

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-0176-PST-E TCEQ ID: RN104999008 CASE NO.: 35317
RESPONDENT NAME: CURTIS CASHION

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 OCCURRED: 407 North Avenue C, Olney, Young County

TYPE OF OPERATION: Former retail gasoline service station

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 April 20, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Stephanie Frazee, Litigation Division, MC 175, (512) 239-3693
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019
TCEQ Enforcement Coordinator: Mr. Ross Fife, Waste Enforcement Section, MC 128, (512) 239-2541
TCEQ Regional Contact: Mr. Michael Taylor, Abilene Regional Office, MC R-3, (325) 698-6125
Respondent: Mr. Curtis Cashion, P.O. Box 352, Holliday, Texas 76366
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 26, 2007</p> <p>Date of NOE Relating to this Case: January 15, 2008</p> <p>Background Facts: The EDP RP was filed October 14, 2008, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDP RP on October 16, 2008. The EDFARP was filed December 19, 2008, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDFARP on December 26, 2008. The Respondent failed to answer the EDP RP or the EDFARP, 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 current delivery certificate.</p> <p>PST: Failed to permanently remove from service no later than 60 days after the prescribed update 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>Total Assessed: \$7,875</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: \$7,875</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this proposed Order.</p> <p>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 or bring it into compliance. 2. Within 45 days, submit written certification to demonstrate compliance with Ordering Provision No. 1.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 6, 2007

TCEQ

DATES	Assigned	22-Jan-2008	Screening	29-Jan-2008	EPA Due	
	PCW	25-Apr-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	Curtis Cashion
Reg. Ent. Ref. No.	RN104999008
Facility/Site Region	3-Abilene
Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	35317	No. of Violations	1	
Docket No.	2008-0176-PST-E	Order Type	1660	
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Ross Fife	
Multi-Media		EC's Team	Enforcement Team 7	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **Subtotals 2, 3, & 7**

Notes

Culpability **Subtotal 4**

Notes

Good Faith Effort to Comply **Subtotal 5**

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/> (mark with x)	<input type="checkbox"/>

Notes

Total EB Amounts **Subtotal 6**
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 29-Jan-2008

Docket No. 2008-0176-PST-E

PCW

Respondent Curtis Cashion

Policy Revision 2 (September 2002)

Case ID No. 35317

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN104999008

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Ross Fife

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 29-Jan-2008</p> <p>Respondent Curtis Cashion</p> <p>Case ID No. 35317</p> <p>Reg. Ent. Reference No. RN104999008</p> <p>Media [Statute] Petroleum Storage Tank</p> <p>Enf. Coordinator Ross Fife</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: 80px;" type="text" value="Failed to permanently remove from service no later than 60 days after the prescribed update one UST for which any applicable component of the system is not brought into timely compliance with the upgrade requirements. Specifically, there is one UST at the facility that is not currently in use that must be permanently removed from service or upgraded to comply with current regulations."/></p>	<p style="text-align: right;">Docket No. 2008-0176-PST-E</p> <p style="text-align: right;">PCW</p> <p style="text-align: right; font-size: small;">Policy Revision 2 (September 2002) PCW Revision November 6, 2007</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 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> </tr> <tr> <td>Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> <tr> <td>Potential</td> <td><input type="text" value="x"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>	Release	Major	Moderate	Minor	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<p>Harm</p> <p>Percent <input style="width:100%;" type="text" value="25%"/></p>
Release	Major	Moderate	Minor										
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>										
Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>										
>> Programmatic Matrix													
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">Falsification</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</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>	Falsification	Major	Moderate	Minor	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<p>Percent <input style="width:100%;" type="text" value="0%"/></p>				
Falsification	Major	Moderate	Minor										
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>										
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 <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:100%;" type="text" value="3"/></p> <p>Number of violation days <input style="width:100%;" type="text" value="64"/></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">daily</td> <td><input type="text"/></td> </tr> <tr> <td style="text-align: center;">monthly</td> <td><input type="text" value="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 style="text-align: center;">single event</td> <td><input type="text"/></td> </tr> </table>	daily	<input type="text"/>	monthly	<input type="text" value="x"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input type="text"/>	<p>Violation Base Penalty <input style="width:100%;" type="text" value="\$7,500"/></p>
daily	<input type="text"/>												
monthly	<input type="text" value="x"/>												
quarterly	<input type="text"/>												
semiannual	<input type="text"/>												
annual	<input type="text"/>												
single event	<input type="text"/>												
Three monthly events are recommended based on documentation of the violation during November 26, 2007 compliance investigation to the January 29, 2008 screening date.													
Economic Benefit (EB) for this violation													
Estimated EB Amount <input style="width:100%;" type="text" value="\$4,882"/>	Statutory Limit Test												
Violation Final Penalty Total <input style="width:100%;" type="text" value="\$7,875"/>													
This violation Final Assessed Penalty (adjusted for limits) <input style="width:100%;" type="text" value="\$7,875"/>													

Economic Benefit Worksheet

Respondent Curtis Cashion
Case ID No. 35317
Reg. Ent. Reference No. RN104999008
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
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No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$10,000	22-Dec-1998	24-Sep-2008	9.8	\$4,882	n/a	\$4,882

Notes for DELAYED costs

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

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$4,882

Compliance History

Customer/Respondent/Owner-Operator: CN603063637 CASHION, CURTIS Classification: AVERAGE Rating: 1.50
Regulated Entity: RN104999008 CURTIS CASHION Classification: AVERAGE Site Rating: 1.50
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 73983
REGISTRATION
Location: 406 N AVENUE C, OLNEY, TX, 76374 Rating Date: 9/1/2007 Repeat Violator: NO
TCEQ Region: REGION 03 - ABILENE
Date Compliance History Prepared: January 22, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: January 22, 2003 to January 22, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Ross Fife Phone: 512-239-2541

Site Compliance History Components

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

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 03/27/2007 (540789)
N/A
2 01/17/2008 (611797)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 03/27/2007 (540789)
Self Report? NO Classification Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)
Description: Failure to perform the permanent removal of an underground storage tank that has not met upgrade requirements.
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CURTIS CASHION,
RN104999008

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2008-0176-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's First Amended 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 Curtis Cashion ("Mr. Cashion").

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

FINDINGS OF FACT

1. Mr. Cashion owns a former retail gasoline service station located at 407 North Avenue C, Olney, Young County, Texas (the "Facility").
2. Mr. Cashion's one underground storage tank ("UST") is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Cashion's UST contains a regulated substance as defined in the rules of the Commission.
3. During an inspection on November 26, 2007, a TCEQ Abilene Regional Office investigator documented that Mr. Cashion failed to permanently remove from service no later than sixty days after the prescribed update one UST for which any applicable component of the system is not brought into timely compliance with the upgrade requirements. Specifically, there is one UST at the facility that is not currently in use that must be permanently removed from service or upgraded to comply with current regulations.
4. Mr. Cashion received notice of the violation on or about January 20, 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 Curtis Cashion" (the "EDPRP") in the TCEQ Chief Clerk's office on October 14, 2008.
6. By letter dated October 14, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Cashion with notice of the EDPRP. According to the return receipt "green card," Mr. Cashion received notice of the EDPRP on October 16, 2008, as evidenced by the signature on the card.
7. The Executive Director filed the "Executive Director's First Amended 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 Curtis Cashion" (the "EDFARP") in the TCEQ Chief Clerk's office on December 19, 2008.
8. By letter dated December 19, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Cashion with notice of the EDFARP. According to the return receipt "green card," Mr. Cashion received notice of the EDFARP on December 26, 2008, as evidenced by the signature on the card.
9. More than twenty days have elapsed since Mr. Cashion received notice of the EDPRP and the EDFARP provided by the Executive Director. Mr. Cashion failed to file an answer to the EDPRP or the EDFARP, 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. Cashion is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Cashion failed to permanently remove from service no later than sixty days after the prescribed update 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 Nos. 5, 6, 7, and 8, the Executive Director has timely served Mr. Cashion with proper notice of the EDPRP and the EDFARP as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).

4. As evidenced by Finding of Fact No. 9, Mr. Cashion has failed to file a timely answer to the EDPRP or the EDFARP, 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. Cashion and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Cashion for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of seven thousand eight hundred seventy five dollars (\$7,875.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Mr. Cashion is assessed an administrative penalty in the amount of seven thousand eight hundred seventy five dollars (\$7,875.00) for violations of TEX. WATER CODE ch. 26 and rules of the TCEQ. The payment of this administrative penalty and Mr. Cashion'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 thirty days after the effective date of this Order and shall be sent with the notation "Re: Curtis Cashion; Docket No. 2008-0176-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. Cashion shall undertake the following technical requirements:
 - a. Within thirty days after the effective date of the Commission Order, Mr. Cashion shall either permanently remove the UST or bring it into compliance with 30 TEX. ADMIN. CODE § 334.55.
 - b. Within forty five days after the effective date of the Commission Order, Mr. Cashion 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 No. 2.a. The certification shall be notarized by a State of Texas Notary Public and shall 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

and

Michael Taylor, Air/Waste Section Manager
Texas Commission on Environmental Quality
Abilene Regional Office
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. Cashion. Mr. Cashion 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. Cashion 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. Cashion's failure to comply is not a violation of this Order. Mr. Cashion shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Cashion shall notify the Executive Director within seven days after Mr. Cashion 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. Cashion shall be made in writing to the Executive Director. Extensions are not effective until Mr. Cashion 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. Cashion if the Executive Director determines that Mr. Cashion 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 STEPHANIE J. FRAZEE

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Stephanie J. Frazee. 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.

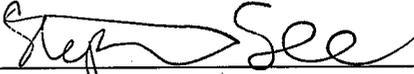
On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Curtis Cashion” (the “EDPRP”) with the Office of the Chief Clerk on October 14, 2008.

I sent the EDPRP to Mr. Cashion at his last known address on October 14, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Cashion received notice of the EDPRP on October 16, 2008, as evidenced by the signature on the card.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the “Executive Director’s First Amended 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 Curtis Cashion” (the “EDFARP”) with the Office of the Chief Clerk on December 19, 2008.

I sent the EDFARP to Mr. Cashion at his last known address on December 19, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Cashion received notice of the EDFARP on December 26, 2008, as evidenced by the signature on the card.

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



Stephanie J. Frazee
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Stephanie J. Frazee, 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 13th day of February, 2009.

Rochelle D. Collins

Notary Signature

Notary Stamp

