

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO. 2010-0135-PST-E RN102351962 CASE NO. 39059

RESPONDENT NAME: KINGWOOD PETROLEUM, LLC DBA KWIK PANTRY FFP 3361

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"/> IMMEDIATE 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: 1516 East Main Street, Nacogdoches, Nacogdoches County

TYPE OF OPERATION: convenience store with retail sales of gasoline

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 Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired September 20, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Steven M. Fishburn, Litigation Division, MC 175, (512) 239-3400
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Mr. Michael Pace, Waste Enforcement Section, MC R-4, (817) 588-5933

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

Respondent: Mr. Obaid Vodin, President, Kingwood Petroleum, LLC, 21521 Towerguard Drive, Humble, Texas 77339

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

**RESPONDENT NAME: KINGWOOD PETROLEUM, LLC
 DBA KWIK PANTRY FFP 3361
 DOCKET NO. 2010-0135-PST-E**

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date of Complaint: None</p> <p>Date of Investigation: January 15, 2010</p> <p>Date of NOE: January 25, 2010</p> <p>Background Facts: The EDPRP was filed on June 14, 2010, and mailed to Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Effective April 1, 2010, ownership of the USTs was assumed by Main Street Petroleum, Inc.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)]. Failed to maintain all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons [30 TEX. ADMIN. CODE § 334.54(b)(2)]. 	<p>Total Assessed: \$3,675</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Due to General Revenue: \$3,675</p> <p>This is a Default Order. 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>Compliance History Classifications: <i>Person/CN – Average</i> <i>Site/RN – Average</i></p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken: The Executive Director recognizes that Respondent is no longer the registered owner of the USTs.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	25-Jan-2010			
	PCW	27-Jan-2010	Screening	27-Jan-2010	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	Kingwood Petroleum, LLC dba Kwik Pantry FFP 3361				
Reg. Ent. Ref. No.	RN102351962				
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	39059	No. of Violations	2		
Docket No.	2010-0135-PST-E	Order Type	1660		
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Mike Pace		
		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
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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.

Compliance History	5.0% Enhancement	Subtotals 2, 3, & 7	\$175
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Notes	Enhancement for one NOV with same or similar violations.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$7	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$200	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,675
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$3,675
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,675
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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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.
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PAYABLE PENALTY	\$3,675
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Screening Date 27-Jan-2010

Docket No. 2010-0135-PST-E

PCW

Respondent Kingwood Petroleum, LLC dba Kwik Pantry FFP 3361

Policy Revision 2 (September 2002)

Case ID No. 39059

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102351962

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Mike Pace

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%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 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 27-Jan-2010

Docket No. 2010-0135-PST-E

PCW

Respondent Kingwood Petroleum, LLC dba Kwik Pantry FFP 3361

Policy Revision 2 (September 2002)

Case ID No. 39059

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102351962

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Mike Pace

Violation Number 1

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

Violation Description Failed to provide an amended registration for any change or additional information regarding the underground storage tanks ("USTs") within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current ownership information.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			x		
100% of the rule requirement was not met.					

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 12 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 15, 2010 record review.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDRP/Settlement
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

Statutory Limit Test

Estimated EB Amount \$3

Violation Final Penalty Total \$1,050

This violation Final Assessed Penalty (adjusted for limits) \$1,050

Economic Benefit Worksheet

Respondent Kingwood Petroleum, LLC dba Kwik Pantry FFP 3361
Case ID No. 39059
Reg. Ent. Reference No. RN102351962
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
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)	\$100	15-Jan-2010	27-Sep-2010	0.70	\$3	n/a	\$3

Notes for DELAYED costs

Estimated cost to submit an amended UST registration form to the TCEQ. The date required is the record review date 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

\$3

Screening Date 27-Jan-2010 **Docket No.** 2010-0135-PST-E **PCW**
Respondent Kingwood Petroleum, LLC dba Kwik Pantry FFP 3361 *Policy Revision 2 (September 2002)*
Case ID No. 39059 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102351962
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Mike Pace

Violation Number 2
Rule Cite(s) 30 Tex. Admin. Code § 334.54(b)(2)
Violation Description Failed to maintain all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons. Specifically, the fill ports were not locked.
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 1 12 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$2,500

One monthly event is recommended based on documentation of the violation during the January 15, 2010 record review to the January 27, 2010 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 \$2,500

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$3 **Violation Final Penalty Total** \$2,625

This violation Final Assessed Penalty (adjusted for limits) \$2,625

Economic Benefit Worksheet

Respondent Kingwood Petroleum, LLC dba Kwik Pantry FFP 3361
Case ID No. 39059
Reg. Ent. Reference No. RN102351962
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
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)	\$100	15-Jan-2010	27-Sep-2010	0.70	\$3	n/a	\$3

Notes for DELAYED costs

Estimated cost to properly secure the fill pipes on the UST system. The date required is the record review date and the final date is the expected 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

\$3

Compliance History Report

Customer/Respondent/Owner-Operator: CN602648933 Kingwood Petroleum, LLC Classification: AVERAGE Rating: 2.50
Regulated Entity: RN102351962 Kwik Pantry FFP 3361 Classification: AVERAGE Site Rating: 2.00
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 736
Location: 1516 E MAIN ST, NACOGDOCHES, TX, 75961
TCEQ Region: REGION 10 - BEAUMONT
Date Compliance History Prepared: June 14, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: June 14, 2005 to June 14, 2010
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Mike Pace Phone: 817-588-5933

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? Yes
3. If Yes, who is the current owner/operator?
Kingwood Petroleum, LLC
4. If Yes, who was/were the prior owner(s)/operator(s)?
FFP Operating Partners, L.P.
5. When did the change(s) in owner or operator occur?
10/01/2008
6. Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, 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 07/23/2009 (760512)
2 01/21/2010 (788616)

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

Date: 07/23/2009 (760512)

CN602648933

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)

Description: Failed to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3), as documented during a record review conducted on January 15, 2010. Specifically, the registration was not updated to reflect the current ownership information.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.54(b)(2)

Description: Failed to maintain all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons, in violation of 30 TEX. ADMIN. CODE § 334.54(b)(2), as documented during a record review conducted on January 15, 2010. Specifically, the fill ports were not locked.

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
KINGWOOD PETROLEUM, LLC DBA
KWIK PANTRY FFP 3361;
RN102351962**

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§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2010-0135-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. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Kingwood Petroleum, LLC d/b/a Kwik Pantry FFP 3361 ("Kingwood").

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

FINDINGS OF FACT

1. Kingwood owned two (2) underground storage tanks ("USTs") and a convenience store with retail sales of gasoline located at 1516 East Main Street, Nacogdoches, Nacogdoches County, County, Texas (the "Facility").
2. The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contain a regulated substance as defined in the rules of the Commission.
3. During a record review conducted on January 15, 2010, a TCEQ Beaumont Regional investigator documented that Kingwood:
 - a. Failed to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current ownership information; and
 - b. Failed to maintain all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons. Specifically, the fill ports were not locked.
4. Kingwood received notice of the violations on or about January 30, 2010.
5. The Executive Director recognizes that effective April 1, 2010, Kingwood is no longer the registered owner the USTs.

6. 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 Kingwood Petroleum, LLC d/b/a Kwik Pantry FFP 3361" (the "EDPRP") in the TCEQ Chief Clerk's office on June 14, 2010.
7. By letter dated June 14, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Kingwood with notice of the EDPRP. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Kingwood received notice of the EDPRP.
8. More than 20 days have elapsed since Kingwood received notice of the EDPRP, provided by the Executive Director. Kingwood failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact Nos. 1 and 2, Kingwood is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Kingwood failed to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3).
3. As evidenced by Finding of Fact No. 3.b., Kingwood failed to maintain all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons, in violation of 30 TEX. ADMIN. CODE § 334.54(b)(2).
4. As evidenced by Findings of Fact Nos. 6 and 7, the Executive Director timely served Kingwood 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. 8, Kingwood 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 Kingwood 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 Kingwood 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 six hundred seventy-five dollars (\$3,675.00) 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. Kingwood is assessed an administrative penalty in the amount of three thousand six hundred seventy-five dollars (\$3,675.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Kingwood'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.
2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Kingwood Petroleum, LLC d/b/a Kwik Pantry FFP 3361; Docket No. 2010-0135-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

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Kingwood. If Kingwood 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, Kingwood's failure to comply is not a violation of this Order. Kingwood shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Kingwood shall notify the Executive Director within seven days after Kingwood 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 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 Kingwood shall be made in writing to the Executive Director. Extensions are not effective until Kingwood receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. 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 Kingwood if the Executive Director determines that Kingwood has not complied with one or more of the terms or conditions in this Order.

7. 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.
8. 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.

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF STEVEN M. FISHBURN

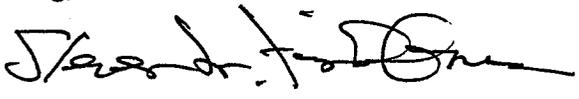
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Steven M. Fishburn. 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 Kingwood Petroleum, LLC d/b/a Kwik Pantry FFP 3361” (the “EDPRP”) was filed with the Office of the Chief Clerk on June 14, 2010.

The EDPRP was mailed to Kingwood at its last known address on June 14, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Kingwood received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

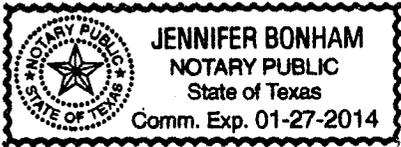
More than 20 days have elapsed since Kingwood received notice of the EDPRP. Kingwood failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.”



Steven M. Fishburn, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Steven M. Fishburn, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 26th day of July, A.D., 2010.



Notary Without Bond

Jenny Bonham
Notary Signature