

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-0944-PST-E TCEQ ID: RN102483823 CASE NO.: 33874

RESPONDENT NAME: JOHN R. PRESTON DBA REFUGIO EXXON NORTH

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	

CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 601 North Alamo, Refugio, Refugio County

TYPE OF OPERATION: Convenience store with retail sales of gasoline

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired June 15, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Tracy Chandler, Litigation Division, MC 175, (512) 239-0629
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Ms. Danielle Porras, Waste Enforcement Section, MC 128, (512) 239-2602

TCEQ Regional Contact: Mr. Brad Genzer, Corpus Christi Regional Office, MC R-14, (361) 825-3106

Respondent: Mr. John R. Preston, Owner, Refugio Exxon North, 3434 Buckhaven Street, San Antonio, TX 78230;
Mr. John R. Preston, Owner, Refugio Exxon North, P.O. Box 781575, San Antonio, TX 78230

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

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: N/A</p> <p>Date of Investigation Relating to this Case: February 1, 2007</p> <p>Date of NOE Relating to this Case: May 31, 2007</p> <p>Background Facts: The EDPRP was filed August 22, 2008, October 21, 2008, and November 21, 2008; service was unsuccessful. The EDPRP was re-filed January 30, 2009, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned. The Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Not yet in compliance. The Respondent's delivery certificate expired in October 2007.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)]. Failed to test the line leak detectors annually for performance and operational reliability [30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(c)(1)]. Failed to provide an amended registration for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition [30 TEX. ADMIN. CODE §§ 334.7(d)(3), 334.8(c)(4)(A)(vii), (c)(4)(B), and (c)(5)(B)(ii)]. 	<p>Total Assessed: \$26,250</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$26,500</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>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>Corrective Actions Taken: The Executive Director recognizes that on February 5, 2007, the line leak detectors were tested and passed.</p> <p>Ordering Provisions: The Respondent's delivery certificate is revoked immediately. The Respondent may submit an application for a new delivery certificate only after he complies with all of the requirements of the Order.</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Immediately: <ol style="list-style-type: none"> Begin maintaining all UST records; Establish and implement a process for reporting a suspected release; and Cease accepting fuel until such time as a valid delivery certificate is obtained. Within 10 days, surrender his delivery certificate to the TCEQ. Within 30 days: <ol style="list-style-type: none"> Submit documentation that demonstrates acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; Conduct an investigation of the suspected release and implement appropriate corrective measures if required; and Submit an amended registration to indicate the current operational status of the UST system. Within 45 days, submit written certification demonstrating compliance with Ordering Provision nos. 1 and 3.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>4. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)].</p> <p>5. Failed to maintain UST records and immediately make them available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b)].</p> <p>6. Failed to report a suspected release to the agency within 24 hours of discovery [30 TEX. ADMIN. CODE § 334.72].</p> <p>7. Failed to investigate a suspected release within 30 days of discovery [30 TEX. ADMIN. CODE § 334.74].</p>		

Penalty Calculation Worksheet (PCW)
 Policy Revision 2 (September 2002) PCW Revision May 25, 2007

TCEQ

DATES	Assigned	4-Jun-2007	Screening	13-Jun-2007	EPA Due	
	PCW	20-Jun-2007				

RESPONDENT/FACILITY INFORMATION

Respondent	John R. Preston dba Refugio Exxon North		
Reg. Ent. Ref. No.	RN102483823		
Facility/Site Region	14-Corpus Christi	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	33874	No. of Violations	7	
Docket No.	2007-0944-PST-E	Order Type	1660	
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Shontay Wilcher	
Multi-Media		EC's Team	EnforcementTeam 6	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 \$25,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1
 Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 5% Enhancement Subtotals 2, 3, & 7 \$1,250

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

Culpability No 0% Enhancement Subtotal 4 \$0

Notes: The respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction Subtotal 5 \$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes: The respondent does not meet the good faith criteria.

Total EB Amounts 0% Enhancement* Subtotal 6 \$0
 *Capped at the Total EB \$ Amount

Total EB Amounts	\$3,292
Approx. Cost of Compliance	\$5,100

SUM OF SUBTOTALS 1-7 Final Subtotal \$26,250

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 \$26,250

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$26,250

DEFERRAL 0% Reduction Adjustment \$0

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 \$26,250

Screening Date 13-Jun-2007

Docket No. 2007-0944-PST-E

PCW

Respondent John R. Preston dba Refugio Exxon North

Policy Revision 2 (September 2002)

Case ID No. 33874

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN102483823

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Shontay Wilcher

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

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

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

Screening Date 13-Jun-2007	Docket No. 2007-0944-PST-E	PCW		
Respondent John R. Preston dba Refugio Exxon North		<i>Policy Revision 2 (September 2002)</i>		
Case ID No. 33874		<i>PCW Revision May 25, 2007</i>		
Reg. Ent. Reference No. RN102483823				
Media [Statute] Petroleum Storage Tank				
Enf. Coordinator Shontay Wilcher				
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 37.815(a) and (b)			
Violation Description	Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.			
Base Penalty		\$10,000		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
		Percent	0%	
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	x	<input type="text"/>	<input type="text"/>
		Percent	10%	
Matrix Notes	100% of the rule requirement was not met.			
Adjustment		\$9,000		
		\$1,000		
Violation Events				
Number of Violation Events		3	Number of violation days	
		365		
<i>mark only one with an x</i>	daily	<input type="text"/>	Violation Base Penalty	
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	x		
Three single events (one per UST) are recommended based on documentation of the violation during the February 1, 2007 investigation.			\$3,000	
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount		\$2,048	Violation Final Penalty Total	
			\$3,150	
This violation Final Assessed Penalty (adjusted for limits)			\$3,150	

Economic Benefit Worksheet

Respondent John R. Preston dba Refugio Exxon North

Case ID No. 33874

Reg. Ent. Reference No. RN102483823

Media Petroleum Storage Tank

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

No commas or \$

Delayed Costs

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

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]	\$1,950	1-Feb-2006	1-Feb-2007	1.0	\$98	\$1,950	\$2,048
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to provide financial assurance for three petroleum USTs (\$650 per tank). The Date Required is one year prior to the investigation. The Final Date is the date of the investigation.

Approx. Cost of Compliance

\$1,950

TOTAL

\$2,048

Screening Date 13-Jun-2007	Docket No. 2007-0944-PST-E	PCW		
Respondent John R. Preston dba Refugio Exxon North	<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 33874	<i>PCW Revision May 25, 2007</i>			
Reg. Ent. Reference No. RN102483823				
Media [Statute] Petroleum Storage Tank				
Enf. Coordinator Shontay Wilcher				
Violation Number	2			
Rule Cite(s)	30 Tex. Admin. Code § 334.50(b)(2)(A)(i)(III) and Tex. Water Code § 26.3475(c)(1)			
Violation Description	Failed to test the line leak detectors at least once per year for performance and operational reliability. Specifically, the respondent did not perform annual testing of the line leak detectors.			
Base Penalty		\$10,000		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Potential	x	<input type="checkbox"/>	<input type="checkbox"/>
		Percent	25%	
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		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		
		365	Number of violation days	
<i>mark only one with an x</i>	daily	<input type="checkbox"/>		
	monthly	<input type="checkbox"/>		
	quarterly	<input type="checkbox"/>		
	semiannual	<input type="checkbox"/>		
	annual	x		
	single event	<input type="checkbox"/>		
		Violation Base Penalty	\$2,500	
One annual event is recommended for the 12-month period preceding the investigation.				
Economic Benefit (EB) for this violation			Statutory Limit Test	
Estimated EB Amount		\$1,096		
		Violation Final Penalty Total	\$2,625	
		This violation Final Assessed Penalty (adjusted for limits)	\$2,625	

Economic Benefit Worksheet

Respondent John R. Preston dba Refugio Exxon North
Case ID No. 33874
Reg. Ent. Reference No. RN102483823
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
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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]	\$1,000	1-Feb-2006	1-Feb-2007	1.9	\$96	\$1,000	\$1,096
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Avoided cost for conducting the annual line leak detector tests. The Date Required is one year prior to the investigation. The Final Date is the date of the investigation.

Approx. Cost of Compliance \$1,000

TOTAL \$1,096

Screening Date 13-Jun-2007	Docket No. 2007-0944-PST-E	PCW		
Respondent John R. Preston dba Refugio Exxon North	<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 33874	<i>PCW Revision May 25, 2007</i>			
Reg. Ent. Reference No. RN102483823				
Media [Statute] Petroleum Storage Tank				
Enf. Coordinator Shontay Wilcher				
Violation Number <input type="text" value="3"/>				
Rule Cite(s)	30 Tex. Admin. Code §§ 334.7(d)(3), 334.8(c)(4)(A)(vii), 334.8(c)(4)(B), and 334.8(c)(5)(B)(ii)			
Violation Description	Failed to provide an amended registration for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current operational status of the USTs at the Facility. Also, the respondent failed to renew a delivery certificate by timely and proper submission of a completed UST registration and self-certification form to the agency at least 30 days before the expiration date of the delivery certificate. Specifically, the delivery certificate expired on October 31, 2005.			
Base Penalty		<input type="text" value="\$10,000"/>		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
		Percent	<input type="text" value="0%"/>	
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	x	<input type="text"/>	<input type="text"/>
		Percent	<input type="text" value="10%"/>	
Matrix Notes	<input type="text" value="100% of the rule requirement was not met."/>			
Adjustment		<input type="text" value="\$9,000"/>		
		<input type="text" value="\$1,000"/>		
Violation Events				
Number of Violation Events		<input type="text" value="1"/>	Number of violation days	
		<input type="text" value="132"/>		
<i>mark only one with an x</i>	daily	<input type="text"/>	Violation Base Penalty	
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	x		
Violation Base Penalty		<input type="text" value="\$1,000"/>		
<input type="text" value="One single event is recommended based on documentation of the violation during the February 1, 2007 investigation."/>				
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount		Violation Final Penalty Total		
<input type="text" value="\$7"/>		<input type="text" value="\$1,050"/>		
		This violation Final Assessed Penalty (adjusted for limits)		
		<input type="text" value="\$1,050"/>		

Economic Benefit Worksheet

Respondent John R. Preston dba Refugio Exxon North

Case ID No. 33874

Reg. Ent. Reference No. RN102483823

Media Petroleum Storage Tank

Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

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

No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$100	1-Oct-2005	5-Feb-2007	1.3	\$7	n/a	\$7

Notes for DELAYED costs

Estimated cost to accurately prepare and submit an updated UST registration. The Date Required is 30 days prior to the expiration date of the delivery certificate. The Final Date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$7

Screening Date 13-Jun-2007

Docket No. 2007-0944-PST-E

PCW

Respondent John R. Preston dba Refugio Exxon North

Policy Revision 2 (September 2002)

Case ID No. 33874

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN102483823

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Shontay Wilcher

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(A)(i) and Tex. Water Code § 26.3467(a)

Violation Description

Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, the respondent accepted eight fuel deliveries without a delivery certificate on October 20, 2006, November 1, 2006, November 16, 2006, November 28, 2006, December 12, 2006, December 22, 2006, January 23, 2007, and January 24, 2007.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				5%
	Potential			x	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 8 132 Number of violation days

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

Violation Base Penalty \$4,000

Eight single events (one per drop) are recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$4,200

This violation Final Assessed Penalty (adjusted for limits) \$4,200

Economic Benefit Worksheet

Respondent John R. Preston dba Refugio Exxon North
Case ID No. 33874
Reg. Ent. Reference No. RN102483823
Media Petroleum Storage Tank
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

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

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

Economic Benefit included in Violation No. 3

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

Screening Date 13-Jun-2007	Docket No. 2007-0944-PST-E	PCW		
Respondent John R. Preston dba Refugio Exxon North	<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 33874	<i>PCW Revision May 25, 2007</i>			
Reg. Ent. Reference No. RN102483823				
Media [Statute] Petroleum Storage Tank				
Enf. Coordinator Shontay Wilcher				
Violation Number <input type="text" value="5"/>				
Rule Cite(s)	30 Tex. Admin. Code § 334.10(b)			
Violation Description	Failed to maintain UST records and immediately make them available for inspection upon request by agency personnel.			
Base Penalty		<input type="text" value="\$10,000"/>		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
		Percent	<input type="text" value="0%"/>	
>> Programmatic Matrix				
Falsification				
Major			Moderate	Minor
<input type="text"/>			<input checked="" type="text" value="x"/>	<input type="text"/>
		Percent	<input type="text" value="10%"/>	
Matrix Notes	100% of the rule requirement was not met.			
		Adjustment	<input type="text" value="\$9,000"/>	
		<input type="text" value="\$1,000"/>		
Violation Events				
Number of Violation Events		<input type="text" value="1"/>	<input type="text" value="132"/>	
		Number of violation days		
<i>mark only one with an x</i>	daily	<input type="text"/>	Violation Base Penalty	
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input checked="" type="text" value="x"/>		
<input type="text" value="\$1,000"/>				
One single event is recommended based on documentation of the violation during the February 1, 2007 investigation.				
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount		<input type="text" value="\$46"/>	Violation Final Penalty Total	
		<input type="text" value="\$1,050"/>		
This violation Final Assessed Penalty (adjusted for limits)			<input type="text" value="\$1,050"/>	

Economic Benefit Worksheet

Respondent John R. Preston dba Refugio Exxon North
Case ID No. 33874
Reg. Ent. Reference No. RN102483823
Media Petroleum Storage Tank
Violation No. 5

Percent Interest	Years of Depreciation
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	\$1,000	1-Feb-2007	1-Jan-2008	0.9	\$46	n/a	\$46
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

Estimated cost to establish and maintain a record keeping system. The Date Required is the date of the investigation. The Final Date is the expected 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 \$1,000 TOTAL \$46

Screening Date 13-Jun-2007	Docket No. 2007-0944-PST-E	PCW		
Respondent John R. Preston dba Refugio Exxon North		<i>Policy Revision 2 (September 2002)</i>		
Case ID No. 33874		<i>PCW Revision May 25, 2007</i>		
Reg. Ent. Reference No. RN102483823				
Media [Statute] Petroleum Storage Tank				
Enf. Coordinator Shontay Wilcher				
Violation Number	6			
Rule Citè(s)	30 Tex. Admin. Code § 334.72			
Violation Description	Failed to report a suspected release to the agency within 24 hours of discovery. Specifically, inventory control records for December 2006 indicated a suspected release that was not reported to the TCEQ.			
	Base Penalty	\$10,000		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
				Percent <input type="text" value="0%"/>
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>
				Percent <input type="text" value="10%"/>
Matrix Notes	100% of the rule requirement was not met.			
				Adjustment <input type="text" value="\$9,000"/>
				<input type="text" value="\$1,000"/>
Violation Events				
	Number of Violation Events	<input type="text" value="1"/>	Number of violation days	<input type="text" value="1"/>
<i>mark only one with an x</i>	daily	<input type="text"/>		
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input checked="" type="text" value="x"/>		
				Violation Base Penalty <input type="text" value="\$1,000"/>
	One single event is recommended based on documentation of the violation during the February 1, 2007 investigation.			
Economic Benefit (EB) for this violation			Statutory Limit Test	
	Estimated EB Amount	<input type="text" value="\$50"/>	Violation Final Penalty Total	<input type="text" value="\$1,050"/>
			This violation Final Assessed Penalty (adjusted for limits)	<input type="text" value="\$1,050"/>

Economic Benefit Worksheet

Respondent John R. Preston dba Refugio Exxon North
Case ID No. 33874
Reg. Ent. Reference No. RN102483823
Media Petroleum Storage Tank
Violation No. 6

Percent Interest	Years of Depreciation
5.0	15

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

No commas or \$

Delayed Costs

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

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)	\$50	1-Jan-2007	2-Jan-2007	0.0	\$0	\$50	\$50

Notes for AVOIDED costs

Estimated cost to report a suspected release. The Date Required is the date of the suspected release. The Final Date is the date the report was due.

Approx. Cost of Compliance

\$50

TOTAL

\$50

Screening Date 13-Jun-2007	Docket No. 2007-0944-PST-E	PCW		
Respondent John R. Preston dba Refugio Exxon North	<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 33874	<i>PCW Revision May 25, 2007</i>			
Reg. Ent. Reference No. RN102483823				
Media [Statute] Petroleum Storage Tank				
Enf. Coordinator Shontay Wilcher				
Violation Number	7			
Rule Cite(s)	30 Tex. Admin. Code § 334.74			
Violation Description	Failed to investigate a suspected release within 30 days of discovery. Specifically, inventory control records for December 2006 indicated a suspected release that was not investigated.			
Base Penalty		\$10,000		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Potential	x	<input type="checkbox"/>	<input type="checkbox"/>	
		Percent	25%	
>> Programmatic Matrix				
Falsification				
Major			Moderate	Minor
<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>
		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				
		5	133	
		Number of violation days		
mark only one with an x	daily	<input type="checkbox"/>		
	monthly	x		
	quarterly	<input type="checkbox"/>		
	semiannual	<input type="checkbox"/>		
	annual	<input type="checkbox"/>		
	single event	<input type="checkbox"/>		
		Violation Base Penalty	\$12,500	
Five monthly events are recommended from the release investigation due date of January 31, 2007 to the June 13, 2007 screening date.				
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount		Violation Final Penalty Total	\$13,125	
\$46		\$13,125		
		This violation Final Assessed Penalty (adjusted for limits)		
		\$13,125		

Economic Benefit Worksheet

Respondent John R. Preston dba Refugio Exxon North
Case ID No. 33874
Reg. Ent. Reference No. RN102483823
Media Petroleum Storage Tank
Violation No. 7

Percent Interest	Years of Depreciation
5.0	15

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

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	\$1,000	31-Jan-2007	1-Jan-2008	0.9	\$46	n/a	\$46
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

Estimated cost to investigate a suspected release. The Date Required is the date the release investigation was due. The Final Date is the expected 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

\$1,000

TOTAL

\$46

Compliance History

Customer/Respondent/Owner-Operator:	CN601566896 John R. Preston	Classification: AVERAGE	Rating: 1.50
Regulated Entity:	RN102483823 REFUGIO EXXON NORTH	Classification: AVERAGE	Site Rating: 1.50
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	18549
Location:	601 N ALAMO ST, REFUGIO, TX, 78377	Rating Date: 9/1/2006 Repeat Violator: NO	
TCEQ Region:	REGION 14 - CORPUS CHRISTI		
Date Compliance History Prepared:	June 21, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	June 21, 2002 to June 21, 2007		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Shontay Wilcher	Phone:	(512) 239-2136

Site Compliance History Components

- | | |
|--|------------------------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | Yes |
| 3. If Yes, who is the current owner? | <u>John R. Preston</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>Preston Petroleum Inc</u> |
| 5. When did the change(s) in ownership occur? | <u>03/20/2003</u> |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 - 1 02/25/2003 (275774)
 - 2 05/30/2007 (538981)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - Date: 02/25/2003 (275774)
 - Self Report? NO
 - Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)[G]
30 TAC Chapter 37, SubChapter I 37.815(b)[G]
 - Description: Failure to provide acceptable financial assurance.

Classification: Moderate
- 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
JOHN R. PRESTON DBA
REFUGIO EXXON NORTH;
RN102483823

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2007-0944-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, corrective action of the respondent, and revocation of the respondent's fuel delivery certificate.

The respondent made the subject of this Order is John R. Preston dba Refugio Exxon North ("Mr. Preston").

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

FINDINGS OF FACT

1. Mr. Preston owns and operates a convenience store with retail sales of gasoline, located at 601 North Alamo, Refugio, Refugio County, Texas (the "Facility").
2. Mr. Preston's four underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Preston's USTs contain a regulated substance as defined in the rules of the Commission.
3. During an inspection on February 1, 2007, a TCEQ Corpus Christi Regional Office investigator documented that Mr. Preston:
 - a. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs;

- b. Failed to test the line leak detectors annually for performance and operational reliability. Specifically, Mr. Preston did not perform annual testing of the line leak detectors;
 - c. Failed to provide amended registration for any change or additional information regarding USTs within 30 days from the date of occurrence of the change or addition. Specifically, the registration was not updated to reflect the current operational status of the USTs at the Facility. Also, Mr. Preston failed to renew a delivery certificate by timely and proper submission of a completed UST registration and self-certification form to the agency at least 30 days before the expiration date of the delivery certificate. Specifically, the delivery certificate expired on October 31, 2005;
 - d. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, Mr. Preston accepted eight fuel deliveries without a delivery certificate on October 20, 2006, November 1, 2006, November 16, 2006, November 28, 2006, December 12, 2006, December 22, 2006, January 23, 2007, and January 24, 2007;
 - e. Failed to maintain UST records and immediately make them available for inspection upon request by agency personnel;
 - f. Failed to report a suspected release to the agency within 24 hours of discovery. Specifically, inventory control records for December 2006 indicated a suspected release that was not reported to the TCEQ; and
 - g. Failed to investigate a suspected release within 30 days of discovery. Specifically, inventory control records for December 2006 indicated a suspected release that was not investigated.
4. Mr. Preston received notice of the violations on or about June 4, 2007.
5. The Executive Director recognizes that on February 5, 2007 the line leak detectors were tested and passed.
6. 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 John R. Preston dba Refugio Exxon North" (the "EDPRP") in the TCEQ Chief Clerk's office on January 30, 2009.

7. By letter dated January 30, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Preston with notice of the EDPRP. According to the return receipt "green card", The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Mr. Preston received notice of the EDPRP.
8. More than 20 days have elapsed since Mr. Preston received notice of the EDPRP, provided by the Executive Director. Mr. Preston failed to file an answer, 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. Preston 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 Number 3.a., Mr. Preston violated 30 TEX. ADMIN. CODE § 37.815(a) and (b) by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.
3. As evidenced by Finding of Fact Number 3.b., Mr. Preston violated 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(c)(1) by failing to test the line leak detectors annually for performance and operational reliability. Specifically, Mr. Preston did not perform annual testing of the line leak detectors.
4. As evidenced by Finding of Fact Number 3.c., Mr. Preston violated 30 TEX. ADMIN. CODE §§ 334.7(d)(3), 334.8(c)(4)(A)(vii), 334.8(c)(4)(B), and 334.8(c)(5)(B)(ii) by failing to provide an amended registration for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current operational status of the USTs at the Facility. Also, Mr. Preston failed to renew a delivery certificate by timely and proper submission of a completed UST registration and self-certification form to the agency at least 30 days before the expiration date of the delivery certificate. Specifically, the delivery certificate expired on October 31, 2005.
5. As evidenced by Finding of Fact Number 3.d., Mr. Preston violated 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a) by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, Mr. Preston accepted eight fuel deliveries without a delivery certificate on October 20, 2006, November 1, 2006, November 16, 2006,

November 28, 2006, December 12, 2006, December 22, 2006, January 23, 2007, and January 24, 2007.

6. As evidenced by Finding of Fact Number 3.e., Mr. Preston violated 30 TEX. ADMIN. CODE § 334.10(b) by failing to maintain UST records and immediately make them available for inspection upon request by agency personnel.
7. As evidenced by Finding of Fact Number 3.f., Mr. Preston violated 30 TEX. ADMIN. CODE § 334.72 by failing to report a suspected release to the agency within 24 hours of discovery. Specifically, inventory control records for December 2006, indicated a suspected release that was not reported to the TCEQ.
8. As evidenced by Finding of Fact Number 3.g., Mr. Preston violated 30 TEX. ADMIN. CODE § 334.74 by failing to investigate a suspected release within 30 days of discovery. Specifically, inventory control records for December 2006 indicated a suspected release that was not investigated.
9. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director timely served Mr. Preston with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
10. As evidenced by Finding of Fact No. 8, Mr. Preston failed to file a timely answer, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Preston and assess the penalty recommended by the Executive Director
11. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Preston for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
12. An administrative penalty in the amount of twenty-six thousand two hundred fifty dollars (\$26,250.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
13. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.
14. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Mr. Preston's UST fuel delivery certificate if the Commission finds that good cause exists.

15. Good cause for revocation of Mr. Preston's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 3 and 6-8 and Conclusions of Law Nos. 2-10.

ORDERING PROVISIONS

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

1. Mr. Preston is assessed an administrative penalty in the amount of twenty-six thousand two hundred fifty dollars (\$26,250.00) for violations of state statutes and TCEQ rules. The payment of this administrative penalty and Mr. Preston'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: John R. Preston dba Refugio Exxon North; Docket No. 2007-0944-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. Preston's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Mr. Preston may submit an application for a new delivery certificate only after Mr. Preston has complied with all of the requirements of this Order.
3. Within 10 days after the effective date of this Order, Mr. Preston shall send his UST fuel delivery certificate to:

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

4. Mr. Preston shall undertake the following technical requirements:
- a. Immediately upon the effective date of the Commission Order Mr. Preston shall:
 - i. Begin maintaining all UST records, in accordance with 30 TEX. ADMIN. CODE § 334.10;
 - ii. Establish and implement a process for reporting a suspected release, in accordance with 30 TEX. ADMIN. CODE § 334.72; and
 - iii. Cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ, in accordance with 30 TEX. ADMIN. CODE § 334.8.
 - b. Within 30 days after the effective date of the Commission Order Mr Preston shall:
 - i. Submit documentation that demonstrates acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in accordance with the 30 TEX. ADMIN. CODE § 37.815 to:

Mr. Rob Norris, Senior Financial Analyst
Financial Assurance Unit, MC 184
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
 - ii. Conduct an investigation of the suspected release and implement appropriate corrective measures if required, in accordance with 30 TEX. ADMIN. CODE § 334.74; and
 - iii. Submit an amended registration to indicate the current operational status of the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.7.
 - c. Within 45 days after the effective date of the Commission Order, Mr. Preston 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.i. through 4.b.iii. 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. Preston shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 4.a.i. through 4.b.iii. 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:

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

5. All relief not expressly granted in this Order is denied.
6. The provisions of this Order shall apply to and be binding upon Mr. Preston. Mr. Preston 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. If Mr. Preston 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. Preston's failure to comply is not a violation of this Order. Mr. Preston shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Preston shall notify the Executive Director within seven days after Mr. Preston becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

8. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Preston shall be made in writing to the Executive Director. Extensions are not effective until Mr. Preston receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
9. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Preston if the Executive Director determines that Mr. Preston has not complied with one or more of the terms or conditions in this Order.
10. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
11. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

John R. Preston dba Refugio Exxon North
Docket No. 2007-0944-PST-E
Page 9

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF TRACY CHANDLER

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Tracy Chandler. 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 John R. Preston dba Refugio Exxon North” (the “EDPRP”) was filed with the Office of the Chief Clerk on January 30, 2009.

I sent the EDPRP to Mr. Preston at his last known address on January 30, 2009 via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed”. The first class mail has not been returned, indicating the respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

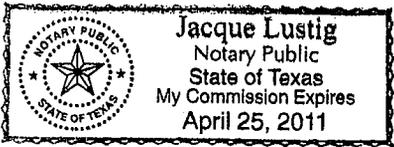
More than 20 days have elapsed since Mr. Preston received notice of the EDPRP. Mr. Preston failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference”.

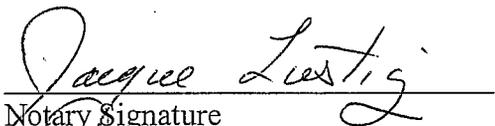


Tracy Chandler
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Tracy Chandler, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 23rd day of April, A.D., 2009.





Notary Signature