

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-1942-PST-E RN101674331 CASE NO. 38779
RESPONDENT NAME: DOYLE TRENT DBA ETEX PROPERTIES

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 VIOLATIONS OCCURRED: 13940 China Spring Road, China Spring, McLennan County

TYPE OF OPERATION: former convenience store

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: Marshall Coover, Litigation Division, MC 175, (512) 239-0620
Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Phillip Aldridge, Waste Enforcement Section, MC 128, (512) 239-0855

TCEQ Regional Contact: Frank Burleson, Waste Manager, Waco Regional Office, MC R-9, (254) 761-3001

Respondent: Doyle Trent, Owner, ETEX Properties, P.O. Box 5918, Waco, Texas 76078

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

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS REQUIRED
<p>Type of Investigation:</p> <p><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: October 9, 2009</p> <p>Date of NOE: November 6, 2009</p> <p>Background Facts: The EDRP was filed on April 15, 2010. Respondent filed an answer and the case was referred to SOAH. On June 9, 2010, the TCEQ Chief Clerk mailed the Notice of the July 1, 2010 preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Respondent. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned. Respondent failed to appear at the July 1, 2010 preliminary hearing. The ALJ remanded the matter to the ED so the case may be disposed of on a default basis.</p> <p>Current Compliance Status: Respondent has not yet submitted documentation to certify compliance with the technical requirements.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to notify the agency of any change or additional information regarding the UST system within 30 days from the date on which the owner or operator first became aware of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)]. Failed to ensure that a corrosion protection system is designed, installed, operated, and maintained in a manner that will ensure continuous corrosion protection to all metal components of the UST system [30 TEX. ADMIN. CODE § 334.49(a)(2) and TEX. WATER CODE § 26.3475(d)]. 	<p>Total Assessed: \$3,675</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay</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>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering 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 Respondent has complied with all of the requirements of these Ordering Provisions.</p> <p>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Within 10 days, send his UST fuel delivery certificate to TCEQ. Within 30 days: <ol style="list-style-type: none"> Install and implement a corrosion protection system for all USTs at the Facility, or permanently remove the UST system from service. Submit an amended registration to reflect the current composition and operational status of the UST system. Within 45 days, submit written certification demonstrating compliance.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	23-Nov-2009			
	PCW	1-Apr-2010	Screening	1-Dec-2009	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	Doyle Trent d/b/a ETEX Properties				
Reg. Ent. Ref. No.	RN101674331				
Facility/Site Region	9-Waco	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	38779	No. of Violations	2		
Docket No.	2009-1942-PST-E	Order Type	1660		
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Philip Aldridge		
		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	\$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 previous 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	\$65	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,600	

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 1-Dec-2009

Docket No. 2009-1942-PST-E

PCW

Respondent Doyle Trent d/b/a ETEX Properties

Policy Revision 2 (September 2002)

Case ID No. 38779

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101674331

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Philip Aldridge

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 (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	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 (<i>number of judgements or consent decrees meeting criteria</i>)	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 (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	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 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	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)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

Enhancement for one previous NOV with same or similar violations.

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

Screening Date	1-Dec-2009	Docket No.	2009-1942-PST-E	PCW
Respondent	Doyle Trent d/b/a ETEX Properties			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	38779			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN101674331			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Philip Aldridge			
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 334.7(d)(3)			
Violation Description	Failed to notify the agency of any change or additional information regarding the underground storage tank ("UST") system within 30 days from the date on which the owner or operator first became aware of the change or addition. Specifically, the registration was not updated to reflect the correct composition of the tanks as steel only.			
Base Penalty	\$10,000			

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate	Minor	
	Actual				Percent <input type="text" value="0%"/>
Potential					

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
		x			Percent <input type="text" value="10%"/>
Matrix Notes	100% of the rule requirement was not met.				
Adjustment	\$9,000				

Violation Events

Number of Violation Events	<input type="text" value="1"/>	<input type="text" value="54"/>	Number of violation days	
<i>mark only one with an x</i>	daily			Violation Base Penalty <input type="text" value="\$1,000"/>
	weekly			
	monthly			
	quarterly			
	semiannual			
	annual			
	single event		x	
One single event is recommended based on documentation of the violation during the October 9, 2009 record review investigation.				

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDPRP/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	<input type="text" value="\$4"/>	Violation Final Penalty Total	<input type="text" value="\$1,050"/>
This violation Final Assessed Penalty (adjusted for limits)		<input type="text" value="\$1,050"/>	

Economic Benefit Worksheet

Respondent Doyle Trent d/b/a ETEX Properties
Case ID No. 38779
Reg. Ent. Reference No. RN101674331
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	9-Oct-2009	1-Aug-2010	0.81	\$4	n/a	\$4

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)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$4

Screening Date 1-Dec-2009 **Docket No.** 2009-1942-PST-E **PCW**
Respondent Doyle Trent d/b/a ETEX Properties *Policy Revision 2 (September 2002)*
Case ID No. 38779 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN101674331
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Philip Aldridge

Violation Number
Rule Cite(s)
Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="25%"/>
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text" value="x"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Good Faith Efforts to Comply

Reduction

	Before NOV	NOV to EDP RP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	<input type="text" value="(mark with x)"/>

Notes

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Doyle Trent d/b/a ETEX Properties
Case ID No. 38779
Reg. Ent. Reference No. RN101674331
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)	\$1,500	9-Oct-2009	1-Aug-2010	0.81	\$61	n/a	\$61

Notes for DELAYED costs

Estimated cost to provide corrosion protection to all underground components of the UST system. 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)

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

\$1,500

TOTAL

\$61

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603433681 Trent, Doyle	Classification: AVERAGE	Rating: 0.50
Regulated Entity:	RN101674331 ETEX Properties	Classification: AVERAGE	Site Rating: 0.50
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		21584
Location:	13940 CHINA SPRING RD, CHINA SPRING, TX, 76633		
TCEQ Region:	REGION 09 - WACO		
Date Compliance History Prepared:	November 30, 2009		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	November 30, 2004 to November 30, 2009		

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

Name: Philip Aldridge Phone: (512) 239-0855

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: 9/1/2009 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	01/20/2009	(721874)
2	03/06/2009	(736922)
3	03/18/2009	(738888)
4	04/28/2009	(743780)
5	07/29/2009	(763247)
6	11/17/2009	(778801)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	01/20/2009	(721874)	CN603433681
Self Report?	NO		Classification: Minor
Citation:	30 TAC Chapter 334, SubChapter A 334.7(d)(3) 30 TAC Chapter 334, SubChapter C 334.54(e)(2)		
Description:	Failure to amend, update, or change registration as required by the Commission.		
 - 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
DOYLE TRENT DBA ETEX
PROPERTIES;
RN101674331**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2009-1942-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, corrective action of the respondent, and revocation of the respondent's fuel delivery certificate. The respondent made the subject of this Order is Doyle Trent d/b/a ETEX Properties ("Mr. Trent").

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

FINDINGS OF FACT

1. Mr. Trent owns five underground storage tanks ("USTs") and a former convenience store with retail sales of gasoline located at 13940 China Spring Road, China Spring, McLennan County, Texas (the "Facility"). 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 petroleum substance as defined in the rules of the TCEQ.
2. During a record review conducted on October 9, 2009, a TCEQ Waco Regional Office investigator documented that Mr. Trent:
 - a. Failed to notify the agency of any change or additional information regarding the UST system within 30 days from the date on which the owner or operator first became aware of the change or addition. Specifically, the registration was not updated to reflect the correct composition of the tanks as steel only; and,
 - b. Failed to ensure that a corrosion protection system is designed, installed, operated, and maintained in a manner that will ensure continuous protection to all metal components of the UST system. Specifically, the corrosion protection system was not supplied with electrical power.
3. Mr. Trent received notice of the violations on or about November 11, 2009.

4. 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 Doyle Trent d/b/a ETEX Properties" (the "EDPRP") in the TCEQ Chief Clerk's office on April 15, 2010.
5. By letter dated April 15, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Trent with notice of the EDPRP. According to the return receipt "green card," Mr. Trent received notice of the EDPRP on April 16, 2010, as evidenced by the signature on the card.
6. Mr. Trent filed an answer requesting a hearing on April 26, 2010, and, pursuant to 30 TEX. ADMIN. CODE § 70.109, the matter was referred to the State Office of Administrative Hearings ("SOAH") on May 27, 2010.
7. On June 9, 2010, the TCEQ Chief Clerk mailed the Notice of the July 1, 2010, preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Mr. Trent. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned.
8. On July 1, 2010, the Administrative Law Judge ("ALJ") convened the preliminary hearing, but Mr. Trent failed to appear. The ALJ entered a finding that Mr. Trent was served with proper notice of the preliminary hearing, and the Executive Director requested that the matter be remanded to the Executive Director so that a Default Order may be entered and the case may be dismissed from the SOAH docket.
9. The ALJ remanded the matter to the Executive Director by SOAH Order No. 1, Granting Motion to Dismiss and Remand, on July 6, 2010, so that TCEQ may dispose of the case on a default basis.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Mr. Trent 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. 2.a., Mr. Trent failed to notify the agency of any change or additional information regarding the UST system within 30 days from the date on which the owner or operator first became aware of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3).
3. As evidenced by Finding of Fact No. 2.b., Mr. Trent failed to ensure that a corrosion protection system is designed, installed, operated, and maintained in a manner that will ensure continuous protection to all metal components of the UST system, in violation of 30 TEX. ADMIN. CODE § 334.49(a)(2) and TEX. WATER CODE § 26.3475(d).
4. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Mr. Trent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).

5. As evidenced by Finding of Fact No. 6, Mr. Trent filed an answer requesting a hearing as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.105, and the matter was referred to SOAH pursuant to 30 TEX. ADMIN. CODE § 70.109.
6. As evidenced by Finding of Fact No. 7, Mr. Trent was provided proper notice of the preliminary hearing pursuant to TEX. GOV'T CODE §§ 2001.051(1) and 2001.052, TEX. WATER CODE § 7.058, 1 TEX. ADMIN. CODE § 155.501(c) and (e)(2), and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.425, 70.104, and 80.6(b)(3).
7. As evidence by Finding of Fact No. 8, Mr. Trent failed to appear for the preliminary hearing. Pursuant to TEX. GOV'T CODE § 2001.056, TEX. WATER CODE § 7.057, 1 TEX. ADMIN. CODE § 155.501(e)(1)(A), and 30 TEX. ADMIN. CODE § 70.106(b), the ALJ dismissed the case from the SOAH docket so that the Commission may enter a Default Order against Mr. Trent and assess the penalty recommended by the Executive Director.
8. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Trent 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.
9. 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.
10. 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.
11. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Mr. Trent's UST fuel delivery certificate if the Commission finds that good cause exists.
12. Good cause for revocation of Mr. Trent's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2 and 4 through 8, and Conclusions of Law Nos. 2 through 7.

ORDERING PROVISIONS

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

1. Mr. Trent 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 Mr. Trent'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: Doyle Trent d/b/a ETEX Properties; Docket No. 2009-1942-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. Trent's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Mr. Trent may submit an application for a new fuel delivery certificate only after Mr. Trent has complied with all of the requirements of this Order.
3. Within 10 days after the effective date of this Order, Mr. Trent shall send his UST fuel delivery certificate to:

Petroleum Storage Tank Registration Team, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Mr. Trent shall undertake the following technical requirements:

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

- i. Install and implement a corrosion protection system for all USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.49, or permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55; and,
- ii. Submit an amended registration to reflect the current composition and operational status of the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

Registration and Reporting Section
Permitting & Remediation Support Division, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- b. Within 45 days after the effective date of this Order, Mr. Trent shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 3 and 4. 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. Trent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions 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:

Frank Burleson, Waste Section Manager
Texas Commission on Environmental Quality
Waco Regional Office
6801 Sanger Avenue, Suite 2500
Waco, Texas 76710-7826

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

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF MARSHALL COOVER

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Marshall Coover. 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.

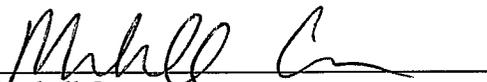
On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Doyle Trent d/b/a ETEX Properties” (the “EDPRP”) was filed with the Office of the Chief Clerk on April 15, 2010.

The EDPRP was mailed to Mr. Trent at his last known address on April 15, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Trent received notice of the EDPRP on April 16, 2010, as evidenced by the signature on the card.

Mr. Trent filed an answer requesting a hearing on April 26, 2010, and the matter was referred to the State Office of Administrative Hearings (“SOAH”) on May 27, 2010.

Notice of the July 1, 2010 preliminary hearing was mailed to Mr. Trent by the TCEQ Chief Clerk on June 9, 2010. The Notice was sent to Mr. Trent 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. Trent received notice of the July 1, 2010 preliminary hearing.

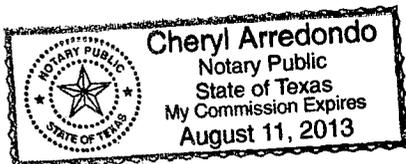
Mr. Trent failed to appear at the preliminary hearing on July 1, 2010. At that hearing, I requested and received a finding that Mr. Trent was served with proper notice of the hearing pursuant to 1 TEX. ADMIN. CODE § 155.501(e)(2). I also requested and received a remand from the Administrative Law Judge pursuant to 1 TEX. ADMIN. CODE § 155.501(e)(1), which gives an ALJ the authority to remand the case back to the agency “to allow the agency to dispose of the case on a default basis under TEX. GOV’T CODE § 2001.056 and the referring agency’s rules.” Pursuant to TEX. GOV’T CODE § 2001.056, TEX. WATER CODE § 7.057, and 30 TEX. ADMIN. CODE 70.106(b), the Commission may enter a Default Order against Mr. Trent and assess the penalty recommended by the Executive Director.



Marshall Coover, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Marshall Coover, 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 3rd day of August, A.D., 2010.





Notary Signature