EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-0943-PST-E TCEQ ID RN101730497 CASE NO. 37820
RESPONDENT NAME: RUBEN RIOS

ORDER TYPE:		
__1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
_X_FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
___AIR	___MULTI-MEDIA (check all that apply)	___INDUSTRIAL HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	_X_PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
___WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
___MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Northeast corner of the intersection of State Highway 44 and Simmons Avenue, Agua Dulce, Nueces County

TYPE OF OPERATION: property with two inactive underground storage tanks

SMALL BUSINESS: 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 February 15, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Rudy Calderon, Litigation Division, MC 175, (512) 239-0205
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019
TCEQ Enforcement Coordinator: Ms. Brianna Carlson, Air Enforcement Section, MC R-15, 956 425-6021
TCEQ Regional Contact: Mr. Brad Genzer, Waste Section, Corpus Christi Regional Office, MC R-14, (361) 825-3106
Respondent: Mr. Ruben Rios, 1611 Pena, Alice, Texas 78332
Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: ___ Complaint _X_ Routine ___ Enforcement Follow-up ___ Records Review **Date of Complaint Relating to this Case**: None **Date of Investigation Relating to this Case**: April 6, 2009 **Date of NOE Relating to this Case**: June 5, 2009 **Background Facts**: The EDPRP was filed on October 27, 2009. According to the return receipt "green card," the Respondent received notice of the EDPRP on October 31, 2009. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference. **Current Compliance Status:** The Respondent is not yet in compliance, does not have a delivery certificate, and owes $1,100.96 in past-due fees. **PST:** 1. Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)]. 2. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE. § 334.10(b)(1)(A)]. 3. 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)]. 4. Failed to maintain all piping, pumps, man-ways, 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)].	**Total Assessed**: $7,700 **Total Deferred**: $0 ___ Expedited Order ___ Financial Inability to Pay ___ SEP Conditional Offset **Total Due to General Revenue**: $7,700 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. **Site Compliance History Classification:** __ High _X_ Average ___ Poor **Person Compliance History Classification:** __ High _X_ Average ___ Poor **Major Source**: ___ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** The Respondent's UST fuel delivery certificate is revoked immediately. The Respondent may submit an application for a new delivery certificate only after the Respondent has complied with all of the requirements of the Order. The Respondent shall undertake the following technical requirements: 1. Immediately: a. Permanently remove the UST system from service; and b. Submit payment for all outstanding fees, including any associated penalties and interest. 2. Within 10 days, surrender his UST fuel delivery certificate to TCEQ. 3. Within 30 days, submit written certification to demonstrate compliance.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
5. Failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0008106U for fiscal years 1988 through 2002 [30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702].		

Penalty Calculation Worksheet (PCW)

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

TCEQ

DATES					
Assigned	8-Jun-2009				
PCW	11-Sep-2009	Screening	5-Jun-2009	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Ruben Rios		
Reg. Ent. Ref. No.	RN101730497		
Facility/Site Region	14-Corpus Christi	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	37820	No. of Violations	4
Docket No.	2009-0943-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	no
Multi-Media		Enf. Coordinator	Brianna Carlson
		EC's Team	Enforcement Team 6

Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* **$7,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **10.0%** Enhancement *Subtotals 2, 3, & 7* **$700**

Notes: Enhancement for two Notices of Violation with same or similar violations.

Culpability No **0.0%** Enhancement *Subtotal 4* **$0**

Notes: The Respondent does not meet the culpability criteria.

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

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

Total EB Amounts	$3,782
Approx. Cost of Compliance	$7,350

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 *Final Subtotal* **$7,700**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0.0%** *Adjustment* **$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **$7,700**

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* **$7,700**

DEFERRAL **0.0%** Reduction *Adjustment* **$0**

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

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY **$7,700**

Screening Date	5-Jun-2009	**Docket No.**	2009-0943-PST-E	**PCW**
Respondent	Ruben Rios			*Policy Revision 2 (September 2002)*
Case ID No.	37820			*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN101730497			
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	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which notices were submitted)*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%
		Please Enter Yes or No	
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 10%

>> 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 Notices of Violation with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 10%

Screening Date	5-Jun-2009	**Docket No.**	2009-0943-PST-E	**PCW**
Respondent	Ruben Rios			*Policy Revision 2 (September 2002)*
Case ID No.	37820			*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN101730497			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Brianna Carlson			

Violation Number 1

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

Violation Description Failed to notify the agency of any change or additional information regarding the underground storage tanks ("USTs") within 30 days of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current operational status of the UST system.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm: Major	Moderate	Minor
	Actual			
	Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

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

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events: 1 — 60 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 April 6, 2009 investigation.

Good Faith Efforts to Comply

0.0% Reduction — $0

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

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

Violation Subtotal $1,000

Economic Benefit (EB) for this violation

Estimated EB Amount $4

Statutory Limit Test

Violation Final Penalty Total $1,100

This violation Final Assessed Penalty (adjusted for limits) $1,100

Economic Benefit Worksheet

Respondent Ruben Rios
Case ID No. 37820
Reg. Ent. Reference No. RN101730497
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	6-Apr-2009	5-Feb-2010	0.84	$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 investigation and the final date is the estimated date of compliance.

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance $100

TOTAL $4

Screening Date	5-Jun-2009	**Docket No.** 2009-0943-PST-E	**PCW**
Respondent	Ruben Rios		*Policy Revision 2 (September 2002)*
Case ID No.	37820		*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN101730497		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Brianna Carlson		

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.10(b)(1)(A)

Violation Description Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

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

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events: 1

60 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 April 6, 2009 investigation to the June 5, 2009 screening date.

Good Faith Efforts to Comply

0.0% Reduction — $0

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

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

Violation Subtotal $1,000

Economic Benefit (EB) for this violation

Estimated EB Amount $21

Statutory Limit Test

Violation Final Penalty Total $1,100

This violation Final Assessed Penalty (adjusted for limits) $1,100

Economic Benefit Worksheet

Respondent Ruben Rios
Case ID No. 37820
Reg. Ent. Reference No. RN101730497
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System	$500	6-Apr-2009	5-Feb-2010	0.84	$21	n/a	$21
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)				0.00	$0	n/a	$0
Notes for DELAYED costs	Estimated cost to maintain UST records. The date required is the date of the investigation and the final date is the estimated date of compliance.						
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Notes for AVOIDED costs							

Approx. Cost of Compliance: $500

TOTAL $21

Screening Date	5-Jun-2009	**Docket No.** 2009-0943-PST-E	**PCW**
Respondent	Ruben Rios		*Policy Revision 2 (September 2002)*
Case ID No.	37820		*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN101730497		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Brianna Carlson		

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 334.47(a)(2) and 334.54(b)(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. 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.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm: Major	Moderate	Minor
	Actual			
	Potential	x		

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events: 2 — 60 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $5,000

Two monthly events are recommended based on documentation of the violation during the April 6, 2009 investigation to the June 5, 2009 screening date.

Good Faith Efforts to Comply

0.0% Reduction — $0

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

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

Violation Subtotal $5,000

Economic Benefit (EB) for this violation

Estimated EB Amount $3,757

Statutory Limit Test

Violation Final Penalty Total $5,500

This violation Final Assessed Penalty (adjusted for limits) $5,500

Economic Benefit Worksheet

Respondent Ruben Rios
Case ID No. 37820
Reg. Ent. Reference No. RN101730497
Media Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)	$6,750	22-Dec-1998	5-Feb-2010	11.13	$3,757	n/a	$3,757

Notes for DELAYED costs Estimated cost to permanently remove from service two USTs with a combined capacity of 9,000 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

Approx. Cost of Compliance $6,750

TOTAL $3,757

Screening Date	5-Jun-2009	**Docket No.** 2009-0943-PST-E	**PCW**
Respondent	Ruben Rios		*Policy Revision 2 (September 2002)*
Case ID No.	37820		*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN101730497		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Brianna Carlson		

Violation Number 4

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. 0008106U for fiscal years 1988 through 2002.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

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

Estimated EB Amount $0

Statutory Limit Test

Violation Final Penalty Total $0

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

Economic Benefit Worksheet

Respondent Ruben Rios
Case ID No. 37820
Reg. Ent. Reference No. RN101730497
Media Petroleum Storage Tank
Violation No. 4

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)				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: CN600929764 Rios Ruben Classification: AVERAGE Rating: 4.00
Regulated Entity: RN101730497 RUBEN RIOS Classification: AVERAGE Site Rating: 4.00
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 16398
REGISTRATION
Location: NE CORNER OF THE INTERSECTION OF STATE HWY 44 &
SIMMONS AVE IN AGUA DULCE, TX
TCEQ Region: REGION 14 - CORPUS CHRISTI

Date Compliance History Prepared: June 09, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: June 09, 2004 to June 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 11/16/2006 (518255)
2 08/22/2007 (569934)
3 06/05/2009 (743644)

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

Date: 11/16/2006 (518255)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)
Description: Failure to provide written notice of any change or additional information to the Executive Director within 30 days from the date of the occurrence of the change or addition.
Self Report? NO Classification: Major
Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)(1)(A)
Description: Failure to develop and maintain all UST records required by the provisions of Title 30 Tex. Admin. Code Chapter 334, specifically corrosion protection records and records of removal of product from the USTs.

Date: 08/22/2007 (569934)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)
Description: Failure to provide written notice of any change or additional information to the Executive Director within 30 days from the date of the occurrence of the change or addition.
Self Report? NO Classification: Major
Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)(1)(A)
Description: Failure to develop and maintain all UST records required by the provisions of Title 30 Tex. Admin. Code Chapter 334, specifically corrosion protection records and records of removal of product from the USTs.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN	**§**	**BEFORE THE**
ENFORCEMENT ACTION	**§**	
CONCERNING	**§**	**TEXAS COMMISSION ON**
RUBEN RIOS;	**§**	
RN101730497	**§**	**ENVIRONMENTAL QUALITY**

DEFAULT ORDER
DOCKET NO. 2009-0943-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 Ruben Rios ("Mr. Rios").

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

FINDINGS OF FACT

1. Mr. Rios owns property with two inactive underground storage tanks ("USTs") located at the northeast corner of the intersection of State Highway 44 and Simmons Avenue in Agua Dulce, Nueces County, Texas (the "Facility").

2. Mr. Rios' two USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Rios' USTs contain a regulated substance as defined in the rules of the Commission.

3. During an investigation conducted on April 6, 2009, a TCEQ Corpus Christi Regional Office investigator documented that Mr. Rios:

   a. Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current operational status of the USTs;

   b. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel;

c. 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;

d. 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; and

e. Failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0008106U for fiscal years 1988 through 2002.

4. Mr. Rios received notice of the violations on or about June 10, 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 Ruben Rios" (the "EDPRP") in the TCEQ Chief Clerk's office on October 27, 2009.

6. By letter dated October 27, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Rios with notice of the EDPRP. According to the return receipt "green card," Mr. Rios received notice of the EDPRP on October 31, 2009, as evidenced by the signature on the card.

7. More than 20 days have elapsed since Mr. Rios received notice of the EDPRP, provided by the Executive Director. Mr. Rios 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 Finding of Fact Nos. 1 and 2, Mr. Rios 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. Rios failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3).

3. As evidenced by Finding of Fact No. 3.b., Mr. Rios failed to maintain UST records and make them immediately available for inspection upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 334.10(b)(1)(A).

4. As evidenced by Finding of Fact No. 3.c., Mr. Rios 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).

5. As evidenced by Finding of Fact No. 3.d., Mr. Rios 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).

6. As evidenced by Finding of Fact No. 3.e., Mr. Rios failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0008106U for fiscal years 1988 through 2002, in violation of 30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702.

7. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. Rios with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).

8. As evidenced by Finding of Fact No. 7, Mr. Rios failed to file a timely answer to the EDPRP, 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. Rios and assess the penalty recommended by the Executive Director.

9. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Rios 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.

10. An administrative penalty in the amount of seven thousand seven hundred dollars ($7,700.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

11. 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.

12. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Mr. Rios' UST fuel delivery certificate if the Commission finds that good cause exists.

13. Good cause for revocation of Mr. Rios' UST fuel delivery certificate exists as justified by Findings of Fact Nos. 3, 5, 6, and 7, and Conclusions of Law Nos. 2 through 8.

ORDERING PROVISIONS

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

1. Mr. Rios is assessed an administrative penalty in the amount of seven thousand seven hundred dollars ($7,700.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Mr. Rios' 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: Ruben Rios; Docket No. 2009-0943-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. Rios' UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Mr. Rios may submit an application for a new delivery certificate only after Mr. Rios has complied with all of the requirements of this Order.

3. Within 10 days after the effective date of this Order, Mr. Rios 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. Rios shall undertake the following technical requirements:
   a. Immediately upon the effective date of this Order, Mr. Rios 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 associated penalties and interestand with the notation, "Re: Ruben Rios, TCEQ Financial Administration Account No. 0008106U", to the address listed in Ordering Provision No. 1.

b. Within 30 days after the effective date of this Order, Mr. Rios shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 3. through 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. Rios shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 3 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:

Brad Genzer, Waste Section Manager
Corpus Christi Regional Office
Texas Commission on Environmental Quality
6300 Ocean Drive, Suite 1200
Corpus Christi, Texas 78412-5503

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

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

"My name is Rudy Calderon. 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 Ruben Rios" (the "EDPRP") was filed with the Office of the Chief Clerk on October 27, 2009.

The EDPRP was mailed to Mr. Rios at his last known address on October 27, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Mr. Rios received notice of the EDPRP on October 31, 2009, as evidenced by the signature on the card.

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

Rudy Calderon, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Rudy Calderon, 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 17th day of December A.D., 2009.

Jacqueline Frances Duckworth
Notary Public
State of Texas
My Commission Expires
April 25, 2011

Notary Signature