

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/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 Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: February 28, 2008, and March 21, 2008</p> <p>Dates of NOEs Relating to this Case: March 11, 2008, and May 11, 2008</p> <p>Background Facts: The EDPRP was filed on September 16, 2008. The EDFARP was filed on August 24, 2009. The Respondent filed an Answer and the case was referred to SOAH. Notice of the January 22, 2010, evidentiary hearing was sent to Respondent by the SOAH Docket Clerk via first class mail, postage prepaid, and by the Executive Director via first class mail, postage prepaid, and via certified mail, return receipt requested. According to the return receipt "green card," the Respondent received notice of the evidentiary hearing on December 23, 2009. The ALJ convened the evidentiary hearing on January 22, 2010, but the Respondent failed to appear. On March 11, 2010, the ALJ remanded the matter to the Executive Director for default proceedings.</p> <p>Current Compliance Status: Not yet in compliance. The Respondent does not have a delivery certificate and owes \$3,750 in past-due fees.</p> <p>PST:</p> <ol style="list-style-type: none"> 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)]. Failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0006065U for fiscal years 1988 through 2002 [TEX. WATER CODE § 5.702 and 30 TEX. ADMIN. CODE § 334.22(a)]. 	<p>Total Assessed: \$2,625</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$2,625</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input 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: The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Within 30 days, permanently remove the UST system from service. Within 45 days, submit payment for all outstanding fees, including any associated penalties and interest. Within 60 days, submit written certification to demonstrate compliance.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision February 29, 2008

TCEQ

DATES	Assigned	17-Mar-2008	Screening	21-Mar-2008	EPA Due	
	PCW	15-Jan-2009				

RESPONDENT/FACILITY INFORMATION			
Respondent	Wayne T. Morgan		
Reg. Ent. Ref. No.	RN102021979		
Facility/Site Region	5-Tyler	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	35631	No. of Violations	2
Docket No.	2008-0517-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Wallace Myers
Multi-Media		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	\$2,500
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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% Enhancement	Subtotals 2, 3, & 7	\$125
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Notes: Enhancement for one NOV with same or similar violations.

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

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	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.

0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$14,258	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$28,500	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,625
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$2,625
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,625
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DEFERRAL	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.

PAYABLE PENALTY	\$2,625
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Screening Date 21-Mar-2008

Docket No. 2008-0517-PST-E

PCW

Respondent Wayne T. Morgan

Policy Revision 2 (September 2002)

Case ID No. 35631

PCW Revision February 29, 2008

Reg. Ent. Reference No. RN102021979

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

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 21-Mar-2008 **Docket No.** 2008-0517-PST-E **PCW**
Respondent Wayne T. Morgan *Policy Revision 2 (September 2002)*
Case ID No. 35631 *PCW Revision February 29, 2008*
Reg. Ent. Reference No. RN102021979
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Wallace Myers

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

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>
<input type="text" value="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 <input type="text" value="\$7,500"/>

Violation Events

Number of Violation Events Number of violation days
 mark only one with an x
 daily
 monthly
 quarterly
 semiannual
 annual
 single event
Violation Base Penalty

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 Wayne T. Morgan
Case ID No. 35631
Reg. Ent. Reference No. RN102021979
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				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$28,500	22-Dec-1998	21-Dec-2008	10.0	\$14,258	n/a	\$14,258

Notes for DELAYED costs
 Estimated cost to permanently remove from service five USTs with a combined capacity of 38,000 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 estimated date of compliance.

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance	\$28,500	TOTAL	\$14,258
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Screening Date 21-Mar-2008

Docket No. 2008-0517-PST-E

PCW

Respondent Wayne T. Morgan

Policy Revision 2 (September 2002)

Case ID No. 35631

PCW Revision February 29, 2008

Reg. Ent. Reference No. RN102021979

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Violation Number 2

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

Violation Description Failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0006065U for fiscal years 1988 through 2002.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (0%).

Matrix Notes

Adjustment \$10,000

\$0

Violation Events

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

- daily []
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.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$0

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

Economic Benefit Worksheet

Respondent Wayne T. Morgan
Case ID No. 35631
Reg. Ent. Reference No. RN102021979
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				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$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				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

TOTAL

\$0

Compliance History

Customer/Respondent/Owner-Operator:	CN601103773	MORGAN, WAYNE T	Classification: AVERAGE	Rating: 3.00
Regulated Entity:	RN102021979	K-ZES GROCERY STORE	Classification: AVERAGE	Site Rating: 3.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	12481
Location:	402 BROADNAX ST, DAINGERFIELD, TX, 75638		Rating Date: September 01 07	Repeat Violator: NO
TCEQ Region:	REGION 05 - TYLER			
Date Compliance History Prepared:	March 21, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	March 21, 2003 to March 21, 2008			

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

Name: Wallace Myers Phone: 512-239-6580

Site Compliance History Components

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

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	08/30/2007	(572337)
2	03/10/2008	(637478)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	08/30/2007	(572337)			
Self Report?	NO		Classification:	Moderate	
Citation:	30 TAC Chapter 334, SubChapter A 334.7(d)(3)				
Description:	Failure to amend the site's PST Registration Information to reflect the current tank owner's contact information and status of the UST system.				
Self Report?	NO		Classification:	Moderate	
Citation:	30 TAC Chapter 334, SubChapter C 334.47(a)(2)				
Description:	Failure to perform the permanent removal of the five underground storage tanks (USTs) listed for the K-Zes Grocery Store facility site that are not meeting the technical upgrade requirements in accordance with 30 TAC Ch. 334.55.				
- 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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
WAYNE T. MORGAN;
RN102021979**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER
DOCKET NO. 2008-0517-PST-E**

At its _____ agenda, the Texas Commission on Environmental Quality, (“Commission” or “TCEQ”) considered the Executive Director’s First Amended Report and Petition filed pursuant to TEX. WATER CODE chs. 5, 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 Wayne T. Morgan (“Mr. Morgan”).

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

FINDINGS OF FACT

1. Mr. Morgan owns five inactive underground storage tanks (“USTs”) located at 402 Broadnax Street, Daingerfield, Morris County, Texas (the “Facility”).
2. Mr. Morgan’s five USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Morgan’s USTs contain a regulated substance as defined in the rules of the Commission.
3. During a records review conducted on February 28, 2008, a TCEQ Tyler Regional Office investigator documented that Mr. Morgan 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.
4. During a records review investigation conducted on March 21, 2008, TCEQ Central Office staff documented that Mr. Morgan failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0006065U for fiscal years 1988 through 2002.
5. Mr. Morgan received notice of the violation in Finding of Fact No. 3 on or about March 16, 2008, and the violations in Finding of Fact No. 4 on or about May 16, 2008.

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 Wayne T. Morgan” (the “EDPRP”) in the TCEQ Chief Clerk’s office on September 16, 2008.
7. By letter dated September 16, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Morgan with notice of the EDPRP. According to the return receipt “green card,” Mr. Morgan received notice of the EDPRP on September 22, 2008, as evidenced by the signature on the card.
8. Mr. Morgan filed an answer requesting a hearing on October 9, 2008, and, pursuant to 30 TEX. ADMIN. CODE § 70.109, the matter was referred to the State Office of Administrative Hearings (“SOAH”) on April 7, 2009.
9. The preliminary hearing was held on July 9, 2009. On July 9, 2009, the Administrative Law Judge (“ALJ”) issued Order No. 1 Memorializing Preliminary Hearing and Approving Agreed Hearing Schedule (“Order No. 1”). The SOAH docket clerk mailed a copy of Order No. 1 to Mr. Morgan at his last known address via first class mail, postage pre-paid.
10. The Executive Director filed the “Executive Director’s First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Wayne T. Morgan” (the “EDFARP”) in the TCEQ Chief Clerk’s office on August 24, 2009.
11. By letter dated August 24, 2009, sent via certified mail, return receipt requested, and via certified mail, postage prepaid, the Executive Director served Mr. Morgan with notice of the EDFARP. According to the return receipt “green card,” Mr. Morgan received notice of the EDFARP on August 28, 2009, as evidenced by the signature on the card.
12. On November 16, 2009, the ALJ issued Order No. 2 Granting Motion for Continuance (“Order No. 2”). Order No. 2 continued the evidentiary hearing to January 22, 2010. The SOAH docket clerk mailed a copy of Order No. 2 to Mr. Morgan at his last known address via first class mail, postage prepaid.
13. On December 17, 2009, the ED mailed notice of the January 22, 2010, evidentiary hearing to Mr. Morgan at his last known address via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Morgan received notice of the January 22, 2010, evidentiary hearing on December 23, 2009, as evidenced by the signature on the card.
14. On January 22, 2010, the ALJ convened the evidentiary hearing, but Mr. Morgan failed to appear. The ALJ enter a finding that Mr. Morgan was served with proper notice of the evidentiary hearing, and the Executive Director requested that the ALJ remand the matter to

the Executive Director so that a Default Order may be entered and the case may be dismissed from the SOAH Docket.

15. The ALJ remanded the matter to the Executive Director by SOAH Order No. 3, Granting Remand, on March 11, 2010, so that TCEQ may dispose of the case on a default basis.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Morgan 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, Mr. Morgan failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, in violation of 30 TEX. ADMIN. CODE § 334.47(a) (2).
3. As evidenced by Finding of Fact No. 4, Mr. Morgan failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0006065U for fiscal years 1988 through 2002, in violation of 30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702.
4. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director timely served Mr. Morgan 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 Nos. 10 and 11, the Executive Director timely served Mr. Morgan with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
6. As evidenced by Finding of Fact No. 8, Mr. Morgan filed an answer requesting a hearing as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105, and the matter was referred to SOAH pursuant to 30 TEX. ADMIN. CODE § 70.109.
7. As evidenced by Finding of Fact Nos. 12 and 13, Mr. Morgan was provided proper notice of the evidentiary 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).
8. As evidenced by Finding of Fact Nos. 14 and 15, Mr. Morgan failed to appear at the evidentiary 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. Morgan 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. Morgan 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 two thousand six hundred twenty-five dollars (\$2,625.00) 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.

ORDERING PROVISIONS

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

1. Mr. Morgan is assessed an administrative penalty in the amount of two thousand six hundred twenty-five dollars (\$2,625.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Mr. Morgan'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: Wayne T. Morgan; Docket No. 2008-0517-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. Morgan shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order, Mr. Morgan shall permanently remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.55.

- b. Within 45 days after the effective date of this Order, Mr. Morgan shall submit payment for all outstanding fees, including any associated penalties and interest, for TCEQ Financial Administration Account No. 0006065U.
- c. Within 60 days after the effective date of this Order, Mr. Morgan shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Mr. Morgan shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Michael Brashear, Waste Section Manager
Texas Commission on Environmental Quality
Tyler Regional Office
2916 Teague Drive
Tyler, Texas 75701

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. Morgan. Mr. Morgan is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. If Mr. Morgan 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. Morgan's failure to comply is not a violation of this Order. Mr. Morgan shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Morgan shall notify the Executive Director within seven days after Mr. Morgan becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

6. 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. Morgan shall be made in writing to the Executive Director. Extensions are not effective until Mr. Morgan receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. 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. Morgan if the Executive Director determines that Mr. Morgan has not complied with one or more of the terms or conditions in this Order.
8. 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.
9. 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.

Wayne T. Morgan
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF STEPHANIE J. FRAZEE

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Stephanie J. Frazee. 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 Wayne T. Morgan” (the “EDPRP”) was filed with the Office of the Chief Clerk on September 16, 2008.

The EDPRP was mailed to Mr. Morgan at his last known address on September 16, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Morgan received notice of the EDPRP on September 22, 2008, as evidenced by the signature on the card.

Mr. Morgan filed an answer requesting a hearing on October 9, 2008, and the matter was referred to the State Office of Administrative Hearings (“SOAH”) on April 7, 2009.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Wayne T. Morgan” (the “EDFARP”) was filed with the Office of the Chief Clerk on August 24, 2009.

The EDFARP was mailed to Mr. Morgan at his last known address on August 24, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Morgan received notice of the EDFARP on August 28, 2009, as evidenced by the signature on the card.

Notice of the January 22, 2010, evidentiary hearing was mailed to Mr. Morgan by the SOAH docket clerk on November 16, 2009, to Mr. Morgan’s last known address via first class mail, postage prepaid. Notice of the evidentiary hearing was also mailed to Mr. Morgan by the Executive Director on December 17, 2009, at his last known address via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Morgan received notice of the January 22, 2010, evidentiary hearing on December 23, 2009, as evidenced by the signature on the card.

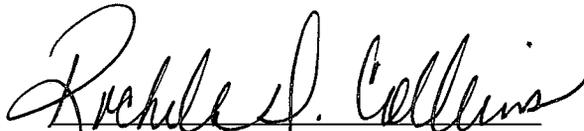
Mr. Morgan failed to appear at the evidentiary hearing on January 22, 2010. At that hearing, I requested a finding that Mr. Morgan was served with proper notice of the hearing pursuant to 1 TEX. ADMIN. CODE § 155.501(e)(2). I also requested a remand from the Administrative Law Judge pursuant to 1 TEX. 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." On March 11, 2010, the ALJ issued Order No. 3 Granting Motion for Remand, which stated that notice was proper and remanded the case to the Executive Director. 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. Morgan and assess the penalty recommended by the Executive Director."



Stephanie J. Frazee, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 15th day of March A.D., 2010.


Notary Signature