

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2008-0666-PST-E TCEQ ID: RN102249836 CASE NO.: 35766  
RESPONDENT NAME: JIMMY MILLER, EXECUTOR OF THE LATHAM MILLER ESTATE**

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

<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL 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 VIOLATIONS OCCURRED:** North side of Hwy 71 between East Willis Street and West Willis Street, Pontotoc, Mason County

**TYPE OF OPERATION:** Former gasoline service station with two underground storage tanks

**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. James Nolan, Air Enforcement Section, MC 149, (512) 239-6634  
**TCEQ Regional Contact:** Mr. Mark Newman, San Angelo Regional Office, MC R-8, (325) 655-9474  
**Respondent:** Mr. Jimmy Miller, Executor of the Latham Miller Estate, HC 13 Box 260, Fredonia, Texas, 76842  
**Respondent's Attorney:** Not represented by counsel on this enforcement matter.

2009 MAY -5 AM 11:54  
 CHIEF CLERKS OFFICE  
 TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**RESPONDENT NAME: JIMMY MILLER, EXECUTOR OF THE LATHAM MILLER ESTATE**  
**DOCKET NO.: 2008-0666-PST-E**

<b>VIOLATION SUMMARY CHART:</b>		
<b>VIOLATION INFORMATION</b>	<b>PENALTY CONSIDERATIONS</b>	<b>CORRECTIVE ACTIONS TAKEN/REQUIRED</b>
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> March 7, 2008</p> <p><b>Date of NOE Relating to this Case:</b> July 15, 2008</p> <p><b>Background Facts:</b> The EDPRP was filed October 30, 2008, 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 Respondent received notice of the EDPRP. The Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Current Compliance Status:</b> Not yet in compliance. The Respondent does not have a delivery certificate.</p> <p><b>PST:</b></p> <p>1. Failed to permanently remove from service, no later than sixty days after the prescribed implementation date, two USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirement. [30 TEX. ADMIN. CODE § 334.47(a)(2)].</p> <p>2. Failed to provide amended registration for any change or additional information regarding USTs within thirty days of the date on which the owner or operator first became aware of the change or addition. Specifically the registration was not updated to reflect the current ownership status. [30 TEX. ADMIN. CODE § 334.7(d)(3)].</p>	<p><b>Total Assessed:</b> \$11,550</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$11,550</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this proposed Order.</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. Within 30 days: <ol style="list-style-type: none"> <li>a. Permanently remove the UST system from service; and</li> <li>b. Submit an amended UST registration to indicate the current ownership status of the UST system.</li> </ol> </li> <li>2. Within 45 days, submit written certification to demonstrate compliance with Ordering Provisions Nos. 1.a. and 1.b.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision February 29, 2008

<b>TCEQ</b>	<b>DATES</b>	<b>Assigned</b>	31-Mar-2008	<b>Screening</b>	16-Apr-2008	<b>EPA Due</b>	
		<b>PCW</b>	13-Oct-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Jimmy Miller, Executor of the Latham Miller Estate
<b>Reg. Ent. Ref. No.</b>	RN102249836
<b>Facility/Site Region</b>	8-San Angelo
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	35766	<b>No. of Violations</b>	2
<b>Docket No.</b>	2008-0666-PST-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Enf. Coordinator</b>	James Nolan
<b>Multi-Media</b>		<b>EC's Team</b>	Enforcement Team 4
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$11,000
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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.

<b>Compliance History</b>	5% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$550
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Notes: Enhancement for one NOV with same or similar violations.

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

<b>Good Faith Effort to Comply</b>	0% Reduction	<b>Subtotal 5</b>	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

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

	0% Enhancement*	<b>Subtotal 6</b>	\$0
Total EB Amounts	\$5,084	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$10,100		

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$11,550
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	\$11,550
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$11,550
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<b>DEFERRAL</b>	0% Reduction	<b>Adjustment</b>	\$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.

<b>PAYABLE PENALTY</b>	\$11,550
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**Screening Date** 16-Apr-2008

**Docket No.** 2008-0666-PST-E

**PCW**

**Respondent** Jimmy Miller, Executor of the Latham Miller Estate

Policy Revision 2 (September 2002)

**Case ID No.** 35766

PCW Revision February 29, 2008

**Reg. Ent. Reference No.** RN102249836

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** James Nolan

**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 ( <i>number of NOVs meeting criteria</i> )	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	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 ( <i>number of judgements or consent decrees meeting criteria</i> )	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 ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	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 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	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%

<b>Screening Date</b> 16-Apr-2008	<b>Docket No.</b> 2008-0666-PST-E	<b>PCW</b>
<b>Respondent</b> Jimmy Miller, Executor of the Latham Miller Estate	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 35766	<i>PCW Revision February 29, 2008</i>	
<b>Reg. Ent. Reference No.</b> RN102249836		
<b>Media [Statute]</b> Petroleum Storage Tank		
<b>Enf. Coordinator</b> James Nolan		
<b>Violation Number</b> <input type="text" value="2"/>		
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 334.7(d)(3)	
<b>Violation Description</b>	Failed to provide amended registration for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first became aware of the change or addition, as documented in a compliance investigation conducted March 7, 2008. Specifically, the registration was not updated to reflect the current ownership status.	
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>

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

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

**>> Programmatic Matrix**

	<b>Falsification</b>	Major	Moderate	Minor	
	<input type="text"/>	x	<input type="text"/>	<input type="text"/>	
<b>Matrix Notes</b>	100% of the rule requirement was not met.				

**Adjustment**

**Violation Events**

Number of Violation Events        Number of violation days

<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	x

**Violation Base Penalty**

One single event is recommended.

**Economic Benefit (EB) for this violation      Statutory Limit Test**

Estimated EB Amount

Violation Final Penalty Total

**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** Jimmy Miller, Executor of the Latham Miller Estate  
**Case ID No.** 35766  
**Reg. Ent. Reference No.** RN102249836  
**Media** Petroleum Storage Tank  
**Violation No.** 2

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	27-May-1997	7-Jan-2009	11.6	\$58	n/a	\$58

Notes for DELAYED costs

Estimated cost to update the UST registration. Date Required is the date of the first NOV notifying the Respondent that a registration update is required. 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

\$100

**TOTAL**

\$58

<b>Screening Date</b>	16-Apr-2008	<b>Docket No.</b>	2008-0666-PST-E	<b>PCW</b>
<b>Respondent</b>	Jimmy Miller, Executor of the Latham Miller Estate			<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b>	35766			<i>PCW Revision February 29, 2008</i>
<b>Reg. Ent. Reference No.</b>	RN102249836			
<b>Media [Statute]</b>	Petroleum Storage Tank			
<b>Enf. Coordinator</b>	James Nolan			
<b>Violation Number</b>	1			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 334.47(a)(2)			
<b>Violation Description</b>	Failed to permanently remove from service, no later than 60 days after the prescribed implementation date, two underground storage tanks ("USTs") for which any applicable component of the system is not brought into timely compliance with the upgrade requirement, as documented in a compliance investigation conducted March 7, 2008.			
		<b>Base Penalty</b>	\$10,000	

>> Environmental, Property and Human Health Matrix

OR		<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor	
	<b>Actual</b>				
	<b>Potential</b>	x			<b>Percent</b> 25%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
					<b>Percent</b> 0%

**Matrix Notes**  
Human health or the environment could be exposed to pollutants which could exceed levels that are protective of human health and environmental receptors as a result of the violation.

**Adjustment** \$7,500

\$2,500

Violation Events

<b>Number of Violation Events</b>	4	<b>Number of violation days</b>	40	
<i>mark only one with an x</i>	daily			
	monthly	x		
	quarterly			
	semiannual			
	annual			
	single event			
		<b>Violation Base Penalty</b>	\$10,000	
Four monthly events (two months per UST) are recommended based the March 7, 2008 investigation date to the April 16, 2008 screening date.				

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b> \$5,026	<b>Violation Final Penalty Total</b> \$10,500
<b>This violation Final Assessed Penalty (adjusted for limits)</b> \$10,500	

## Economic Benefit Worksheet

**Respondent** Jimmy Miller, Executor of the Latham Miller Estate  
**Case ID No.** 35766  
**Reg. Ent. Reference No.** RN102249836  
**Media** Petroleum Storage Tank  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	7-Jan-2009	10.1	\$5,026	n/a	\$5,026

Notes for DELAYED costs

Estimated cost to permanently remove the UST system from service. Date Required is the date the upgrade requirement was due. 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**

\$5,026

# Compliance History

Customer/Respondent/Owner-Operator:	CN601199060	Latham Miller Estate	Classification: AVERAGE	Rating:
Regulated Entity:	RN102249836	PONTOTOC TEXACO	Classification: AVERAGE	Site Rating:
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION		12360
Location:	N SIDE OF HWY 71 BRICK BLDG BETWEEN EAST & WEST WILLIS			
TCEQ Region:	REGION 08 - SAN ANGELO			
Date Compliance History Prepared:	April 24, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	April 16, 2003 to April 16, 2008			

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

Name: James Nolan Phone: (512) 239-6634

### 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 11/08/2005 (435868)
    - 2 04/30/2007 (543781)
    - 3 03/24/2008 (638630)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
    - Date: 11/08/2005 (435868)
    - Self Report? NO Classification: Moderate
    - Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)
    - Description: Failure to notify of any change or additional information on the PST Registration/Self-Certification within 30 days from the date of the occurrence of the change or addition, or within 30 days from the date on which the owner or operator first became aware of the change or addition, as applicable.
    - Self Report? NO Classification: Minor
    - Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)
    - Description: Failure to permanently remove from service, the UST system no later than 60 days after the prescribed implementation schedule as defined in §334.44(b).
  - 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  
JIMMY MILLER, EXECUTOR OF  
THE LATHAM MILLER ESTATE,  
RN102249836

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BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

**DEFAULT ORDER**  
**DOCKET NO. 2008-0666-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 Jimmy Miller, Executor of the Latham Miller Estate (“Mr. Miller”).

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

**FINDINGS OF FACT**

1. Mr. Miller owns a former gasoline service station located on the north side of Highway 71 between East Willis Street and West Willis Street in Pontotoc, Mason County, Texas (the “Facility”).
2. Mr. Miller’s two underground storage tanks (“USTs”) are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Miller’s USTs contain a regulated substance as defined in the rules of the Commission.
3. During an investigation conducted on March 7, 2008, a TCEQ San Angelo Regional Office investigator documented that Mr. Miller:
  - a. Failed to permanently remove from service, no later than sixty days after the prescribed implementation date, two USTs for which any applicable component of the system is not brought into compliance with the upgrade requirement.

- b. Failed to provide amended registration for any change or additional information regarding USTs within thirty days of the date on which the owner or operator first became aware of the change or addition. Specifically, the registration was not updated to reflect the current ownership status.
4. Mr. Miller received notice of the violations on or about July 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 Jimmy Miller, Executor of the Latham Miller Estate" (the "EDPRP") in the TCEQ Chief Clerk's office on October 30, 2008.
6. By letter dated October 30, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Miller 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. Miller received notice of the EDPRP.
7. More than twenty days have elapsed since Mr. Miller received notice of the EDPRP provided by the Executive Director. Mr. Miller 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. Miller 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. Miller failed to permanently remove from service, no later than sixty days after the prescribed implementation date, two USTs for which any applicable component of the system is not brought into compliance with the upgrade requirement in violation of 30 TEX. ADMIN. CODE § 334.47(a)(2).
3. As evidenced by Finding of Fact No. 3.b., Mr. Miller failed to provide amended registration for any change or additional information regarding USTs within thirty days of the date on which the owner or operator first became aware 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 has timely served Mr. Miller with proper notice of the EDP RP, 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. Miller has failed to file a timely answer to the EDP RP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Miller 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. Miller for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of eleven thousand five hundred fifty dollars (\$11,550.00) 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. Miller is assessed an administrative penalty in the amount of eleven thousand five hundred fifty dollars (\$11,550.00) for violations of TEX. WATER CODE ch. 26 and rules of the TCEQ. The payment of this administrative penalty and Mr. Miller'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: Jimmy Miller, Executor of the Latham Miller Estate; Docket No. 2008-0666-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. Miller shall undertake the following technical requirements:
  - a. Within thirty days after the effective date of this Order, Mr. Miller shall permanently remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.55.
  - b. Within thirty days after the effective date of this Order, Mr. Miller shall submit amended registration to indicate the current ownership status of the UST system in accordance with 30 TEX. ADMIN. CODE § 334.7.
  - c. Within forty five days after the effective date of this Order, Mr. Miller 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. 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.”

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

Mark Newman, Waste Section Manager  
Texas Commission on Environmental Quality  
San Angelo Regional Office  
622 South Oakes, Suite K  
San Angelo, Texas 76903-7035

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. Miller. Mr. Miller 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. Miller 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. Miller's failure to comply is not a violation of this Order. Mr. Miller shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Miller shall notify the Executive Director within seven days after Mr. Miller 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. Miller shall be made in writing to the Executive Director. Extensions are not effective until Mr. Miller 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. Miller if the Executive Director determines that Mr. Miller 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.

**Jimmy Miller, Executor of the Latham Miller Estate**  
**DOCKET NO. 2008-0666-PST-E**  
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## **SIGNATURE PAGE**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

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**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 Jimmy Miller, Executor of the Latham Miller Estate” (the “EDPRP”) with the Office of the Chief Clerk on October 30, 2008.

I sent the EDPRP to Mr. Miller at his last known address on October 30, 2008, 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 twenty days have elapsed since Mr. Miller received notice of the EDPRP. Mr. Miller failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”

  
\_\_\_\_\_  
Stephanie J. Frazee  
Attorney  
Texas Commission on Environmental Quality

**Affidavit of Stephanie J. Frazee**  
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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 3<sup>rd</sup> day of February, A.D., 2009.

  
Notary Signature

Notary Stamp

