EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-0391-PST-E **TCEQ ID:** RN101852515 **CASE NO.:** 37327

RESPONDENT NAME: Tim Kahir Helo

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	X PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Trio Kard Club, 200 West Broadway, Coahoma, Howard County

TYPE OF OPERATION: Property with two inactive underground storage tanks ("USTs")

SMALL BUSINESS: X **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 has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on August 3, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Ms. Brianna Carlson, Enforcement Division, Enforcement Team 6, MC R-15, (956) 430-6021; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387
Respondent: Mr. Tim Helo, Owner, 1300 Providence Place, Bakersfield, California 93314
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint _X_ Routine __ Enforcement Follow-up __ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** January 21, 2009 **Date of NOV/NOE Relating to this Case:** February 23, 2009 (NOE) **Background Facts:** This was a routine investigation. **WASTE** 1) Failure to notify the agency 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)]. 2) Failure to adequately protect the UST system from corrosion [30 TEX. ADMIN. CODE §§ 334.49(a)(1) and 334.54(c)(1), and TEX. WATER CODE § 26.3475(d)]. 3) Failure to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly [30 TEX. ADMIN. CODE § 334.49(c)(2)(C) and TEX. WATER CODE § 26.3475(d)]. 4) Failure to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years [30 TEX. ADMIN. CODE § 334.49(c)(4)(C) and TEX. WATER CODE § 26.3475(d)].	**Total Assessed:** $4,976 **Total Deferred:** $995 _X_ Expedited Settlement __ Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid (Due) to General Revenue:** $131 (remaining $3,850 due in 35 monthly payments of $110 each) **Site Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Person Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** The Order will require the Respondent to: a) Within 30 days after the effective date of this Agreed Order either: i) Provide adequate corrosion protection for the UST system, begin conducting bimonthly inspections of the cathodic protection system, and conduct the required triennial testing of the cathodic protection system; or ii) Permanently remove the UST system from service. b) Within 45 days after the effective date of this Agreed Order, submit an amended registration to reflect the owner's correct contact information and current operational status of the USTs; and c) Within 60 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a. and b.

Additional ID No(s).: PST 45731

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) *PCW Revision October 30, 2008*

TCEQ

DATES					
Assigned	3-Mar-2009				
PCW	19-Mar-2009	Screening	17-Mar-2009	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Tim Kahir Helo		
Reg. Ent. Ref. No.	RN101852515		
Facility/Site Region	7-Midland	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	37327	No. of Violations	2
Docket No.	2009-0391-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Brianna Carlson
		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* $3,500

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 *Subtotals 2, 3, & 7* $175

Notes: Enhancement for one NOV with same or similar violations.

Culpability No 0.0% Enhancement *Subtotal 4* $0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments *Subtotal 5* $0

Economic Benefit 0.0% Enhancement* *Subtotal 6* $0

Total EB Amounts $1,335
Approx. Cost of Compliance $1,700

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 *Final Subtotal* $3,675

OTHER FACTORS AS JUSTICE MAY REQUIRE 35.4% *Adjustment* $1,301

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with violation no. 2.

Final Penalty Amount $4,976

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* $4,976

DEFERRAL 20.0% Reduction *Adjustment* -$995

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY $3,981

Screening Date 17-Mar-2009 **Docket No.** 2009-0391-PST-E **PCW**

Respondent Tim Kahir Helo *Policy Revision 2 (September 2002)*

Case ID No. 37327 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN101852515

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Brianna Carlson

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%

		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) 5%

>> **Repeat Violator (Subtotal 3)**

No

Adjustment Percentage (Subtotal 3) 0%

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

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for one NOV with same or similar violations.

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

Screening Date 17-Mar-2009 **Docket No.** 2009-0391-PST-E **PCW**

Respondent Tim Kahir Helo

Policy Revision 2 (September 2002)

Case ID No. 37327

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101852515

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Brianna Carlson

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.7(d)(3)

Violation Description Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the owner's correct contact information and current operational status of the UST system.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events: 1

55 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $1,000

One single event is recommended based on documentation of the violation during the January 21, 2009 investigation.

Good Faith Efforts to Comply

0.0% Reduction $0

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

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

Violation Subtotal $1,000

Economic Benefit (EB) for this violation

Estimated EB Amount $4

Statutory Limit Test

Violation Final Penalty Total $1,422

This violation Final Assessed Penalty (adjusted for limits) $1,422

Economic Benefit Worksheet

Respondent Tim Kahir Helo
Case ID No. 37327
Reg. Ent. Reference No. RN101852515
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	$100	21-Jan-2009	21-Nov-2009	0.83	$4	n/a	$4
Other (as needed)				0.00	$0	n/a	$0
Notes for DELAYED costs	Estimated cost to accurately prepare and submit an updated UST registration. The date required is the date of the investigation 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: $100

TOTAL: $4

Screening Date 17-Mar-2009 **Docket No.** 2009-0391-PST-E **PCW**

Respondent Tim Kahir Helo *Policy Revision 2 (September 2002)*

Case ID No. 37327 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN101852515

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Brianna Carlson

Violation Number: 2

Rule Cite(s): 30 Tex. Admin. Code §§ 334.49(a)(1), (c)(2)(C), (c)(4)(C) and 334.54(c)(1), and Tex. Water Code § 26.3475(d)

Violation Description: Failed to adequately protect the UST system from corrosion. Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly. Also, failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years. Specifically, the triennial test had not been conducted.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

Release	Harm: Major	Moderate	Minor
Actual			
Potential	x		

OR

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: 1 — 55 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $2,500

One quarterly event is recommended based on documentation of the violation during the January 21, 2009 investigation to the March 17, 2009 screening date.

Good Faith Efforts to Comply

0.0% Reduction $0

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

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

Violation Subtotal $2,500

Economic Benefit (EB) for this violation

Estimated EB Amount $1,331

Statutory Limit Test

Violation Final Penalty Total $3,554

This violation Final Assessed Penalty (adjusted for limits) $3,554

Economic Benefit Worksheet

Respondent Tim Kahir Helo
Case ID No. 37327
Reg. Ent. Reference No. RN101852515
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	No commas or $						
Delayed Costs							
Equipment	$500	21-Jan-2009	21-Nov-2009	0.83	$1	$28	$29
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)				0.00	$0	n/a	$0
Notes for DELAYED costs	Estimated cost to adequately protect the UST system. The date required is the date of the investigation. 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]	$100	22-Nov-2008	21-Jan-2009	1.08	$5	$100	$105
Other (as needed)	$1,000	21-Jan-2006	21-Jan-2009	3.92	$196	$1,000	$1,196
Notes for AVOIDED costs	Avoided cost to conduct bimonthly inspection ($100) and completing the triennial test ($1000). The dates required are 60 days before the investigation and three years before the investigation respectively. The final date is the investigation date.						

Approx. Cost of Compliance	$1,600	TOTAL	$1,331

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603248998	Tim Kahir Helo	Classification: AVERAGE	Rating: 2.36
Regulated Entity:	RN101852515	TRIO KARD CLUB	Classification: AVERAGE	Site Rating: 3.50

ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	45731
Location:	200 W BROADWAY, COAHOMA, TX, 79511		
TCEQ Region:	REGION 07 - MIDLAND		
Date Compliance History Prepared:	March 19, 2009		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	March 19, 2004 to March 19, 2009		

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

Name: Brianna Carlson Phone: 956/430-6021

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?	Tim Kahir Helo
4. if Yes, who was/were the prior owner(s)?	Ackerly Oil Company Inc CJO, Inc
5. When did the change(s) in ownership occur?	10/2/2007 09/01/2007

6. Rating Date: 9/1/2008 Repeat Violator: NO

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 10/12/2007 (594003)
2 02/23/2009 (735971)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 10/11/2007 (594003)
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)
Description: Failure to update UST Registration Form

Self Report? NO Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(d)
30 TAC Chapter 334, SubChapter C 334.49(c)(4)(C)
30 TAC Chapter 334, SubChapter C 334.54(c)(1)
Description: Failure to inspect and test operability of CP at least once every three years

Self Report? NO Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(d)
30 TAC Chapter 334, SubChapter C 334.49(c)(2)(C)
30 TAC Chapter 334, SubChapter C 334.54(c)(1)

Description: Failure to observe rectifier readings at least once every 60 days

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	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
TIM KAHIR HELO	§	
RN101852515	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2009-0391-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Tim Kahir Helo ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns property with two inactive underground storage tanks ("USTs") at 200 West Broadway in Coahoma, Howard County, Texas (the "Facility").

2. The Respondent's two USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.

3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.

4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about February 28, 2009.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Four Thousand Nine Hundred Seventy-Six Dollars ($4,976) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Hundred Thirty One Dollars ($131) of the

administrative penalty and Nine Hundred Ninety-Five Dollars ($995) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Three Thousand Eight Hundred Fifty Dollars ($3,850) of the administrative penalty shall be payable in 35 monthly payments of One Hundred Ten Dollars ($110) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.

10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner of the Facility, the Respondent is alleged to have:

1. Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3), as documented during an investigation conducted on January 21, 2009. Specifically, the registration was not updated to reflect the owner's correct contact information and current operational status of the UST system.

2. Failed to adequately protect the UST system from corrosion, in violation of 30 TEX. ADMIN. CODE §§ 334.49(a)(1) and 334.54(c)(1), and TEX. WATER CODE § 26.3475(d), as documented during an investigation conducted on January 21, 2009.

3. Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly, in violation of 30 TEX. ADMIN. CODE § 334.49(c)(2)(C) and TEX. WATER CODE § 26.3475(d), as documented during an investigation conducted on January 21, 2009.

4. Failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years, in violation of 30 TEX. ADMIN. CODE § 334.49(c)(4)(C) and TEX. WATER CODE § 26.3475(d), as documented during an investigation conducted on January 21, 2009. Specifically, the triennial test had not been conducted.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Tim Kahir Helo, Docket No. 2009-0391-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. It is further ordered that the Respondent shall undertake the following technical requirements:

   a. Within 30 days after the effective date of this Agreed Order either:

      i. Provide adequate corrosion protection for the UST system, begin conducting bimonthly inspections of the cathodic protection system, and conduct the required triennial testing of the cathodic protection system, in accordance with 30 TEX. ADMIN. CODE § 334.49; or

      ii. Permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55; and

b. Within 45 days after the effective date of this Agreed Order, submit an amended registration to reflect the owner's correct contact information and current operational status of the USTs, in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

Registration and Reporting Section
Permitting and Registration Support Division, MC 138
Texas Commission on Environmental Quality
P.O. Box 12087
Austin, Texas 78711-3087

c. Within 60 days after the effective date of this Agreed Order, 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 fines 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:

Waste Section Manager
Midland Regional Office
Texas Commission on Environmental Quality
3300 North A Street, Building 4, Suite 107
Midland, Texas 79705-5404

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent.

4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

_____ 7/31/2009
For the Executive Director Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

_____ 5-27-09
Signature Date

Tim Kahir Helo _____ Owner
Name (Printed or typed) Title
Authorized Representative of
Tim Kahir Helo

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.