

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1414-PST-E **TCEQ ID:** RN101815405 **CASE NO.:** 36483

RESPONDENT NAME: Ona Van Dorn

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL 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>SITE WHERE VIOLATION(S) OCCURRED: Vans Bar-B-Q, located at Interstate 37 North, Exit 65 and County Road 1358, Oakville, Live Oak County</p> <p>TYPE OF OPERATION: Property with three inactive underground storage tanks ("USTs")</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on March 16, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Mike Pace, Enforcement Division, Enforcement Team 6, MC R-04, (817) 588-5933; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Ms. Ona Van Dorn, Owner, 959 Farm-to-Market Road 799, George West, Texas 78022 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: August 19, 2008</p> <p>Date of NOV/NOE Relating to this Case: August 25, 2008 (NOE)</p> <p>Background Facts: This was a record review investigation.</p> <p>WASTE</p> <p>Failure 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 [30 TEX. ADMIN. CODE § 334.47(a)(2)].</p>	<p>Total Assessed: \$2,625</p> <p>Total Deferred: \$525 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$100 (remaining \$2,000 due in 20 monthly payments of \$100 each)</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>Within 30 days after the effective date of this Agreed Order, permanently remove the UST system from service; and</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.</p>

Additional ID No(s): PST 8979



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

DATES	Assigned	2-Sep-2008	Screening	4-Sep-2008	EPA Due	
	PCW	4-Sep-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	Ona Van Dorn
Reg. Ent. Ref. No.	RN101815405
Facility/Site Region	14-Corpus Christi
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36483	No. of Violations	1
Docket No.	2008-1414-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Mike Pace
		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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement Subtotals 2, 3, & 7

Notes

Culpability Enhancement Subtotal 4

Notes

Good Faith Effort to Comply Total Adjustments Subtotal 5

Economic Benefit Enhancement* Subtotal 6

Total EB Amounts
 Approx. Cost of Compliance

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty

DEFERRAL Reduction Adjustment

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

Notes

PAYABLE PENALTY

Screening Date 4-Sep-2008

Docket No. 2008-1414-PST-E

PCW

Respondent Ona Van Dorn

Policy Revision 2 (September 2002)

Case ID No. 36483

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN101815405

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Mike Pace

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 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%
<i>Please Enter Yes or No</i>			
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 NOV with same or similar violations.

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

<p>Screening Date 4-Sep-2008</p> <p>Respondent Ona Van Dorn</p> <p>Case ID No. 36483</p> <p>Reg. Ent. Reference No. RN101815405</p> <p>Media [Statute] Petroleum Storage Tank</p> <p>Enf. Coordinator Mike Pace</p> <p>Violation Number <input type="text" value="1"/></p> <p>Rule Cite(s) <input style="width:100%;" type="text" value="30 Tex. Admin. Code § 334.47(a)(2)"/></p> <p>Violation Description <input style="width:100%; height: 50px;" type="text" value="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."/></p>	<p>Docket No. 2008-1414-PST-E</p> <p style="text-align: right;">PCW <small>Policy Revision 2 (September 2002) PCW Revision June 12, 2008</small></p>																			
Base Penalty <input style="width:100%;" type="text" value="\$10,000"/>																				
>> Environmental, Property and Human Health Matrix																				
<p>OR</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td colspan="3" style="text-align: center;">Harm</td> <td></td> </tr> <tr> <td style="text-align: center;">Release</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> <td></td> </tr> <tr> <td style="text-align: center;">Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td rowspan="2" style="text-align: right;">Percent <input style="width:50px;" type="text" value="25%"/></td> </tr> <tr> <td style="text-align: center;">Potential</td> <td style="text-align: center;">x</td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>		Harm				Release	Major	Moderate	Minor		Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input style="width:50px;" type="text" value="25%"/>	Potential	x	<input type="text"/>	<input type="text"/>	
	Harm																			
Release	Major	Moderate	Minor																	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input style="width:50px;" type="text" value="25%"/>																
Potential	x	<input type="text"/>	<input type="text"/>																	
>> Programmatic Matrix																				
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> <td></td> </tr> <tr> <td style="text-align: center;">Falsification</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td rowspan="2" style="text-align: right;">Percent <input style="width:50px;" type="text" value="0%"/></td> </tr> <tr> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table> <p>Matrix Notes <input style="width:100%; height: 30px;" type="text" value="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."/></p>		Major	Moderate	Minor		Falsification	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input style="width:50px;" type="text" value="0%"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>						
	Major	Moderate	Minor																	
Falsification	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input style="width:50px;" type="text" value="0%"/>																
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>																	
Adjustment <input style="width:100%;" type="text" value="\$7,500"/>																				
<input style="width:100%;" type="text" value="\$2,500"/>																				
Violation Events																				
<p>Number of Violation Events <input style="width:50px;" type="text" value="1"/> <input style="width:50px;" type="text" value="16"/> Number of violation days</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td rowspan="5" style="vertical-align: middle;"><small>mark only one with an x</small></td> <td style="text-align: center;">daily</td> <td><input type="text"/></td> </tr> <tr> <td style="text-align: center;">monthly</td> <td style="text-align: center;">x</td> </tr> <tr> <td style="text-align: center;">quarterly</td> <td><input type="text"/></td> </tr> <tr> <td style="text-align: center;">semiannual</td> <td><input type="text"/></td> </tr> <tr> <td style="text-align: center;">annual</td> <td><input type="text"/></td> </tr> <tr> <td></td> <td style="text-align: center;">single event</td> <td><input type="text"/></td> </tr> </table> <p style="text-align: right;">Violation Base Penalty <input style="width:100%;" type="text" value="\$2,500"/></p> <p style="border: 1px solid black; padding: 5px; margin-top: 10px;">One monthly event is recommended based on documentation of the violation during the August 19, 2008 record review to the September 4, 2008 screening date.</p>	<small>mark only one with an x</small>	daily	<input type="text"/>	monthly	x	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>		single event	<input type="text"/>						
<small>mark only one with an x</small>		daily	<input type="text"/>																	
		monthly	x																	
		quarterly	<input type="text"/>																	
		semiannual	<input type="text"/>																	
	annual	<input type="text"/>																		
	single event	<input type="text"/>																		
Good Faith Efforts to Comply																				
<p style="text-align: right;">0.0% Reduction <input style="width:100%;" type="text" value="\$0"/></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">Before NOV</td> <td style="text-align: center;">NOV to EDPRP/Settlement Offer</td> </tr> <tr> <td style="text-align: center;">Extraordinary</td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> <tr> <td style="text-align: center;">Ordinary</td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> <tr> <td style="text-align: center;">N/A</td> <td style="text-align: center;">x</td> <td style="text-align: center;">(mark with x)</td> </tr> </table> <p>Notes <input style="width:100%; height: 30px;" type="text" value="The Respondent does not meet the good faith criteria for this violation."/></p> <p style="text-align: right;">Violation Subtotal <input style="width:100%;" type="text" value="\$2,500"/></p>		Before NOV	NOV to EDPRP/Settlement Offer	Extraordinary	<input type="text"/>	<input type="text"/>	Ordinary	<input type="text"/>	<input type="text"/>	N/A	x	(mark with x)								
	Before NOV	NOV to EDPRP/Settlement Offer																		
Extraordinary	<input type="text"/>	<input type="text"/>																		
Ordinary	<input type="text"/>	<input type="text"/>																		
N/A	x	(mark with x)																		
Economic Benefit (EB) for this violation																				
<p>Estimated EB Amount <input style="width:100%;" type="text" value="\$3,487"/></p>	<p>Statutory Limit Test</p> <p>Violation Final Penalty Total <input style="width:100%;" type="text" value="\$2,625"/></p> <p>This violation Final Assessed Penalty (adjusted for limits) <input style="width:100%;" type="text" value="\$2,625"/></p>																			

Economic Benefit Worksheet

Respondent Ona Van Dorn
Case ID No. 36483
Reg. Ent. Reference No. RN101815405
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$6,750	22-Dec-1998	19-Apr-2009	10.33	\$3,487	n/a	\$3,487

Notes for DELAYED costs
 Estimated cost to permanently remove from service three USTs with combined capacity of 9,000 gallons at \$0.75 per gallon. The date required is the date when the Respondent was required to upgrade the UST system and the final date is based on the expected compliance date.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance **\$6,750**

TOTAL **\$3,487**

Compliance History

Customer/Respondent/Owner-Operator:	CN600985766 Van Dorn, Ona	Classification: AVERAGE	Rating: 1.88
Regulated Entity:	RN101815405 VANS BAR-B-Q	Classification: AVERAGE	Site Rating: 0.75
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	8979
Location:	I -37 NORTH EXIT 65 & COUNTY ROAD 1358 AT OAKVILLE TEXAS 78022		
TCEQ Region:	REGION 14 - CORPUS CHRISTI		
Date Compliance History Prepared:	September 08, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	September 08, 2003 to September 08, 2008		

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

Name: Mike Pace Phone: 8175885933

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.)
01/19/2007 (519086)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 01/19/2007 (519086)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)
Description: Failure to perform the permanent removal of the USTs that have not met upgrade requirements as required by 30 Texas Admin. Code 334.47(a)(2).
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A
- J. Early compliance.
N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
ONA VAN DORN
RN101815405

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2008-1414-PST-E

I. JURISDICTION AND STIPULATIONS

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

1. The Respondent owns property with three inactive underground storage tanks ("USTs") at Interstate 37 North Exit 65 and County Road 1358 in Oakville, Live Oak County, Texas (the "Facility").
2. The Respondent's three USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about August 30, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Two Thousand Six Hundred Twenty-Five Dollars (\$2,625) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Hundred Dollars (\$100) of the administrative

penalty and Five Hundred Twenty-Five Dollars (\$525) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Two Thousand Dollars (\$2,000) of the administrative penalty shall be payable in 20 monthly payments of One Hundred Dollars (\$100) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner of the Facility, the Respondent is alleged to have 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, in violation of 30 TEX. ADMIN. CODE § 334.47(a)(2), as documented during a record review conducted on August 19, 2008.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Ona Van Dorn, Docket No. 2008-1414-PST-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55; and
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Waste Section, Manager
Corpus Christi Regional Office
Texas Commission on Environmental Quality
6300 Ocean Drive, Suite 1200
Corpus Christi, Texas 78412-5503

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Zoller
For the Executive Director

2/16/2009
Date

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

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

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

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

Ona Van Dorn
Signature

1-8-09
Date

ONA VANDORN
Name (Printed or typed)
Authorized Representative of
Ona Van Dorn

Owner
Title

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

