

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-0377-PST-E TCEQ ID: RN101737773 CASE NO.: 21549
RESPONDENT NAME: HECTOR SILVA, SR.

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

CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND 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 checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 604 West Comal Street, Pearsall, Frio County

TYPE OF OPERATION: Property with inactive 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. The Respondent has been making payments on a \$6,300 penalty for TCEQ Agreed Order Docket No. 2004-1776-PST-E; the current balance is \$434.00.

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 March 9, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Barham A. Richard, Litigation Division, MC 175, (512) 239-0107
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019
TCEQ Enforcement Coordinator: Mr. Rajesh Acharya, Waste Enforcement Section, MC 128, (512) 239-0577
TCEQ Regional Contact: Mr. Joel Anderson, San Antonio Regional Office, MC R-13, (210) 403-4010
Respondent: Mr. Hector Silva, Sr., 424 West Davila, Pearsall, Texas 78061
Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input checked="" type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: February 7, 2008</p> <p>Date of NOE Relating to this Case: February 20, 2008</p> <p>Background Facts: The EDPRP was filed July 21, 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 the Respondent received notice of the EDPRP. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: The Respondent is not yet in compliance. The Respondent does not have a current delivery certificate.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to provide written notification to the agency at least 30 days prior to initiating construction activities [30 TEX. ADMIN. CODE § 334.6]. Failed to comply with permanent removal from service requirements for USTs, and failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, two USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements [30 TEX. ADMIN. CODE §§ 334.47(a)(2) and 334.55(b) and TCEQ Agreed Order Docket No. 2004-1776-PST-E, Ordering Provision 2.a.i.]. 	<p>Total Assessed: \$111,800</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$111,800</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provision(s):</p> <p>The Respondent's UST delivery certificate is revoked immediately. The Respondent may submit an application for a new delivery certificate only after the Respondent complies with all of the requirements of this Order.</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Within 10 days, surrender his UST delivery certificate to the TCEQ; Immediately, submit construction notification for the permanent removal from service of the rest of the UST system; Within 30 days, permanently remove the UST system from service; and Within 45 days, submit written certification to demonstrate compliance with these Ordering Provisions.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision January 29, 2008

DATES	Assigned	25-Feb-2008	Screening	4-Mar-2008	EPA Due	
	PCW	2-Jun-2008				

RESPONDENT/FACILITY INFORMATION			
Respondent	Hector Silva, Sr.		
Reg. Ent. Ref. No.	RN101737773		
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	21549	No. of Violations	2
Docket No.	2008-0377-PST-E	Order Type	Findings
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Rajesh Acharya
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 \$86,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 30% Enhancement Subtotals 2, 3, & 7 \$25,800

Notes: Enhancement for two NOV's with same or similar violations and one prior enforcement order containing a denial of liability.

Culpability No 0% Enhancement Subtotal 4 \$0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction Subtotal 5 \$0

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

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

Total EB Amounts \$1,106 0% Enhancement* Subtotal 6 \$0
 Approx. Cost of Compliance \$10,100 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal \$111,800

OTHER FACTORS AS JUSTICE MAY REQUIRE 0% Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$111,800

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$111,800

DEFERRAL 0% Reduction Adjustment \$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

No deferral is recommended for Findings Orders.

PAYABLE PENALTY \$111,800

Screening Date 4-Mar-2008

Docket No. 2008-0377-PST-E

PCW

Respondent Hector Silva, Sr.

Policy Revision 2 (September 2002)

Case ID No. 21549

PCW Revision January 29, 2008

Reg. Ent. Reference No. RN10173773

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

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)	2	10%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	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%
Please Enter Yes or No			
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) 30%

>> 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 two NOVs with same or similar violations and one prior enforcement order containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 30%

Screening Date 4-Mar-2008	Docket No. 2008-0377-PST-E	PCW		
Respondent Hector Silva, Sr.	<small>Policy Revision 2 (September 2002)</small>			
Case ID No. 21549	<small>PCW Revision January 29, 2008</small>			
Reg. Ent. Reference No. RN101737773				
Media [Statute] Petroleum Storage Tank				
Enf. Coordinator Rajesh Acharya				
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 334.6			
Violation Description	Failed to provide written notification to the agency at least 30 days prior to initiating the construction activities. Specifically, the Respondent removed two dispensers and piping associated with the UST system without a construction notification.			
Base Penalty		\$10,000		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
		Percent	0%	
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	x	<input type="text"/>	<input type="text"/>
		Percent	10%	
Matrix Notes	100% of the rule requirement was not met.			
		Adjustment	\$9,000	
			\$1,000	
Violation Events				
	Number of Violation Events	1	Number of violation days	
		26		
<small>mark only one with an x</small>	daily	<input type="text"/>	Violation Base Penalty	
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
single event	x	\$1,000		
One single event is recommended based on documentation of the violation during the February 7, 2008 investigation.				
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount	\$105	Violation Final Penalty Total	\$1,300	
		This violation Final Assessed Penalty (adjusted for limits)	\$1,300	

Economic Benefit Worksheet

Respondent Hector Silva, Sr.
Case ID No. 21549
Reg. Ent. Reference No. RN101737773
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	\$100	7-Jan-2008	7-Feb-2008	1.0	\$5	\$100	\$105

Notes for AVOIDED costs

Estimated cost to notify the agency prior to initiating the construction activities. Date Required is 30 days prior to the commencement of the removal of the dispensers and piping. Final Date is the date of the investigation.

Approx. Cost of Compliance \$100

TOTAL \$105

Screening Date 4-Mar-2008

Docket No. 2008-0377-PST-E

PCW

Respondent Hector Silva, Sr.

Policy Revision 2 (September 2002)

Case ID No. 21549

PCW Revision January 29, 2008

Reg. Ent. Reference No. RN101737773

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

Violation Number 2

Rule Cite(s) TCEQ Agreed Order Docket No. 2004-1776-PST-E, Ordering Provision Nos. 2.a.i., 30 Tex. Admin. Code §§ 334.47(a)(2) and 334.55(b)

Violation Description

Failed to comply with permanent removal from service requirements for USTs. Also, failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, two USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements .

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 34

503 Number of violation days

mark only one with an x	daily	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$85,000

Thirty-four monthly events (two months per tank) are recommended from the order effective date of October 19, 2006 to the screening date of March 4, 2008.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,001

Violation Final Penalty Total \$110,500

This violation Final Assessed Penalty (adjusted for limits) \$110,500

Economic Benefit Worksheet

Respondent Hector Silva, Sr.
Case ID No. 21549
Reg. Ent. Reference No. RN10173773
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	19-Oct-2006	19-Oct-2008	2.0	\$1,001	n/a	\$1,001

Notes for DELAYED costs

Estimated expense to permanently remove the USTs from service. Date Required is the effective date of the agreed order. Final Date is the estimated compliance date.

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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 \$1,001

Compliance History

Customer/Respondent/Owner-Operator:	CN602736001 SILVA SR, HECTOR	Classification: AVERAGE	Rating: 31.75
Regulated Entity:	RN101737773 CHAPARRAL MINI MART	Classification: AVERAGE	Site Rating: 31.75
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	14303
Location:	604 W COMAL ST, PEARSALL, TX, 78061	Rating Date: September 01 07	Repeat Violator: NO
TCEQ Region:	REGION 13 - SAN ANTONIO		
Date Compliance History Prepared:	March 07, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	March 07, 2003 to March 07, 2008		

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

Name: Rajesh Acharya Phone: (512) 239-0577

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.
- | | |
|---|----------------------------|
| Effective Date: 10/19/2006 | ADMINORDER 2004-1776-PST-E |
| Classification: Moderate | |
| Citation: 30 TAC Chapter 334, SubChapter A 334.6 | |
| Description: Failure to comply with UST construction notification requirements. | |
| Classification: Moderate | |
| Citation: 30 TAC Chapter 334, SubChapter C 334.55(b) | |
| Description: Failure to comply with permanent-removal-from-service requirements | |
| Classification: Minor | |
| Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2) | |
| Description: Failure to permanently remove from service any UST system that was not brought into timely compliance w/in upgrade requirements no later than sixty (60) days after the prescribed implementation date | |
- 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.)
- | | | | |
|-----|---|------------|----------|
| N/A | 1 | 04/29/2004 | (270128) |
| | 2 | 09/28/2004 | (287730) |
| | 3 | 03/30/2007 | (554917) |
| | 4 | 02/19/2008 | (617857) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | |
|------------------|--|--------------------------|
| Date: 04/29/2004 | (270128) | |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 334, SubChapter A 334.6 | |
| Description: | Failure to comply with UST construction notification requirements. | |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 334, SubChapter C 334.55(b) | |
| Description: | Failure to comply with permanent-removal-from-service requirements | |

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)(2)
 Description: Failure to provide records for underground storage tanks.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)
 Description: Failure to permanently remove from service any UST system that was not brought into timely compliance with upgrade requirements no later than sixty (60) days after the prescribed implementation date
 Date: 03/27/2007 (554917)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 334, SubChapter A 334.6
 Description: Failure to comply with UST construction notification requirements.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 334, SubChapter C 334.55(b)
 Description: Failure to comply with permanent-removal-from-service requirements
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)
 Description: Failure to permanently remove from service any UST system that was not brought into timely compliance with upgrade requirements no later than sixty (60) days after the prescribed implementation date
 Self Report? NO Classification: Major
 Citation: 2A TWC Chapter 7, SubChapter A 7.101
 Rqmt Prov: ORDER Ordering Provisions 2.a-2.b.
 Description: Failure to comply with Ordering Provisions of Commission Docket No. 2004-1776-PST-E.

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
HECTOR SILVA, SR.;
RN101737773**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2008-0377-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 ch. 7 and 26, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty, corrective action of the respondent, and revocation of the respondent's fuel delivery certificate. The respondent made the subject of this Order is Héctor Silva, Sr. ("Mr. Silva").

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

FINDINGS OF FACT

1. Mr. Silva owns property with underground storage tanks located at 604 West Comal Street, Pearsall, Frio County, Texas (the "Facility").
2. Mr. Silva'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. Silva's USTs contain a regulated substance as defined in the rules of the Commission.
3. During an investigation conducted on February 7, 2008, a TCEQ San Antonio Regional Office investigator documented that Mr. Silva:
 - a. Failed to provide written notification to the agency at least 30 days prior to initiating the construction activities. Specifically, Mr. Silva removed two dispensers and piping associated with the UST system without a construction notification.
 - b. Failed to comply with permanent removal from service requirements for USTs, and failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, two USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.

4. Mr. Silva received notice of the violations on or about February 25, 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 Hector Silva, Sr." (the "EDPRP") in the TCEQ Chief Clerk's office on July 21, 2008.
6. By letter dated July 21, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Silva 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. Silva received notice of the EDPRP.
7. More than 20 days have elapsed since Mr. Silva received notice of the EDPRP, provided by the Executive Director. Mr. Silva 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. Silva 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. Silva failed to provide written notification to the agency at least 30 days prior to initiating the construction activities. Specifically, Mr. Silva removed two dispensers and piping associated with the UST system without a construction notification, in violation of 30 TEX. ADMIN. CODE § 334.6.
3. As evidenced by Finding of Fact No. 3.b., Mr. Silva failed to comply with permanent removal from service requirements for USTs and failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, two USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, in violation of 30 TEX. ADMIN. CODE §§ 334.47(a)(2) and 334.55(b) and TCEQ Agreed Order Docket No. 2004-1776-PST-E, Ordering Provision No. 2.a.i.
4. As evidenced by Finding of Fact Nos. 5 and 6 the Executive Director timely served Mr. Silva with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
5. As evidenced by Finding of Fact No. 7, Mr. Silva 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. Silva 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. Silva 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 one hundred eleven thousand eight hundred dollars (\$111,800.00) 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.
9. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Mr. Silva's UST delivery certificate if the Commission finds that good cause exists.
10. Good cause for revocation of Mr. Silva's UST delivery certificate exists as justified by Findings of Fact Nos. 2, 3, 5, 6, and 7 and Conclusions of Law Nos. 2, 3, 4, and 5.

ORDERING PROVISIONS

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

1. Mr. Silva is assessed an administrative penalty in the amount of one hundred eleven thousand eight hundred dollars (\$111,800.00) for violations of the Texas Water Code ch. 26, and the rules of the TCEQ. The payment of this administrative penalty and Mr. Silva'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: Hector Silva, Sr.; Docket No. 2008-0377-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. Silva's UST delivery certificate is revoked immediately upon the effective date of this Order. Mr. Silva may submit an application for a new delivery certificate only after Mr. Silva has complied with all of the requirements of this Order.
3. Within 10 days after the effective date of this Order, Mr. Silva shall send his UST delivery certificate to:

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

4. Mr. Silva shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Mr. Silva shall submit construction notification for the permanent removal from service of the rest of the UST system, in accordance with TEX. ADMIN. CODE § 334.6(b)(2);
 - b. Within 30 days after the effective date of this Order, Mr. Silva shall permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55; and
 - c. Within 45 days after the effective date of this Order, Mr. Silva shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 4.a. and 4.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

possibility of fine and imprisonment for knowing violations.”

Mr. Silva shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 4.a. and 4.b 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:

Joel Anderson, Waste Section Manager
Texas Commission on Environmental Quality
San Antonio Regional Office
14250 Judson Road
San Antonio, Texas 78233-4480

5. All relief not expressly granted in this Order is denied.
6. The provisions of this Order shall apply to and be binding upon Mr. Silva. Mr. Silva is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
7. If Mr. Silva 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. Silva's failure to comply is not a violation of this Order. Mr. Silva shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Silva shall notify the Executive Director within seven days after Mr. Silva becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
8. 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. Silva shall be made in writing to the Executive Director. Extensions are not effective until Mr. Silva receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

9. 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. Silva if the Executive Director determines that Mr. Silva has not complied with one or more of the terms or conditions in this Order.
10. 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.
11. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF BARHAM A. RICHARD

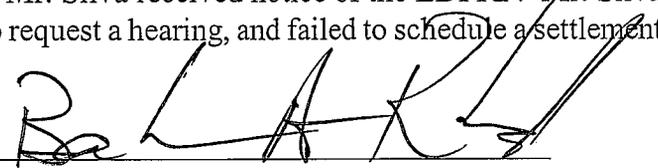
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

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

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Hector Silva, Sr.” (the “EDPRP”) was filed with the Office of the Chief Clerk on July 21, 2008.

The EDPRP was mailed to Mr. Silva at his last known address on July 21, 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 that Mr. Silva received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

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


Barham A. Richard, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Barham A. Richard, 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 8th day of January, A.D., 2009.

 **MICHELLE MOORE**
Notary Public
STATE OF TEXAS
Commission Exp. 08-08-2011
Notary without Bond


Notary Signature