

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO. 2009-0556-PST-E TCEQ ID RN102229465 CASE NO. 37700**  
**RESPONDENT NAME: WILLIAM RANDLE MCLARRIN**

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

**SITE WHERE VIOLATION(S) OCCURRED:** 10260 U.S. Highway 190 East, Pointblank, San Jacinto County

**TYPE OF OPERATION:** Property containing three inactive underground storage tanks

**SMALL BUSINESS:**  Yes  No  N/A

**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 December 21, 2009. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Ms. Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503  
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

**TCEQ Enforcement Coordinator:** Ms. Brianna Carlson, Waste Enforcement Section, MC R-15, (956) 430-6021

**TCEQ Regional Contact:** Mr. Derek Eades, Beaumont Regional Office, MC R-10, (409) 898-3838

**Respondent:** Mr. William Randle McLarrin, 101 Barton Road, Oak Grove, Louisiana 71263; and  
 10260 U.S. Highway 190 East, Pointblank, Texas 77364

**Respondent's Attorney:** Not represented by counsel on this enforcement matter.

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> April 21, 2009</p> <p><b>Date of NOE Relating to this Case:</b> May 14, 2009</p> <p><b>Background Facts:</b> The EDPRP was filed on September 18, 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, 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><b>Current Compliance Status:</b> The Respondent has not yet submitted documentation to certify compliance with the technical requirements. The Respondent does not have a current delivery certificate and owes \$3,045.48 in past-due fees.</p> <p><b>PST:</b></p> <ol style="list-style-type: none"> <li>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 upgrade requirements [30 TEX. ADMIN. CODE § 334.47(a)(2)].</li> <li>Failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0025332U for fiscal years 1989 through 2007 [30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702].</li> </ol>	<p><b>Total Assessed:</b> \$5,600</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$5,600</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><b>Site Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Respondent's delivery certificate is revoked immediately. The Respondent must surrender his delivery certificate to the TCEQ within 10 days, and may apply for a new delivery certificate only after complying with all the terms and conditions of this order.</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Within 30 days;             <ol style="list-style-type: none"> <li>Permanently remove the UST system from service; and</li> <li>Submit payment for all outstanding fees; including any associated penalties and interest.</li> </ol> </li> <li>Within 45 days, submit written certification demonstrating compliance with Ordering Provisions Nos. 1.a. and 1.b.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	Assigned	27-May-2009			
	PCW	2-Sep-2009	Screening	27-May-2009	EPA Due

<b>RESPONDENT/FACILITY INFORMATION</b>					
Respondent	William Randle McLarrin				
Reg. Ent. Ref. No.	RN102229465				
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor		

<b>CASE INFORMATION</b>					
Enf./Case ID No.	37700	No. of Violations	2		
Docket No.	2009-0556-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

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$5,000</b>
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	12.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$600</b>
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Notes: Enhancement for two NOVs with same or similar violations and one NOV with dissimilar violations.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	<b>\$0</b>
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>\$0</b>
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts	\$7,497	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$13,500	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$5,600</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount** \$5,600

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$5,600</b>
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<b>DEFERRAL</b>	0.0%	Reduction	<b>Adjustment</b>	<b>\$0</b>
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral not offered for non-expedited settlement.

<b>PAYABLE PENALTY</b>	<b>\$5,600</b>
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Screening Date 27-May-2009

Docket No. 2009-0556-PST-E

PCW

Respondent William Randle McLarrin

Policy Revision 2 (September 2002)

Case ID No. 37700

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102229465

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)	2	10%
	Other written NOVs	1	2%
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) 12%

>> 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 NOV with dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 12%

Screening Date 27-May-2009

Docket No. 2009-0556-PST-E

PCW

Respondent William Randle McLarrin

Policy Revision 2 (September 2002)

Case ID No. 37700

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102229465

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Brianna Carlson

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.47(a)(2)

Violation Description 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 upgrade requirements.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

>> 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 2 36 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$5,000

Two monthly events are recommended based on documentation of the violation during the April 21, 2009 record review to the May 27, 2009 screening date.

Good Faith Efforts to Comply 0.0% Reduction \$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 for this violation.

Violation Subtotal \$5,000

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount \$7,497 Violation Final Penalty Total \$5,600

This violation Final Assessed Penalty (adjusted for limits) \$5,600

## Economic Benefit Worksheet

**Respondent** William Randle McLarrin  
**Case ID No.** 37700  
**Reg. Ent. Reference No.** RN102229465  
**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
<small>No commas or \$</small>							

### 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)	\$13,500	22-Dec-1998	27-Jan-2010	11.11	\$7,497	n/a	\$7,497

**Notes for DELAYED costs**  
 Estimated cost to permanently remove from service three USTs with a combined capacity of 18,000 gallons at \$0.75 per gallon. 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**

<b>Approx. Cost of Compliance</b>	\$13,500	<b>TOTAL</b>	\$7,497
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Screening Date 27-May-2009

Docket No. 2009-0556-PST-E

PCW

Respondent William Randle McLarrin

Policy Revision 2 (September 2002)

Case ID No. 37700

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102229465

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Brianna Carlson

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.22(a) and Tex. Water Code § 5.702

Violation Description Failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0025332U for fiscal years 1989 through 2007.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

Adjustment \$10,000

\$0

Violation Events

Number of Violation Events [ ] Number of violation days [ ]

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

Violation Base Penalty \$0

No additional administrative penalty was calculated for this violation as penalties and interest will be assessed on the next fee billing.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

Violation Subtotal \$0

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$0

This violation Final Assessed Penalty (adjusted for limits) \$0

## Economic Benefit Worksheet

**Respondent** William Randle McLarrin  
**Case ID No.** 37700  
**Reg. Ent. Reference No.** RN102229465  
**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
<small>No commas or \$</small>							

### 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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

N/A

### 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

N/A

Approx. Cost of Compliance

\$0

**TOTAL**

\$0

# Compliance History Report

Customer/Respondent/Owner-Operator: CN601191208 McLarrin, William Randle Classification: AVERAGE Rating: 4.00  
Regulated Entity: RN102229465 RANDLES CONSTRUCTION Classification: AVERAGE Site Rating: 4.00

ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 48760  
REGISTRATION

Location: 10260 US HIGHWAY 190 E, POINTBLANK, TX, 77364

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: April 09, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: April 09, 2004 to April 09, 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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
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	01/24/2007	(534341)
2	01/24/2007	(534727)
3	01/17/2008	(612838)
4	03/27/2008	(617566)
5	10/01/2008	(702526)

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

Date: 01/24/2007 (534727)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 328, SubChapter D 328.23(a)

Description: Failure to comply with general requirements on the storage or disposal of used oil filters in a manner that doesnot cause a discharge of oil to the soil.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 328, SubChapter D 328.23(b)

Description: Failure to place used oil filters that contain oil in a container in a manner that does not cause a discharge of oil to the soil.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 328, SubChapter D 328.24(b)(1)

Description: Failure to register as a used oil filter storage facility.  
Self Report? NO Classification: Moderate  
Citation: 40 CFR Chapter 279, SubChapter I, PT 279, SubPT C 279.22(c)  
Description: Failure to maintain properly labeled containers with the words "USED OIL".

Date: 01/24/2007 (534341)  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)  
Description: Failure to perform removal of a UST that has not met upgrade requirements.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)  
Description: Failure to update the UST Registration and Self Certification Form.

Date: 03/27/2008 (617566)  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)  
Description: Failure to perform removal of a UST that has not met upgrade requirements.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)  
Description: Failure to update the UST Registration and Self Certification Form.

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  
WILLIAM RANDLE MCLARRIN  
RN102229465**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER DOCKET NO. 2009-0556-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 chs. 5, 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 William Randle McLarrin ("Mr. McLarrin").

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

### **FINDINGS OF FACT**

1. Mr. McLarrin owns property with three inactive underground storage tanks ("USTs") located at 10260 U.S. Highway 190 East, Pointblank, San Jacinto County, Texas (the "Facility").
2. Mr. McLarrin's three USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. McLarrin's USTs contain a regulated substance as defined in the rules of the Commission.
3. During a record review conducted on April 21, 2009, a TCEQ Beaumont Regional Office investigator documented that Mr. McLarrin:
  - a. 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 upgrade requirements; and
  - b. Failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0025332U for fiscal years 1989 through 2007.

4. Mr. McLarrin received notice of the violations on or about May 19, 2009.
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 William Randle McLarrin" (the "EDPRP") in the TCEQ Chief Clerk's office on September 18, 2009.
6. By letter dated September 18, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. McLarrin 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. McLarrin received notice of the EDPRP.
7. More than 20 days have elapsed since Mr. McLarrin received notice of the EDPRP, provided by the Executive Director. Mr. McLarrin failed to file an answer, 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. McLarrin is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 5, 7 and 26, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. McLarrin 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 upgrade requirements, in violation of 30 TEX. ADMIN. CODE § 334.47(a)(2).
3. As evidenced by Finding of Fact No. 3.b., Mr. McLarrin failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0025332U for fiscal years 1989 through 2007, in violation of 30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702.
4. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. McLarrin 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. McLarrin 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. McLarrin 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. McLarrin 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 five thousand six hundred dollars (\$5,600.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

#### ORDERING PROVISIONS

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

1. Mr. McLarrin is assessed an administrative penalty in the amount of five thousand six hundred dollars (\$5,600.00) for violations of state statutes and TCEQ rules. The payment of this administrative penalty and Mr. McLarrin'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: William Randle McLarrin; Docket No. 2009-0556-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. McLarrin's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Mr. McLarrin may submit an application for a new delivery certificate only after Mr. McLarrin has complied with all of the requirements of this Order.

3. Within 10 days after the effective date of this Order, Mr. McLarrin 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. McLarrin shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Order, Mr. McLarrin shall:

- i. Permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55; and
- ii. Submit payment for all outstanding fees; including any associate penalties and interest and with the notation, "Re: William Randle McLarrin, TCEQ Financial Administration Account No. 0025332U," 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

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

Mr. Derek Eades, Waste Section Manager  
Texas Commission on Environmental Quality  
Beaumont Regional Office  
3870 Eastex Freeway  
Beaumont, Texas 77703-1892

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

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For the Commission

**AFFIDAVIT OF SHARESASA Y. ALEXANDER**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Sharesa Y. Alexander. 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 William Randle McLarrin” (the “EDPRP”) was filed with the Office of the Chief Clerk on September 18, 2009.

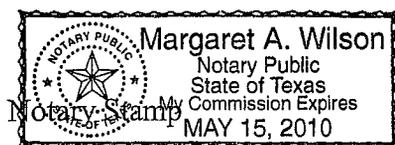
I sent the EDPRP to Mr. McLarrin at his last known address on September 18, 2009 via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed”. The first class mail has not been returned, indicating the respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

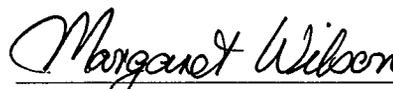
More than 20 days have elapsed since Mr. McLarrin received notice of the EDPRP. Mr. McLarrin failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference”.

  
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Sharesa Y. Alexander  
Attorney  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Sharesa Y. Alexander, 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 26<sup>th</sup> day of OCTOBER, A.D., 2009.



  
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Notary Signature