal 5</i>	\$0
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	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.
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	0% Enhancement*	<i>Subtotal 6</i>	\$0
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Total EB Amounts	\$4,704	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$10,000	

<b>SUM OF SUBTOTALS 1-7</b>	<i>Final Subtotal</i>	\$2,600
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0%	<i>Adjustment</i>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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<i>Final Penalty Amount</i>	\$2,600
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<i>Final Assessed Penalty</i>	\$2,600
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<b>DEFERRAL</b>	0% Reduction	<i>Adjustment</i>	\$0
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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.
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<b>PAYABLE PENALTY</b>	\$2,600
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Screening Date 17-Sep-2007

Docket No. 2007-1552-PST-E

PCW

Respondent Richard Brannan

Policy Revision 2 (September 2002)

Case ID No. 34681

PCW Revision September 19, 2007

Reg. Ent. Reference No. RN102220761

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

### Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 4%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for two NOVs without same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 4%

<b>Screening Date</b> 17-Sep-2007	<b>Docket No.</b> 2007-1552-PST-E	<b>PCW</b>
<b>Respondent</b> Richard Brannan		<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b> 34681		<i>PCW Revision September 19, 2007</i>
<b>Reg. Ent. Reference No.</b> RN102220761		
<b>Media [Statute]</b> Petroleum Storage Tank		
<b>Enf. Coordinator</b> Wallace Myers		
<b>Violation Number</b> <input type="text" value="1"/>		
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 334.47(a)(2)	
<b>Violation Description</b>	Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, one UST for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.	
	<b>Base Penalty</b>	<input type="text" value="\$10,000"/>

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

<b>OR</b>	<b>Harm</b>			
	<b>Release</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>
				<b>Percent</b> <input type="text" value="25%"/>

**>> Programmatic Matrix**

	<b>Falsification</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
					<b>Percent</b> <input type="text" value="0%"/>
<b>Matrix Notes</b>	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**

**Violation Events**

Number of Violation Events <input type="text" value="1"/>	<input type="text" value="26"/>	Number of violation days
mark only one with an x daily <input type="text"/> monthly <input type="text" value="x"/> quarterly <input type="text"/> semiannual <input type="text"/> annual <input type="text"/> single event <input type="text"/>		<b>Violation Base Penalty</b> <input type="text" value="\$2,500"/>

One monthly event is recommended based on documentation of the violation during the August 22, 2007 record review date to the September 17, 2007 screening date.

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b> <input type="text" value="\$4,704"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$2,600"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$2,600"/>	

## Economic Benefit Worksheet

**Respondent** Richard Brannan  
**Case ID No.** 34681  
**Reg. Ent. Reference No.** RN102220761  
**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
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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)	\$10,000	22-Dec-1998	17-May-2008	9.4	\$4,704	n/a	\$4,704

Notes for DELAYED costs

Estimated cost to permanently remove the UST system from service. The Date Required is the date when the Respondent was required to upgrade the UST system and the Final Date is the estimated date of compliance.

**Avoided Costs**

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

**TOTAL**

\$4,704

<b>Screening Date</b> 17-Sep-2007	<b>Docket No.</b> 2007-1552-PST-E	<b>PCW</b>
<b>Respondent</b> Richard Brannan	<small>Policy Revision 2 (September 2002)</small>	
<b>Case ID No.</b> 34681	<small>PCW Revision September 19, 2007</small>	
<b>Reg. Ent. Reference No.</b> RN102220761		
<b>Media [Statute]</b> Petroleum Storage Tank		
<b>Enf. Coordinator</b> Wallace Myers		
<b>Violation Number</b> <input type="text" value="2"/>		
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 334.22(a) and Tex. Water Code § 5.702"/>	
<b>Violation Description</b>	<input type="text" value="Failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0049072U for fiscal years 1996 through 2007."/>	
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>

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

<b>OR</b>	<b>Harm</b>				
	<b>Release</b>	<b>Major</b>	<b>Moderate</b>		<b>Minor</b>
	<b>Actual</b>	<input type="text"/>	<input type="text"/>		<input type="text"/>
	<b>Potential</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
				<b>Percent</b> <input type="text" value="0%"/>	

**>> Programmatic Matrix**

	<b>Falsification</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
					<b>Percent</b> <input type="text" value="0%"/>

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of Violation Events <input type="text"/>		Number of violation days <input type="text"/>												
<small>mark only one with an x</small> <table border="1" style="width:100%; border-collapse: collapse;"> <tr><td style="width:100px;">daily</td><td><input type="text"/></td></tr> <tr><td>monthly</td><td><input type="text"/></td></tr> <tr><td>quarterly</td><td><input type="text"/></td></tr> <tr><td>semiannual</td><td><input type="text"/></td></tr> <tr><td>annual</td><td><input type="text"/></td></tr> <tr><td>single event</td><td><input type="text"/></td></tr> </table>	daily	<input type="text"/>	monthly	<input type="text"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input type="text"/>		<b>Violation Base Penalty</b> <input type="text" value="\$0"/>
daily	<input type="text"/>													
monthly	<input type="text"/>													
quarterly	<input type="text"/>													
semiannual	<input type="text"/>													
annual	<input type="text"/>													
single event	<input type="text"/>													

No additional administrative penalty was calculated for this violation as penalties and interest will be assessed on the next fee billing.

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
Estimated EB Amount <input type="text" value="\$0"/>	Violation Final Penalty Total <input type="text" value="\$0"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$0"/>	

## Economic Benefit Worksheet

**Respondent:** Richard Brannan  
**Case ID No.:** 34681  
**Reg. Ent. Reference No.:** RN102220761  
**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

n/a

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

**TOTAL**

\$0

# Compliance History

Customer/Respondent/Owner-Operator:	CN603095282	BRANNAN, RICHARD	Classification: Average	Rating: 1.50
Regulated Entity:	RN102220761	BRANNAN, RICHARD	Classification: Average	Site Rating: 1.50
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION REGISTRATION			68038
Location:	1001 Wallis Ave., Santa Anna		Rating Date: September 01 07 Repeat Violator: NO	
TCEQ Region:	REGION 03 - ABILENE			
Date Compliance History Prepared:	September 24, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	September 24, 2002 to September 24, 2007			

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

Name: Wallace Myers Phone: 512-239-6580

## Site Compliance History Components

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

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- |   |            |          |  |
|---|------------|----------|--|
| 1 | 09/20/2006 | (510860) |  |
| 2 | 01/11/2007 | (536224) |  |
| 3 | 08/30/2007 | (573212) |  |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |              |   |                 |          |
|--------------|---|-----------------|----------|
| Date:        | 09/20/2006  | (510860)        |          |
| Self Report? | NO  | Classification: | Moderate |
| Citation:    | 30 TAC Chapter 334, SubChapter C 334.54(c)(1)   |                 |          |
| Description: | Failure to provide monitoring system to meet technical requirements 30 TAC 334.54(c)(1). UST's have no corrosion protection provided to the system according to 30 TAC 334.49a. |                 |          |
| Date:        | 01/10/2007  | (536224)        |          |
| Self Report? | NO  | Classification: | Moderate |
| Citation:    | 30 TAC Chapter 334, SubChapter C 334.54(c)(1)   |                 |          |
| Description: | Failure to provide monitoring system to meet technical requirements 30 TAC 334.54(c)(1). UST's have no corrosion protection provided to the system according to 30 TAC 334.49a. |                 |          |
- 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  
RICHARD BRANNAN;  
RN102220761

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**DEFAULT ORDER**  
**DOCKET NO. 2007-1552-PST-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 5, 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the revocation of the respondent's underground storage tank delivery certificate, the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Richard Brannan ("Respondent").

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

**FINDINGS OF FACT**

1. Respondent owns an inactive underground storage tank ("UST") at 1001 Wallis Avenue in Santa Anna, Coleman County, Texas (the "Facility").
2. Respondent's UST is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Respondent's UST contains a regulated petroleum substance as defined in the rules of the Commission.
3. During a records review conducted on August 22, 2007, a TCEQ Abilene Regional Office investigator documented that Respondent:
  - a. failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, one UST for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.
  - b. failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0049072U for fiscal years 1996 through 2007.

4. Respondent received notice of the violations on or about September 3, 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 Richard Brannan (the "EDPRP") in the TCEQ Chief Clerk's office on February 14, 2008.
6. By letter dated February 14, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. The certified mail receipt has not been returned to the TCEQ. However, the United States Postal Service's Internet "Track & Confirm" service indicates the EDPRP was delivered on March 27, 2008. The United States Postal Service did not return the wrapper sent by certified mail. The first class mail also has not been returned, indicating that Respondent received notice of the EDPRP.
7. More than 20 days have elapsed since Respondent received notice of the EDPRP, provided by the Executive Director. Respondent 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, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 5, 7 and 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Respondent failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, one UST 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 No. 3.b., Respondent failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0049072U for fiscal years 1996 through 2007, in violation of 30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702.
4. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).

5. As evidenced by Finding of Fact No. 7, Respondent 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 Respondent and assess the penalty recommended by the Executive Director.
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against 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.
7. An administrative penalty in the amount of two thousand six hundred dollars (\$2,600.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.
9. 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.
10. Good cause for revocation of Respondent's UST delivery certificate exists as justified by Findings of Fact Nos. 3, 5, 6, and 7 and Conclusions of Law Nos. 2, 3, 4, and 5.

### ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of two thousand six hundred dollars (\$2,600.00) for violations of TEX. WATER CODE chs. 5, 7, and 26, and rules of the TCEQ. 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: Richard Brannan; Docket No. 2007-1552-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. 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 submit payment for all outstanding fees, including any associated penalties and interest and with the notation, "Richard Brannan," TCEQ Financial Administration Account No. 0049072U, to the address listed in Paragraph 1 of this section;
  - b. Within 45 days after the effective date of this Order, Respondent shall permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55; and
  - c. Within 60 days after the effective date of this Order, Respondent shall 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. and 4.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware

that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

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

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 Facility operations referenced in this Order.
7. 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.
8. 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.
9. 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.

10. 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.

Richard Brannan  
TCEQ Docket No. 2007-1552-PST-E  
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF GARY K. SHIU**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

"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, I 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 Richard Brannan" (the "EDPRP") with the Office of the Chief Clerk on February 14, 2008.

I sent the EDPRP to Respondent at his last known address on February 14, 2008 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the United States Postal Service's Internet "Track & Confirm" service, the EDPRP was delivered on March 27, 2008. The certified mail receipt has not been returned to the TCEQ. The United States Postal Service did not return the wrapper sent by certified mail. The first class mail also has not been returned, indicating the respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

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



\_\_\_\_\_  
Gary K. Shiu  
Attorney  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Gary K. Shiu, 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 8 day of July, A.D., 2008.

  
\_\_\_\_\_  
Notary Stamp

