

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-1845-PST-E TCEQ ID: RN104315155 CASE NO.: 36861
RESPONDENT NAME: EDWARD WIESEN

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: 201 North Avenue C, Olney, Young County

TYPE OF OPERATION: property with one inactive underground storage tank

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 22, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Ms. Evette Alvarado, Water Enforcement Division, MC 169, (512) 239-2573

TCEQ Regional Contact: Mr. Mike Taylor, Abilene Regional Office, MC R-3, (325) 698-6125

Respondent: Mr. Edward Wiesen, Owner, 809 North Avenue G, Olney, Texas 76374

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: None</p> <p>Date of Investigation Relating to this Case: November 4, 2008</p> <p>Date of NOE Relating to this Case: November 14, 2008</p> <p>Background Facts: The EDP RP was filed March 18, 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, indicating that the Respondent received notice of the EDP RP. The Respondent failed to answer the EDP RP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Not yet in compliance. The Respondent does not have a delivery certificate.</p> <p>PST:</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 notify the agency of any change or additional information within 30 days from the date of occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)].</p>	<p>Total Assessed: \$ 3,675</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: \$ 3,675</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>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Within 30 days, permanently remove the UST system from service; 2. Within 45 days, submit an amended registration to reflect the correct ownership information and operational status of the UST system; and 3. Within 60 days, submit written certification demonstrating compliance with Ordering Provision Nos. 1 and 2.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES:	Assigned	17-Nov-2008		
	PCW	19-Feb-2009	Screening	2-Dec-2008
			EPA Due	

RESPONDENT/FACILITY INFORMATION	
Respondent	Edward Wiesen
Reg. Ent. Ref. No.	RN104315155
Facility/Site Region	3-Abilene
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36861	No. of Violations	2
Docket No.	2008-1845-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Evette Alvarado
		EC's Team	Enforcement Team
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$3,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	5.0% Enhancement	Subtotals 2, 3 & 7	\$175
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Notes: Enhancement recommended for one previous NOV for same or similar violations.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement	Subtotal 6	\$0
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Total EB Amounts \$2,636
 Approx. Cost of Compliance \$5,100
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,675
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$3,675
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,675
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DEFERRAL	0.0% Reduction	Adjustment	\$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.

PAYABLE PENALTY	\$3,675
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Screening Date 2-Dec-2008

Docket No. 2008-1845-PST-E

PCW

Respondent Edward Wiesen

Policy Revision 2 (September 2002)

Case ID No 36861

PCW Revision October 30, 2008

Reg. Ent. Reference No RN104315155

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Evette Alvarado

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<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 recommended for one previous NOV for same or similar violations.

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

Screening Date: 2-Dec-2008 **Docket No.:** 2008-1845-PST-E **PCW**
Respondent: Edward Wiesen *Policy Revision 2 (September 2002)*
Case ID No.: 36861 *PCW Revision October 30, 2008*
Reg. Ent. Reference No.: RN104315155
Media (Statute): Petroleum Storage Tank
Enf. Coordinator: Evette Alvarado

Violation Number: 1
Rule Cite(s): 30 Tex. Admin. Code § 334.47(a)(2)
Violation Description: Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, one underground storage tank ("UST") for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.
Base Penalty: \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	X			

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	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

Adjustment: \$2,500

Violation Events

Number of Violation Events: 1 **Number of violation days:** 28
Frequency:

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty: \$2,500

One monthly event is recommended from the record review date of November 4, 2008 to the screening date of December 2, 2008.

Good Faith Efforts to Comply **0.0% Reduction** **\$0**

Extraordinary: Before NOV NOV to EDRP/Settlement Offer
Ordinary:
N/A: X (mark with X)
Notes: The Respondent does not meet the good faith criteria for this violation.
Violation Subtotal: \$2,500

Economic Benefit (EB) for this violation		Statutory Limit Test	
Estimated EB Amount	\$2,632	Violation Final Penalty Total	\$2,625
This violation Final Assessed Penalty (adjusted for limits)		\$2,625	

Economic Benefit Worksheet

Respondent: Edward Wiesen
 Case ID No: 36861
 Reg. Ent. Reference No: RN104315155
 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	One-time Costs	EB Amount
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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	\$0	\$0
Record Keeping System				0:00	\$0	\$0	\$0
Training/Sampling				0:00	\$0	\$0	\$0
Remediation/Disposal				0:00	\$0	\$0	\$0
Permit Costs				0:00	\$0	\$0	\$0
Other (as needed)	\$5,000	22-Dec-1998	30-Jun-2009	10:53	\$2,682		\$2,682

Notes for DELAYED costs

Estimated minimum 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 expected date of compliance.

Avoided Costs

Item Description	ANNUALIZED (if avoided costs before entering item (except for one-time avoided costs))	Yrs	Interest Saved	One-time Costs	EB Amount
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 \$5,000

TOTAL \$2,682

Screening Date: 2-Dec-2008	Docket No.: 2008-1845-PST-E	PCW		
Respondent: Edward Wiesen		<i>Policy Revision 2 (September 2002)</i>		
Case ID No.: 36861		<i>PCW Revision October 30, 2008</i>		
Reg. Ent. Reference No.: RN104315155				
Media (Statute): Petroleum Storage Tank				
Enf. Coordinator: Evette Alvarado				
Violation Number: 12				
Rule Cite(s):	30 Tex. Admin. Code § 334.7(d)(3)			
Violation Description:	Failed to notify the agency of any change or additional information within 30 days from the date of occurrence of the change or addition. Specifically, the Respondent failed to update the UST registration form with the current owner information.			
	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	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
				Percent <input type="text" value="0%"/>
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
				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="28"/>
	mark only one with an x	daily	<input type="checkbox"/>	
		weekly	<input type="checkbox"/>	
		monthly	<input type="checkbox"/>	
		quarterly	<input type="checkbox"/>	
		semiannual	<input type="checkbox"/>	
		annual	<input type="checkbox"/>	
		single event	<input checked="" type="checkbox"/>	
				Violation Base Penalty <input type="text" value="\$1,000"/>
				One single event is recommended
Good Faith Efforts to Comply			Reduction	<input type="text" value="\$0"/>
		0.0%		
		Before NOV	NOV to EDPRP/Settlement Offer	
	Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>	
	Ordinary	<input type="checkbox"/>	<input type="checkbox"/>	
	N/A	<input checked="" type="checkbox"/>	(mark with x)	
Notes:	The Respondent does not meet the good faith criteria for this violation.			
				Violation Subtotal <input type="text" value="\$1,000"/>
Economic Benefit (EB) for this violation			Statutory Limit Test	
	Estimated EB Amount	<input type="text" value="\$3"/>	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: Edward Wiesen
 Case ID No: 36861
 Reg/Ent: Reference No: RN104315155
 Media: Petroleum Storage Tank
 Violation No: 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	No. comments	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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)		\$100	4-Nov-2008	15-Jul-2009	0:69	\$3	n/a	\$3

Notes for DELAYED costs

Estimated cost to submit an updated UST registration. Date required is the date of the record review. Final date is the expected date of compliance.

Avoided Costs

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

Disposal					0:00	\$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

\$100

TOTAL

\$3

Compliance History Report

Customer/Respondent/Owner-Operator: CN602616260 WIESEN, EDWARD S Classification: AVERAGE Rating: 2.33
Regulated Entity: RN104315155 JOHNIES PAINT & BODY Classification: AVERAGE Site Rating: 2.33
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 74012
REGISTRATION
Location: 201 N AVENUE C, OLNEY, YOUNG CO, TX
TCEQ Region: REGION 03 - ABILENE
Date Compliance History Prepared: December 01, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: September 01, 2003 to August 31, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Staff Name Phone: 239 - 1000

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? Edward Wiesen
4. If Yes, who was/were the prior owner(s)?
GOLDSMITH, JOHNNIE
5. When did the change(s) in ownership occur?
12/07/2004
6. Rating Date: 9/1/2008 Repeat Violator: NO

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 03/27/2007 (540795)

N/A

2 01/22/2008 (611796)

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

Date: 01/18/2008 (611796)

Self NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)

Description: Failure to perform permanent removal of an underground storage tank that has not met upgrade requirements.

Self NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)

Description: Failure to submit a UST Registration that reflects the current ownership information.

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
EDWARD WIESEN;
RN104315155

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER DOCKET NO. 2008-1845-PST-E

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

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

FINDINGS OF FACT

1. Mr. Wiesen owns property with one inactive underground storage tank located at 201 North Avenue C in Olney, Young County, Texas (the "Facility").
2. Mr. Wiesen's one UST underground storage tank is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Wiesen's UST contains a regulated substance as defined in the rules of the Commission.
3. During an investigation conducted on November 4, 2008, a TCEQ Central Office investigator documented that Mr. Wiesen:
 - 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; and,
 - b. Failed to notify the agency of any change or additional information within 30 days from the date of occurrence of the change or addition. Specifically, the Respondent failed to update the UST registration form with the current owner information.
4. Mr. Wiesen received notice of the violations on or about November 19, 2008.

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 Edward Wiesen" (the "EDPRP") in the TCEQ Chief Clerk's office on March 18, 2009.
6. By letter dated March 18, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Wiesen with notice of the EDPRP. 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. Wiesen received notice of the EDPRP.
7. More than 20 days have elapsed since Mr. Wiesen received notice of the EDPRP, provided by the Executive Director. Mr. Wiesen failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Wiesen is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs.7 and 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Wiesen 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., Mr. Wiesen failed to notify the agency of any change or additional information within 30 days from the date of occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3).
4. As evidenced by Finding of Fact Nos. 5 and 6 the Executive Director timely served Mr. Wiesen with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
5. As evidenced by Finding of Fact No.7, Mr. Wiesen 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. Wiesen 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 Mr. Wiesen 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.

7. An administrative penalty in the amount of three thousand six hundred seventy-five dollars (\$3,675.00) 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.

ORDERING PROVISIONS

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

1. Mr. Wiesen is assessed an administrative penalty in the amount of three thousand six hundred seventy-five dollars (\$3,675.00) for violations of the Texas Water Code, and the rules of the TCEQ. The payment of this administrative penalty and Mr. Wiesen'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: Edward Wiesen; Docket No. 2008-1845-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. Wiesen shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of the Commission Order, Mr. Wiesen shall 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 Order, Mr. Wiesen shall submit an amended registration to reflect the correct ownership information and operational status of the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

Registration and Reporting Section
Permitting and Registration Support Division, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- c. Within 60 days after the effective date of the Commission Order, Mr. Wiesen shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision No. 2.a. and 2.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.”

Mr. Wiesen shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions 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
Abilene Regional Office
Texas Commission on Environmental Quality
1977 Industrial Boulevard
Abilene, Texas 79602-7833

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

4. The provisions of this Order shall apply to and be binding upon Mr. Wiesen. Mr. Wiesen is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. If Mr. Wiesen 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. Wiesen's failure to comply is not a violation of this Order. Mr. Wiesen shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Wiesen shall notify the Executive Director within seven days after Mr. Wiesen becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Wiesen shall be made in writing to the Executive Director. Extensions are not effective until Mr. Wiesen receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Wiesen if the Executive Director determines that Mr. Wiesen has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF JACQUELYN BOUTWELL

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Jacquelyn Boutwell. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Edward Wiesen” (the “EDPRP”) was filed with the Office of the Chief Clerk on March 18, 2009.

The EDPRP was mailed to Mr. Wiesen at his last known address on March 18, 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 that Mr. Wiesen received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

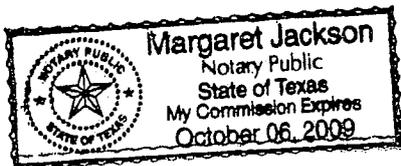
More than 20 days have elapsed since Mr. Wiesen received notice of the EDPRP. Mr. Wiesen failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.”



Jacquelyn Boutwell, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jacquelyn Boutwell, 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 4 day of May, A.D., 2009.





Notary Signature

