

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2008-0914-PST-E TCEQ ID: RN101683373 CASE NO.: 35970**  
**RESPONDENT NAME: CARMEN MARTINEZ**

<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:** 305 South Seventh Street, Raymondville, Willacy County

**TYPE OF OPERATION:** Former retail gasoline service station with four USTs

**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 on 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. Wallace Myers, Waste Enforcement Section, MC 128, (512) 239-6580  
**TCEQ Regional Contact:** Mr. Jaime A. Garza, Harlingen Regional Office, MC R-15, (956) 430-6030  
**Respondent:** Ms. Carmen Martinez, P.O. Box 27, Sebastian, Texas 78594  
**Respondent's Attorney:** Not represented by counsel on this enforcement matter.

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date of Investigation Relating to this Case:</b>                      March 26, 2008</p> <p><b>Date of NOE Relating to this Case:</b>                      April 25, 2008</p> <p><b>Background Facts:</b>                      The EDRP was filed on October 6, 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 EDRP on October 8, 2008, as evidenced by the signature on the card. The EDFARP was filed on December 16, 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 20, 2008, as evidenced by the signature on the card. The Respondent failed to answer the EDRP or the EDFARP, 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 notify TCEQ of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition [30 TEX. ADMIN. CODE §334.7(d)(3)].</p> <p>2. Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, four USTs for which any applicable component of the system is not brought into 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)(2)].</p>	<p><b>Total Assessed:</b> \$22,050</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> \$22,050</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 USTs from service.</li> <li>2. Within 45 days, submit an amended registration to reflect the current ownership information and current operational status of the UST system.</li> <li>3. Within 60 days, submit written certification to demonstrate compliance with Ordering Provision Nos. 1 and 2.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision April 29, 2008

**TCEQ**

<b>DATES</b>	Assigned PCW	28-Apr-2008	Screening	5-May-2008	EPA Due	
		11-Sep-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	Carmen Martinez
Reg. Ent. Ref. No.	RN101683373
Facility/Site Region	15-Harlingen
Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	35970	No. of Violations	2
Docket No.	2008-0914-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

**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**  Enhancement Subtotals 2, 3, & 7

Notes

**Culpability**   Enhancement Subtotal 4

Notes

**Good Faith Effort to Comply**  Reduction Subtotal 5

	Before NOV	NOV to EDRP/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)

Notes

**Total EB Amounts**  0.0% Enhancement\* Subtotal 6   
\*Capped at the Total EB \$ Amount  
**Approx. Cost of Compliance**

**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 indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

**PAYABLE PENALTY**

Screening Date 5-May-2008

Docket No. 2008-0914-PST-E

PCW

Respondent Carmen Martinez

Policy Revision 2 (September 2002)

Case ID No. 35970

PCW Revision April 29, 2008

Reg. Ent. Reference No. RN101683373

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 judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same or similar violations.

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

**Screening Date** 5-May-2008 **Docket No.** 2008-0914-PST-E **PCW**  
**Respondent** Carmen Martinez *Policy Revision 2 (September 2002)*  
**Case ID No.** 35970 *PCW Revision April 29, 2008*  
**Reg. Ent. Reference No.** RN101683373  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Wallace Myers  
**Violation Number**   
**Rule Cite(s)**   
**Violation Description**   
**Base Penalty**

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text" value="10%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events  Number of violation days

mark only one with an x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="checkbox"/>

Violation Base Penalty

Economic Benefit (EB) for this violation

Estimated EB Amount

Statutory Limit Test

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

## Economic Benefit Worksheet

**Respondent** Carmen Martinez  
**Case ID No.** 35970  
**Reg. Ent. Reference No.** RN101683373  
**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
<b>Delayed Costs</b>							
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	26-Mar-2008	20-Feb-2009	0.91	\$5	n/a	\$5

**Notes for DELAYED costs** Estimated cost to accurately prepare and submit an updated UST registration. The date required is the date of the record review and the final date is the estimated date of compliance.

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Avoided Costs</b>							
<b>ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)</b>							
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance** **TOTAL**

\$100	\$5
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Screening Date 5-May-2008

Docket No. 2008-0914-PST-E

PCW

Respondent Carmen Martinez

Policy Revision 2 (September 2002)

Case ID No. 35970

PCW Revision April 29, 2008

Reg. Ent. Reference No. RN101683373

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm		
		Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent

Matrix Notes

Adjustment

Violation Events

Number of Violation Events

Number of violation days

mark only one with an x	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"/>

Violation Base Penalty

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** Carmen Martinez  
**Case ID No.** 35970  
**Reg. Ent. Reference No.** RN101683373  
**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
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No commas or \$

**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$10,000	6-Oct-2006	5-Feb-2009	2.34	\$1,168	n/a	\$1,168

Notes for DELAYED costs: Estimated cost to permanently remove the UST system from service. The date required is the date of ownership change 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				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs:

Approx. Cost of Compliance	\$10,000	TOTAL	\$1,168
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# Compliance History

Customer/Respondent/Owner-Operator:	CN603362849 MARTINEZ, CARMEN	Classification: N/A	Rating: N/A
Regulated Entity:	RN101683373 MARTINEZ CARMEN	Classification: AVERAGE	Site Rating: 2.33
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	34015
Location:	305 S 7TH ST, RAYMONDVILLE, TX, 78580	Rating Date: September 01 07 Repeat Violator: NI	
TCEQ Region:	REGION 15 - HARLINGEN		
Date Compliance History Prepared:	June 24, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	June 05, 2003 to June 05, 2008		

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

Name: Wallace Myers Phone: 512-239-6580

## 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?   | <u>CARMEN MARTINEZ</u>                                 |
| 4. If Yes, who was/were the prior owner(s)?  | <u>NESTOR AND CARMEN MARTINEZ</u><br><u>Ruben Romo</u> |
| 5. When did the change(s) in ownership occur?  | <u>5/29/2008</u><br><u>10/6/2006</u>                   |

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- |   |            |          |
|---|------------|----------|
| 1 | 11/10/2006 | (515023) |
| 2 | 05/08/2007 | (556185) |
| 3 | 04/25/2008 | (640233) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |              |  |          |                 |          |  |
|--------------|--|----------|-----------------|----------|--|
| Date:        | 11/10/2006   | (515023) |                 |          |  |
| Self Report? | NO   |          | Classification: | Minor    |  |
| Citation:    | 30 TAC Chapter 334, SubChapter A 334.7(d)(3)   |          |                 |          |  |
| Description: | Failure to amend, update or change registration information  |          |                 |          |  |
| Self Report? | NO   |          | Classification: | Moderate |  |
| Citation:    | 30 TAC Chapter 334, SubChapter C 334.47(a)(2)  |          |                 |          |  |
| Description: | Failure to perform the permanent removal of a UST that not met upgrade requirements.   |          |                 |          |  |
| Self Report? | NO   |          | Classification: | Moderate |  |
| Citation:    | 30 TAC Chapter 334, SubChapter C 334.54(b)(2)  |          |                 |          |  |
| Description: | Failure to assure that, with the exception of vent lines, all piping, pumps, manways, and ancillary equipment shall be capped, plugged, locked, and/or otherwise secured 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  
CARMEN MARTINEZ,  
RN101683373

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**DEFAULT ORDER**  
**DOCKET NO. 2008-0914-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 Carmen Martinez ("Ms. Martinez").

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

**FINDINGS OF FACT**

1. Ms. Martinez owns a former retail gasoline service station located at 305 South Seventh Street, Raymondville, Willacy County, Texas (the "Facility").
2. Ms. Martinez's four underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Ms. Martinez's USTs contain a regulated substance as defined in the rules of the Commission.
3. During an investigation conducted from March 26, 2008, to March 27, 2008, a TCEQ Harlingen Regional Office investigator documented that Ms. Martinez:
  - a. Failed to notify TCEQ of any change or additional information regarding the USTs within thirty days of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the correct ownership and current operational status of the UST system.
  - b. Failed to permanently remove from service, no later than sixty days after the prescribed upgrade implementation date, four USTs for which any applicable

component of the system is not brought into compliance with the upgrade requirements and by failing 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.

4. Ms. Martinez received notice of the violations on or about April 30, 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 Carmen Martinez" (the "EDPRP") in the TCEQ Chief Clerk's office on October 6, 2008.
6. By letter dated October 6, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Ms. Martinez with notice of the EDPRP. According to the return receipt "green card," Ms. Martinez received notice of the EDPRP on October 8, 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 Carmen Martinez" (the "EDFARP") in the TCEQ Chief Clerk's office on December 16, 2008.
8. By letter dated December 16, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Ms. Martinez with notice of the EDFARP. According to the return receipt "green card," Ms. Martinez received notice of the EDFARP on December 20, 2008, as evidenced by the signature on the card.
9. More than twenty days have elapsed since Ms. Martinez received notice of the EDPRP and the EDFARP provided by the Executive Director. Ms. Martinez 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, Ms. Martinez 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., Ms. Martinez failed to notify TCEQ of any change or additional information regarding the USTs within thirty days of the occurrence of the change or addition in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3).
3. As evidenced by Finding of Fact No. 3.b., Ms. Martinez failed to permanently remove from service, no later than sixty days after the prescribed upgrade implementation date, four USTs for which any applicable component of the system is not brought into 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 in violation of 30 TEX. ADMIN. CODE §§ 334.47(a)(2) and 334.54(b)(2).
4. As evidenced by Finding of Fact Nos. 5, 6, 7, and 8, the Executive Director has timely served Ms. Martinez 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).
5. As evidenced by Finding of Fact No. 9, Ms. Martinez 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 Ms. Martinez 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 Ms. Martinez 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 twenty two thousand fifty dollars (\$22,050.00) 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. Ms. Martinez is assessed an administrative penalty in the amount of twenty two thousand fifty dollars (\$22,050.00) for violations of TEX. WATER CODE ch. 26 and rules of the TCEQ. The payment of this administrative penalty and Ms. Martinez'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: Carmen Martinez; Docket No. 2008-0914-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. Ms. Martinez shall undertake the following technical requirements:
  - a. Within thirty days after the effective date of this Order, Ms. Martinez shall permanently remove the USTs from service in accordance with 30 TEX. ADMIN. CODE § 334.55.
  - b. Within forty five days after the effective date of this Order, Ms. Martinez shall submit an amended registration to reflect the current ownership information and current operational status of the UST system in accordance with 30 TEX. ADMIN. CODE § 334.7.
  - c. Within sixty days after the effective date of this Order, Ms. Martinez 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

with a copy to:

Jaime A. Garza, Waste Section Manager  
Texas Commission on Environmental Quality  
Harlingen Regional Office  
1804 West Jefferson Avenue  
Harlingen, Texas 78550-5247

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Ms. Martinez. Ms. Martinez 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 Ms. Martinez 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, Ms. Martinez's failure to comply is not a violation of this Order. Ms. Martinez shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Ms. Martinez shall notify the Executive Director within seven days after Ms. Martinez 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 Ms. Martinez shall be made in writing to the Executive Director. Extensions are not effective until Ms. Martinez 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 Ms. Martinez if the Executive Director determines that Ms. Martinez 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

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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.

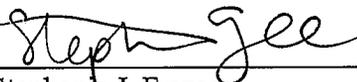
On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Carmen Martinez” (the “EDPRP”) with the Office of the Chief Clerk on October 6, 2008.

I sent the EDPRP to Ms. Martinez at her last known address on October 6, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Ms. Martinez received notice of the EDPRP on October 8, 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 Carmen Martinez” (the “EDFARP”) with the Office of the Chief Clerk on December 16, 2008.

I sent the EDFARP to Ms. Martinez at her last known address on December 16, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Ms. Martinez received notice of the EDFARP on December 20, 2008, as evidenced by the signature on the card.

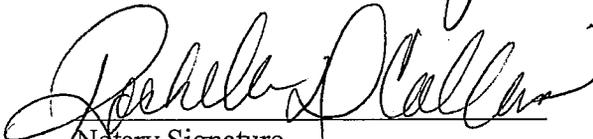
More than twenty days have elapsed since Ms. Martinez received notice of the EDPRP and the EDFARP. Ms. Martinez failed to file an answer to the EDPRP or the EDFARP, failed to request a hearing, and failed to schedule a settlement conference.”

  
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Stephanie J. Frazee  
Attorney  
Texas Commission on Environmental Quality

**Affidavit of Stephanie J. Frazee**  
**Page 2**

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 13<sup>th</sup> day of February A.D., 2009.

  
Notary Signature

Notary Stamp

