

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-1739-PST-E TCEQ ID: RN101680981 CASE NO.: 36713
RESPONDENT NAME: JESUS GUZMAN, JR.

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 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 VIOLATION(S) OCCURRED: Southwest corner of Las Palmas Street and Farm-to-Market 2360, Grulla, Starr County

TYPE OF OPERATION: property with two 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.

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 September 7, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019
TCEQ Enforcement Coordinator: Ms. Danielle Porras, Waste Enforcement Section, MC 128, (512) 239-2602
TCEQ Regional Contact: Mr. Jaime Garza, Waste Section Manager, Harlingen Regional Office, MC R-15, (956) 430-6030
Respondent: Mr. Jesus Guzman, Jr., Post Office Box 271, Grulla, Texas 78548
Respondent's Attorney: Not represented by counsel on this enforcement matter.

**RESPONDENT NAME: JESUS GUZMAN, JR.
DOCKET NO.: 2008-1739-PST-E**

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input 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: September 25, 2008</p> <p>Date of NOE Relating to this Case: October 16, 2008</p> <p>Background Facts: The EDFRP was filed April 13, 2009, 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. The EDFARP was filed June 19, 2009, 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. The Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Not yet in compliance. The Respondent does not have a delivery certificate.</p> <p>PST:</p> <p>1. Failed to update the self-certification registration to reflect changes to the system [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, a UST system for which any applicable component of the system is not brought into timely compliance with the upgraded requirements [30 TEX. ADMIN. CODE § 334.47(a)(2)].</p>	<p>Total Assessed: \$3,500</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: \$3,500</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 checked="" type="checkbox"/> High <input 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 Provisions:</p> <p>Respondent's UST fuel delivery certificate is revoked immediately. Respondent may submit an application for a new fuel delivery certificate only after he has complied 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"> 1. Within 10 days, the Respondent shall send his UST fuel delivery certificate to TCEQ. 2. Within 30 days: <ol style="list-style-type: none"> a. Permanently remove the UST system from service; and b. Obtain a self-certification registration to reflect changes to the UST system. 3. Within 45 days, submit written certification demonstrating compliance with Ordering Provision Nos. 2.a. and 2.b.

Penalty Calculation Worksheet (PCW)
 Policy Revision 2 (September 2002) PCW Revision October 30, 2008

TCEQ
DATES: Assigned 20-Oct-2008
 PCW 4-Mar-2009 Screening 24-Oct-2008 EPA Due

RESPONDENT/FACILITY INFORMATION
 Respondent Jesus Guzman, Jr.
 Reg. Ent. Ref. No. RN101680981
 Facility/Site Region 15-Harlingen Major/Minor Source Minor

CASE INFORMATION
 Enf./Case ID No. 36713 No. of Violations 2
 Docket No. 2008-1739-PST-E Order Type 1660
 Media Program(s) Petroleum Storage Tank Government/Non-Profit No
 Multi-Media Enf. Coordinator Danielle Porras
 EC's Team Enforcement Team 7
 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 -10.0% Enhancement Subtotals 2, 3, & 7

Notes

Culpability No 0.0% Enhancement Subtotal 4

Notes

Good Faith Effort to Comply Total Adjustments Subtotal 5

Economic Benefit 0.0% Enhancement* Subtotal-6

Total EB Amounts *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 indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

PAYABLE PENALTY

<p>Screening Date 24-Oct-2008</p> <p>Respondent Jesus Guzman, Jr.</p> <p>Case ID No. 36713</p> <p>Reg. Ent. Reference No. RN101680981</p> <p>Media [Statute] Petroleum Storage Tank</p> <p>Enf. Coordinator Danielle Porras</p> <p>Violation Number <input type="text" value="1"/></p> <p>Rule Cite(s) <input style="width:100%;" type="text" value="30 Tex. Admin. Code § 334.7(d)(3)"/></p> <p>Violation Description <input style="width:100%;" system."="" type="text" ust")="" value="Failed to update the self-certification registration to reflect changes to the system. Specifically, the registration is not updated to reflect the current status of the underground storage tank ("/></p>	<p style="text-align: right;">Docket No. 2008-1739-PST-E</p> <p style="text-align: right;">PCW</p> <p style="text-align: right; font-size: small;">Policy Revision 2 (September 2002)</p> <p style="text-align: right; font-size: small;">PCW Revision October 30, 2008</p>																			
<p>Base Penalty <input style="width:100%;" type="text" value="\$10,000"/></p>																				
<p>>> Environmental, Property and Human Health Matrix</p>																				
<p>OR</p>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td colspan="3" style="text-align: center;">Harm</td> <td></td> </tr> <tr> <td>Release</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> <td></td> </tr> <tr> <td>Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td rowspan="2" style="vertical-align: middle;">Percent <input style="width:50px;" type="text" value="0%"/></td> </tr> <tr> <td>Potential</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>		Harm				Release	Major	Moderate	Minor		Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input style="width:50px;" type="text" value="0%"/>	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Harm																			
Release	Major	Moderate	Minor																	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input style="width:50px;" type="text" value="0%"/>																
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>																	
<p>>> Programmatic Matrix</p>																				
<p>Matrix Notes</p>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> <td></td> </tr> <tr> <td>Falsification</td> <td style="text-align: center;">x</td> <td><input type="text"/></td> <td><input type="text"/></td> <td rowspan="2" style="vertical-align: middle;">Percent <input style="width:50px;" type="text" value="10%"/></td> </tr> </table> <p style="text-align: center; border: 1px solid black; padding: 5px; margin-top: 10px;">100% of the rule requirement was not met.</p>		Major	Moderate	Minor		Falsification	x	<input type="text"/>	<input type="text"/>	Percent <input style="width:50px;" type="text" value="10%"/>									
	Major	Moderate	Minor																	
Falsification	x	<input type="text"/>	<input type="text"/>	Percent <input style="width:50px;" type="text" value="10%"/>																
<p>Adjustment <input style="width:100%;" type="text" value="\$9,000"/></p>																				
<p><input style="width:100%;" type="text" value="\$1,000"/></p>																				
<p>Violation Events</p>																				
<p>Number of Violation Events <input style="width:50px;" type="text" value="1"/> <input style="width:50px;" type="text" value="1"/> Number of violation days</p>																				
<p>mark only one with an x</p>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr><td>daily</td><td><input type="text"/></td></tr> <tr><td>weekly</td><td><input type="text"/></td></tr> <tr><td>monthly</td><td><input type="text"/></td></tr> <tr><td>quarterly</td><td><input type="text"/></td></tr> <tr><td>semiannual</td><td><input type="text"/></td></tr> <tr><td>annual</td><td><input type="text"/></td></tr> <tr><td>single event</td><td style="text-align: center;">x</td></tr> </table>	daily	<input type="text"/>	weekly	<input type="text"/>	monthly	<input type="text"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	x					
daily	<input type="text"/>																			
weekly	<input type="text"/>																			
monthly	<input type="text"/>																			
quarterly	<input type="text"/>																			
semiannual	<input type="text"/>																			
annual	<input type="text"/>																			
single event	x																			
<p>Violation Base Penalty <input style="width:100%;" type="text" value="\$1,000"/></p>																				
<p>One single event is recommended.</p>																				
<p>Good Faith Efforts to Comply</p>																				
<p>0.0% Reduction <input 2"="" style="width:100%;" type="text" value="\$0</p> </td> </tr> <tr> <td colspan="/> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">Before NOV</td> <td style="text-align: center;">NOV to EDPRP/Sellment Offer</td> </tr> <tr> <td>Extraordinary</td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> <tr> <td>Ordinary</td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> <tr> <td>N/A</td> <td style="text-align: center;">x</td> <td style="text-align: center;">(mark with x)</td> </tr> </table> </p>			Before NOV	NOV to EDPRP/Sellment Offer	Extraordinary	<input type="text"/>	<input type="text"/>	Ordinary	<input type="text"/>	<input type="text"/>	N/A	x	(mark with x)							
	Before NOV	NOV to EDPRP/Sellment Offer																		
Extraordinary	<input type="text"/>	<input type="text"/>																		
Ordinary	<input type="text"/>	<input type="text"/>																		
N/A	x	(mark with x)																		
<p>Notes</p>	<p style="border: 1px solid black; padding: 5px; margin-top: 10px;">The Respondent does not meet the good faith criteria for this violation.</p>																			
<p>Violation Subtotal <input style="width:100%;" type="text" value="\$1,000"/></p>																				
<p>Economic Benefit (EB) for this violation Statutory Limit Test</p>																				
<p>Estimated EB Amount <input style="width:100%;" type="text" value="\$5"/> Violation Final Penalty Total <input style="width:100%;" type="text" value="\$1,000"/></p>																				
<p>This violation Final Assessed Penalty (adjusted for limits) <input style="width:100%;" type="text" value="\$1,000"/></p>																				

Economic Benefit Worksheet

Respondent Jesus Guzman, Jr.
 Case ID No. 36713
 Reg. Ent. Reference No. RN101680981
 Media Petroleum Storage Tank
 Violation No. 1

Percent Interest 5.0
 Years of Depreciation 15

Item Cost Date Required Final Date Yrs Interest Saved Onetime Costs EB Amount
 Item Description No commas or \$

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$100	15-Sep-2008	22-Jun-2009	0.77	\$0	\$5	\$5
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 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.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$5

<p>Screening Date 24-Oct-2008</p> <p>Respondent Jesus Guzman, Jr.</p> <p>Case ID No. 36713</p> <p>Reg. Ent. Reference No. RN101680981</p> <p>Media [Statute] Petroleum Storage Tank</p> <p>Enf. Coordinator Danielle Porras</p> <p>Violation Number <input type="text" value="2"/></p> <p>Rule Cite(s) <input type="text" value="30 Tex. Admin. Code § 334.47(a)(2)"/></p> <p>Violation Description <input type="text" value="Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgraded requirements."/></p>	<p>Docket No. 2008-1739-PST-E</p> <p style="text-align: right;">PCW <i>Policy Revision 2 (September 2002)</i> <i>PCW Revision October 30, 2008</i></p>																			
<p>Base Penalty <input type="text" value="\$10,000"/></p>																				
<p>>> Environmental, Property and Human Health Matrix</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td rowspan="3" style="width:10%; text-align: center; vertical-align: middle;">OR</td> <td colspan="3" style="text-align: center;">Harm</td> <td rowspan="3"></td> </tr> <tr> <td style="text-align: center;">Release</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> </tr> <tr> <td style="text-align: center;">Actual</td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td></td> <td style="text-align: center;">Potential</td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: right;">Percent <input type="text" value="25%"/></td> </tr> </table>		OR	Harm				Release	Major	Moderate	Minor	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>		Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Percent <input type="text" value="25%"/>
OR	Harm																			
	Release		Major		Moderate		Minor													
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>															
	Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Percent <input type="text" value="25%"/>															
<p>>> Programmatic Matrix</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">Falsification</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> <td rowspan="2"></td> </tr> <tr> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td colspan="4"></td> <td style="text-align: right;">Percent <input type="text" value="0%"/></td> </tr> </table> <p>Matrix Notes <input type="text" value="Human health or the environment will or could be exposed to pollutants which would exceed protective levels."/></p> <p style="text-align: right;">Adjustment <input type="text" value="\$7,500"/></p>		Falsification	Major	Moderate	Minor		<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>					Percent <input type="text" value="0%"/>					
Falsification	Major	Moderate	Minor																	
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>																	
				Percent <input type="text" value="0%"/>																
<p><input type="text" value="\$2,500"/></p>																				
<p>Violation Events</p> <p>Number of Violation Events <input type="text" value="1"/> <input type="text" value="29"/> Number of violation days</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td rowspan="6" style="width:10%; text-align: center; vertical-align: middle;">mark only one with an x</td> <td style="text-align: center;">daily</td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td style="text-align: center;">weekly</td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td style="text-align: center;">monthly</td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> </tr> <tr> <td style="text-align: center;">quarterly</td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td style="text-align: center;">semiannual</td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td style="text-align: center;">annual</td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td style="text-align: center;">single event</td> <td style="text-align: center;"><input type="text"/></td> </tr> </table> <p style="text-align: right;">Violation Base Penalty <input type="text" value="\$2,500"/></p> <p><input type="text" value="One monthly event is recommended based on documentation of the violation during the September 25, 2008 investigation to the October 24, 2008 screening date."/></p>		mark only one with an x	daily	<input type="text"/>	weekly	<input type="text"/>	monthly	<input checked="" type="checkbox"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input type="text"/>				
mark only one with an x	daily		<input type="text"/>																	
	weekly		<input type="text"/>																	
	monthly		<input checked="" type="checkbox"/>																	
	quarterly		<input type="text"/>																	
	semiannual		<input type="text"/>																	
	annual	<input type="text"/>																		
single event	<input type="text"/>																			
<p>Good Faith Efforts to Comply <input type="text" value="0.0%"/> Reduction <input type="text" value="\$0"/></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">Before NOV</td> <td style="text-align: center;">NOV to EDRP/Settlement Offer</td> </tr> <tr> <td style="text-align: center;">Extraordinary</td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td style="text-align: center;">Ordinary</td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td style="text-align: center;">N/A</td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;">(mark with x)</td> </tr> </table> <p>Notes <input type="text" value="The Respondent does not meet the good faith criteria for this violation."/></p> <p style="text-align: right;">Violation Subtotal <input type="text" value="\$2,500"/></p>			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)							
	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)																		
<p>Economic Benefit (EB) for this violation Statutory Limit Test</p> <p>Estimated EB Amount <input type="text" value="\$2,627"/> Violation Final Penalty Total <input type="text" value="\$2,500"/></p> <p style="text-align: right;">This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$2,500"/></p>																				

Economic Benefit Worksheet

Respondent Jesus Guzman, Jr.
Case ID No. 36713
Reg. Ent. Reference No. RN101680981
Media Petroleum Storage Tank
Violation No. 2

Percent Interest 5.0
Years of Depreciation 15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description 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)	\$5,000	22-Dec-1998	22-Jun-2009	10.51	\$2,627	n/a	\$2,627

Notes for DELAYED costs

Estimated minimum cost to permanently remove the UST system with unknown capacity. The Date Required is the date when the Respondent was required to upgrade the UST system 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

\$5,000

TOTAL

\$2,627

Compliance History Report

Customer/Respondent/Owner-Operator: CN603197179 GUZMAN, JESUS JR Classification: HIGH Rating: 0.00
Regulated Entity: RN101680981 GRULLA GRO & SER STA Classification: AVERAGE Site Rating: 3.01
BY DEFAULT
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 21846
REGISTRATION
Location: Located at the SW corner of Las Palmas Street and FM 2360, Grulla, Texas Rating Date: 9/1/2008 Repeat Violator: NO
TCEQ Region: REGION 15 - HARLINGEN
Date Compliance History: October 21, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: October 21, 2003 to October 21, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Danielle Porras Phone: (512) 239-2602

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
N/A
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
 - 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
JESUS GUZMAN, JR.;
RN101680981**

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER
DOCKET NO. 2008-1739-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 and revocation of the respondent's fuel delivery certificate. The respondent made the subject of this Order is Jesus Guzman, Jr. ("Mr. Guzman").

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

FINDINGS OF FACT

1. Mr. Guzman owns a property with two inactive underground storage tanks ("USTs") located at southwest corner of Las Palmas Street and Farm-to-Market 2360 in Grulla, Starr County, Texas (the "Facility").
2. Mr. Guzman's two underground storage tank(s) ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Guzman's USTs contain a regulated substance as defined in the rules of the Commission.
3. During an investigation conducted on September 25, 2008, a TCEQ Regional Office investigator documented that Mr. Guzman:
 - a. Failed to update the self-certification registration to reflect changes to the system; and,
 - b. Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgraded requirements.

4. Mr. Guzman received notice of the violations on or about October 21, 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 Jesus Guzman, Jr." (the "EDPRP") in the TCEQ Chief Clerk's office on April 13, 2009.
6. By letter dated April 13, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Guzman 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. Guzman received notice of the EDPRP.
7. More than 20 days have elapsed since Mr. Guzman received notice of the EDPRP, provided by the Executive Director. Mr. Guzman failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.
8. 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 Jesus Guzman, Jr." (the "EDFARP") in the TCEQ Chief Clerk's office on June 19, 2009.
9. By letter dated June 19, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Guzman with notice of the EDFARP. 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. Guzman received notice of the EDFARP.
10. More than 20 days have elapsed since Mr. Guzman received notice of the EDFARP, provided by the Executive Director. Mr. Guzman failed to file an answer to 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, Mr. Guzman 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. Guzman failed to update the self-certification registration to reflect changes to the system, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3).

3. As evidenced by Finding of Fact No. 3.b., Mr. Guzman failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgraded requirements, in violation of 30 TEX. ADMIN. CODE § 334.47(a)(2).
4. As evidenced by Finding of Fact Nos. 5, 6, 8 and 9 the Executive Director timely served Mr. Guzman with proper notice of the EDPRP and EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
5. As evidenced by Finding of Fact Nos. 7 and 10, Mr. Guzman failed to file a timely answer 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. Guzman 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. Guzman for violations of the Texas Water 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 three thousand five hundred dollars (\$3,500.00) 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. Guzman's UST fuel delivery certificate if the Commission finds that good cause exists.
10. Good cause for revocation of Mr. Guzman's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2, 3, 5, 6, 7, 8, 9, and 10 and Conclusions of Law Nos. 2, 3, 4, and 5.

ORDERING PROVISIONS

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

1. Mr. Guzman is assessed an administrative penalty in the amount of three thousand five hundred dollars (\$3,500.00) for violations of the Texas Water Code, and the rules of the TCEQ. The payment of this administrative penalty and Mr. Guzman'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: Jesus Guzman, Jr.; Docket No. 2008-1739-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. Guzman's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Mr. Guzman may submit an application for a new fuel delivery certificate only after Mr. Guzman has complied with all of the requirements of this Order.
3. Within 10 days after the effective date of this Order, Mr. Guzman shall send his UST fuel 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. Guzman shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order, Mr. Guzman shall permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55; and
 - b. Within 30 days after the effective date of this Order, Mr. Guzman shall obtain a self-certification registration to reflect changes to the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.7; and

- c. Within 45 days after the effective date of this Order, Mr. Guzman shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 4.a. through 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. Guzman shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 4.a. through 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:

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

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

Jesus Guzman, Jr.
Docket No. 2008-1739-PST-E
Page 7

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF JACQUELYN BOUTWELL

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Jacquelyn Boutwell. 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 Jesus Guzman, Jr.” (the “EDPRP”) was filed with the Office of the Chief Clerk on April 13, 2009.

The EDPRP was mailed to Mr. Guzman at his last known address on April 13, 2009 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. Guzman received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

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

On behalf of the Executive Director of the Texas Commission on Environmental Quality, 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 Jesus Guzman, Jr.” (the “EDFARP”) was filed with the Office of the Chief Clerk on June 19, 2009.

The EDFARP was mailed to Mr. Guzman at his last known address on June 19, 2009 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. Guzman received notice of the EDFARP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

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



Jacquelyn Boutwell, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jacquelyn Boutwell, 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 21 day of July, A.D., 2009.





Notary Signature