

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2008-0723-PST-E TCEQ ID: RN101828275 CASE NO.: 35840**  
**RESPONDENT NAME: GILBERT NAVARRO**

<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
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 211 East Main Street, Crosbyton, Crosby County</p> <p><b>TYPE OF OPERATION:</b> Property with three inactive underground storage tanks</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired May 18, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Mr. Benjamin O. Thompson, Litigation Division, MC 175, (512) 239-1297  Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019  <b>TCEQ Enforcement Coordinator:</b> Mr. Wallace Myers, Waste Enforcement Section, MC 128, (512) 239-6580  <b>TCEQ Regional Contact:</b> Mr. Jeff Bertl, Lubbock Regional Office, MC R-2, (806) 796-7092  <b>Respondent:</b> Mr. Gilbert Navarro, 515 South Ivy Street, Crosbyton, Texas 79322  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter.</p>		

CHIEF CLERKS OFFICE  
 2009 MAY -5 AM 11:57  
 TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<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> February 29, 2008</p> <p><b>Date of NOE Relating to this Case:</b> March 30, 2008</p> <p><b>Background Facts:</b> The EDPRP was filed September 3, 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 EDPRP on September 8, 2008. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Current Compliance Status:</b> The Respondent is not yet in compliance. The Respondent does not have a delivery certificate.</p> <p><b>PST:</b> Failed to permanently remove from service, no later than 60 days after the prescribed implementation date, three USTs for which any applicable component of the system was not brought into timely compliance with the upgrade requirements, and failed to maintain all piping, pump, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons [30 TEX. ADMIN. CODE §§ 334.47(a)(2) and 334.54(b)].</p>	<p><b>Total Assessed:</b> \$15,750</p> <p><b>Total Deferred:</b> \$0  <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> \$15,750</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, permanently remove the UST system from service.</li> <li>2. Within 45 days, submit written certification to demonstrate compliance with Ordering Provision No. 1.</li> </ol>



## Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision April 29, 2008

<b>DATES</b>	Assigned	18-Apr-2008	<b>Screening</b>	22-Apr-2008	<b>EPA Due</b>	
	PCW	31-Jul-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Gilbert Navarro		
Reg. Ent. Ref. No.	RN101828275		
Facility/Site Region	2-Lubbock	Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	35840	No. of Violations	1
Docket No.	2008-0723-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Wallace Myers
Multi-Media		EC's Team	Enforcement Team 6
Admin. Penalty \$	Limit Minimum	\$0	Maximum
			\$10,000

### Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<i>Subtotal 1</i>	\$15,000
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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.

Compliance History	5.0% Enhancement	<i>Subtotals 2, 3, &amp; 7</i>	\$750
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Notes	Enhancement for one Notice of Violation with same or similar violations.
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Culpability	No	0.0% Enhancement	<i>Subtotal 4</i>	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply	0.0% Reduction	<i>Subtotal 5</i>	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>
Ordinary	<input type="checkbox"/>	<input type="checkbox"/>
N/A	X	(mark with x)

Notes	The Respondent does not meet the good faith criteria.
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	0.0% Enhancement*	<i>Subtotal 6</i>	\$0
Total EB Amounts	\$542	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$10,000		

<b>SUM OF SUBTOTALS 1-7</b>	<i>Final Subtotal</i>	\$15,750
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<i>Adjustment</i>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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<i>Final Penalty Amount</i>	\$15,750
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<i>Final Assessed Penalty</i>	\$15,750
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<b>DEFERRAL</b>	0.0%	Reduction	<i>Adjustment</i>	\$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.
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<b>PAYABLE PENALTY</b>	\$15,750
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**Screening Date** 22-Apr-2008

**Docket No.** 2008-0723-PST-E

**PCW**

**Respondent** Gilbert Navarro

Policy Revision 2 (September 2002)

**Case ID No.** 35840

PCW Revision April 29, 2008

**Reg. Ent. Reference No.** RN101828275

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** Wallace Myers

### 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)**

N/A

**Adjustment Percentage (Subtotal 3)** 0%

>> **Compliance History Person Classification (Subtotal 7)**

N/A

**Adjustment Percentage (Subtotal 7)** 0%

>> **Compliance History Summary**

**Compliance History Notes**

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

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

<b>Screening Date</b> 22-Apr-2008	<b>Docket No.</b> 2008-0723-PST-E	<b>PCW</b>												
<b>Respondent</b> Gilbert Navarro		<i>Policy Revision 2 (September 2002)</i>												
<b>Case ID No.</b> 35840		<i>PCW Revision April 29, 2008</i>												
<b>Reg. Ent. Reference No.</b> RN101828275														
<b>Media [Statute]</b> Petroleum Storage Tank														
<b>Enf. Coordinator</b> Wallace Myers														
<b>Violation Number</b>	1													
<b>Rule Cite(s)</b>	30 Tex. Admin. Code §§ 334.47(a)(2) and 334.54(b)													
<b>Violation Description</b>	Failed to permanently remove from service, no later than 60 days after the prescribed implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements. Also, failed to maintain all piping, pump, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons.													
	<b>Base Penalty</b>	\$10,000												
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>														
<b>OR</b>	<b>Release</b>	<b>Harm</b>												
		Major      Moderate      Minor												
	Actual	<table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 50px; height: 15px;"></td><td style="width: 50px; height: 15px;"></td><td style="width: 50px; height: 15px;"></td></tr><tr><td style="text-align: center;">x</td><td></td><td></td></tr></table>				x								
x														
	Potential	<table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 50px; height: 15px;"></td><td style="width: 50px; height: 15px;"></td><td style="width: 50px; height: 15px;"></td></tr><tr><td style="text-align: center;">x</td><td></td><td></td></tr></table>				x								
x														
	<b>Percent</b>	25%												
<b>&gt;&gt; Programmatic Matrix</b>														
	<b>Falsification</b>	<b>Major</b>												
	Moderate	Minor												
	<table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 50px; height: 15px;"></td><td style="width: 50px; height: 15px;"></td><td style="width: 50px; height: 15px;"></td><td style="width: 50px; height: 15px;"></td></tr></table>													
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	<b>Percent</b>	0%												
<b>Matrix Notes</b>	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.													
	<b>Adjustment</b>	\$7,500												
		\$2,500												
<b>Violation Events</b>														
	<b>Number of Violation Events</b>	6												
		53												
		<b>Number of violation days</b>												
<i>mark only one with an x</i>	<table border="1" style="border-collapse: collapse;"> <tr><td style="width: 50px; height: 15px;">daily</td><td style="width: 50px; height: 15px;"></td></tr> <tr><td style="width: 50px; height: 15px;">monthly</td><td style="width: 50px; height: 15px; text-align: center;">x</td></tr> <tr><td style="width: 50px; height: 15px;">quarterly</td><td style="width: 50px; height: 15px;"></td></tr> <tr><td style="width: 50px; height: 15px;">semiannual</td><td style="width: 50px; height: 15px;"></td></tr> <tr><td style="width: 50px; height: 15px;">annual</td><td style="width: 50px; height: 15px;"></td></tr> <tr><td style="width: 50px; height: 15px;">single event</td><td style="width: 50px; height: 15px;"></td></tr> </table>	daily		monthly	x	quarterly		semiannual		annual		single event		
daily														
monthly	x													
quarterly														
semiannual														
annual														
single event														
	<b>Violation Base Penalty</b>	\$15,000												
	Six monthly events are recommended (two months per UST) based on documentation of the violation during the February 29, 2008 record review date to the April 22, 2008 screening date.													
<b>Economic Benefit (EB) for this violation</b>														
<b>Statutory Limit Test</b>														
	<b>Estimated EB Amount</b>	\$542												
	<b>Violation Final Penalty Total</b>	\$15,750												
	<b>This violation Final Assessed Penalty (adjusted for limits)</b>													
		\$15,750												

## Economic Benefit Worksheet

**Respondent** Gilbert Navarro  
**Case ID No.** 35840  
**Reg. Ent. Reference No.** RN101828275  
**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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	\$10,000	1-Nov-2007	1-Dec-2008	1.08	\$542	n/a	\$542

Notes for DELAYED costs

Estimated cost to permanently remove the UST system from service. The Date Required is the date when the Respondent became owner of the facility 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)

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime 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

<b>Approx. Cost of Compliance</b>	\$10,000	<b>TOTAL</b>	\$542
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# Compliance History

Customer/Respondent/Owner-Operator:	CN603262346    NAVARRO, GILBERT	Classification:	Rating:
Regulated Entity:	RN101828275    NAVARRO CARPENTRY	Classification:	Site Rating:
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	30890
Location:	211 E MAIN ST, CROSBYTON, TX, 79322		
TCEQ Region:	REGION 02 - LUBBOCK		
Date Compliance History Prepared:	May 09, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	May 09, 2003 to May 09, 2008		

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

Name: Shontay Wilcher Phone: (512) 239-2136

### Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? Yes
3. If Yes, who is the current owner? Navarro, Gilbert
4. If Yes, who was/were the prior owner(s)? Johnston, Joseph
5. When did the change(s) in ownership occur? 11/01/2007

### 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 11/13/2007 (599945)
  - 2 04/02/2008 (637572)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 

Date:	11/12/2007 (599945)	Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 334, SubChapter A 334.7(d)(3)				
Description:	Failure of current owner to amend, update, or change UST registration information within 30 days of its occurrence.				
Self Report?	NO	Classification:	Moderate		
Citation:	30 TAC Chapter 334, SubChapter C 334.47(a)(2)				
Description:	Failure of the owner to permanently remove from service all UST systems that have not been brought into timely compliance no later than 60 days after the prescribed implementation date [§334.44 (b)(1)(A): December 22, 1998].				
Self Report?	NO	Classification:	Moderate		
Citation:	30 TAC Chapter 334, SubChapter C 334.54(b)(2)				
Description:	Failure of owner to lock and secure each fill pipe cap to prevent access, tampering, or vandalism by unauthorized persons.				
- 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  
GILBERT NAVARRO,  
RN101828275**

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER DOCKET NO. 2008-0723-PST-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, formerly known as the Texas Natural Resource Conservation Commission ("Commission" or "TCEQ" or "TNRCC") 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 Gilbert Navarro ("Mr. Navarro").

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

### **FINDINGS OF FACT**

1. Mr. Navarro owns property with inactive underground storage tanks located at 211 East Main Street, in Crosbyton, Crosby County, Texas (the "Facility").
2. Mr. Navarro's three underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Navarro's USTs contain a regulated substance as defined in the rules of the Commission.
3. During an inspection on February 29, 2008, a TCEQ Lubbock Regional Office investigator documented that Mr. Navarro failed to permanently remove from service, no later than 60 days after the prescribed implementation date, three USTs for which any applicable component of the system was not brought into timely compliance with the upgrade requirements. Also, Mr. Navarro failed to maintain all piping, pump, manways, tank access points, and ancillary equipment in a capped, plugged, locked, or otherwise secure manner to prevent access, tampering, or vandalism by unauthorized persons.
4. Mr. Navarro received notice of the violation on or about April 4, 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 Gilbert Navarro" (the "EDPRP") in the TCEQ Chief Clerk's office on September 3, 2008.
6. By letter dated September 3, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Navarro with notice of the EDPRP. According to the return receipt "green card," Mr. Navarro received notice of the EDPRP on September 8, 2008, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Mr. Navarro received notice of the EDPRP, provided by the Executive Director. Mr. Navarro 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. Navarro 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. Navarro failed to permanently remove from service, no later than 60 days after the prescribed implementation date, three USTs for which any applicable component of the system was not brought into timely compliance with the upgrade requirements, and failed to maintain all piping, pump, manways, tank access points, and ancillary equipment in a capped, plugged, locked, or otherwise secure manner to prevent access, tampering, or vandalism by unauthorized persons., in violation of 30 TEX. ADMIN. CODE §§ 334.47(a)(2) and 334.54(b).
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director has timely served Mr. Navarro with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 7, Mr. Navarro has failed to file a timely answer to the EDPRP, 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. Navarro 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. Navarro 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 fifteen thousand seven hundred and fifty dollars (\$15,750.00) 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. Navarro is assessed an administrative penalty in the amount of fifteen thousand seven hundred fifty dollars (\$15,750.00) for violations of TEX. WATER CODE ch. 7 and rules of the TCEQ. The imposition of this administrative penalty and Navarro'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: Gilbert Navarro; Docket No. 2008-0723-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. Navarro shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Order, Mr. Navarro shall permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55.

- b. Within 45 days after the effective date of this Order, Mr. Navarro shall submit written certification as describe below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

The certification shall be submitted to:

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

Jeff Bertl, Waste Section Manager  
Texas Commission on Environmental Quality  
Lubbock Regional Office  
5012 50<sup>th</sup> Street, Suite 100  
Lubbock, Texas 79414-3421

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Navarro. Navarro 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. 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. Navarro shall be made in writing to the Executive Director. Extensions are not effective until Mr. Navarro receives written

approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. 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. Navarro if the Executive Director determines that Navarro has not complied with one or more of the terms or conditions in this Order.
7. 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.
8. 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

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For the Commission

**AFFIDAVIT OF BENJAMIN O. THOMPSON**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Benjamin O. Thompson. 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 Gilbert Navarro” (the “EDPRP”) with the Office of the Chief Clerk on September 3, 2008.

The EDPRP was sent to Gilbert Navarro (“Mr. Navarro”) at his last known address on September 3, 2008 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Navarro received notice of the EDPRP on September 8, 2008, as evidenced by the signature on the card.

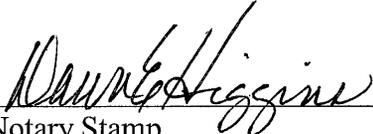
More than 20 days have elapsed since Mr. Navarro received notice of the EDPRP. Mr. Navarro failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”



\_\_\_\_\_  
Benjamin O. Thompson  
Attorney  
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 5<sup>th</sup> day of March, A.D., 2009.

  
\_\_\_\_\_  
Notary Stamp