

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2009-0405-PST-E      TCEQ ID: RN105600159      CASE NO.: 37338**

**RESPONDENT NAME: R. BRUCE WILKINS, TRUSTEE OF THE ROAD RUNNER INVESTMENT TRUST AKA ROAD RUNNER REAL ESTATE INVESTMENT TRUST**

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

**SITE WHERE VIOLATIONS OCCURRED:** 2027 South Armstrong Avenue, Denison, Grayson County

**TYPE OF OPERATION:** Property containing three inactive USTs

**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 May 10, 2010. No comments were received.

**CONTACTS AND MAILING LIST:**  
**TCEQ Attorney:** Mr. Phillip M. Goodwin, P.G., Litigation Division, MC 175, (512) 239-0675  
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019  
**TCEQ Enforcement Coordinator:** Mr. John Shelton, Waste Enforcement Section, MC 128, (512) 239-2563  
**TCEQ Regional Contact:** Mr. Sam Barrett, Dallas/Fort Worth Regional Office, MC R-4, (817) 588-5903  
**Respondent:** Mr. R. Bruce Wilkins, Trustee, Road Runner Real Estate Investment Trust, 21306 Park Royale Drive, Katy, Texas, 77450  
**Respondent's Attorney:** Not represented by counsel on this enforcement matter.

**RESPONDENT NAME: R. BRUCE WILKINS, TRUSTEE OF THE ROAD RUNNER INVESTMENT TRUST AKA ROAD RUNNER REAL ESTATE INVESTMENT TRUST**

**DOCKET NO.: 2009-0405-PST-E**

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> January 22, 2009</p> <p><b>Date of NOE Relating to this Case:</b> February 24, 2009</p> <p><b>Background Facts:</b> The EDPRP was filed on July 9, 2009, and re-filed for service on July 27, 2009. The EDFARP was filed on October 5, 2009. The Respondent filed an answer and the case was referred to SOAH. Respondent withdrew its answer on March 4, 2010. The ALJ remanded the case to the Executive Director on March 10, 2010, so that a default order may be entered.</p> <p><b>Current Compliance Status:</b> Not yet in compliance. Respondent does not have a delivery certificate.</p> <p><b>PST:</b></p> <ol style="list-style-type: none"> <li>Failed to register USTs with the Commission [30 TEX. ADMIN. CODE § 334.7(a)(1)].</li> <li>Failed to permanently remove from service no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements [30 TEX. ADMIN. CODE § 334.47(a)(2)].</li> </ol>	<p><b>Total Assessed:</b> \$ 6,300</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$6,300</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p><b>Site Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>Respondent's UST fuel delivery certificate is revoked immediately. Respondent may submit an application for a new fuel delivery certificate only after he has complied with all of the requirements of this Order.</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Within 10 days, send its UST fuel delivery certificate to TCEQ.</li> <li>Within 30 days, permanently remove the UST system from service.</li> <li>Within 45 days, submit a properly completed UST registration form.</li> <li>Within 60 days, submit written certification to demonstrate compliance with Ordering Provision Nos. 1, 2, and 3.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	3-Mar-2009			
	<b>PCW</b>	17-Jun-2009	<b>Screening</b>	13-Mar-2009	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>					
<b>Respondent</b>	R. Bruce Wilkins, Trustee of the Road Runner Investment Trust aka Road Runner Real Estate				
<b>Reg. Ent. Ref. No.</b>	Investment Trust				
<b>Facility/Site Region</b>	4-Dallas/Fort Worth	<b>Major/Minor Source</b>	Minor		

<b>CASE INFORMATION</b>					
<b>Enf./Case ID No.</b>	37338	<b>No. of Violations</b>	2		
<b>Docket No.</b>	2009-0405-PST-E	<b>Order Type</b>	1660		
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Government/Non-Profit</b>	No		
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	John Shelton		
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000		
		<b>EC's Team</b>	Enforcement Team 7		

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$6,000
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	5.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$300
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Notes: One NOV for same or similar violation.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$2,022
Approx. Cost of Compliance	\$5,100

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$6,300
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount** \$6,300

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$6,300
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$0
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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.

<b>PAYABLE PENALTY</b>	\$6,300
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**Screening Date** 13-Mar-2009

**Docket No.** 2009-0405-PST-E

**PCW**

R. Bruce Wilkins, Trustee of the Road Runner  
Investment Trust aka Road Runner Real Estate

**Respondent** Investment Trust

*Policy Revision 2 (September 2002)*

**Case ID No.** 37338

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN105600159

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** John Shelton

### 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)** 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**

One NOV for same or similar violation.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 5%

**Screening Date** 13-Mar-2009 **Docket No.** 2009-0405-PST-E **PCW**  
 R. Bruce Wilkins, Trustee of the Road Runner Investment Trust  
**Respondent** aka Road Runner Real Estate Investment Trust *Policy Revision 2 (September 2002)*  
**Case ID No.** 37338 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN105600159  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** John Shelton

**Violation Number** 1  
**Rule Cite(s)** 30 Tex. Admin. Code § 334.7(a)(1)  
**Violation Description** Failed to register underground storage tanks (USTs) with the Commission. Specifically, the three USTs located at the Facility were not registered.

**Base Penalty** \$10,000

**>> Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual			
Potential					

**>> Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
	x			10%

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

**Adjustment** \$9,000

\$1,000

**Violation Events**

Number of Violation Events 1 50 Number of violation days

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

**Violation Base Penalty** \$1,000

One single event is recommended based on documentation of the violation during the January 22, 2009 investigation.

**Good Faith Efforts to Comply** 0.0% Reduction \$0

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

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

**Violation Subtotal** \$1,000

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

**Estimated EB Amount** \$4 **Violation Final Penalty Total** \$1,050

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

## Economic Benefit Worksheet

**Respondent** R. Bruce Wilkins, Trustee of the Road Runner Investment Trust aka Road Runner Real Estate Investment Trust

**Case ID No.** 37338

**Reg. Ent. Reference No.** RN105600159

**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
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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	22-Jan-2009	13-Dec-2009	0.89	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to submit a properly completed UST registration form. The date Required is the investigation date and the Final Date is the estimated date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

**TOTAL**

\$4

Screening Date 13-Mar-2009 Docket No. 2009-0405-PST-E PCW

Respondent R. Bruce Wilkins, Trustee of the Road Runner Investment Trust aka Road Runner Real Estate Investment Trust

Case ID No. 37338 Policy Revision 2 (September 2002)

Reg. Ent. Reference No. RN105600159 PCW Revision October 30, 2008

Media [Statute] Petroleum Storage Tank

Enf. Coordinator John Shelton

Violation Number 2

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

Violation Description Failed to permanently remove from service no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (25%).

>> Programmatic Matrix

Table with columns: 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 50 Number of violation days

Table with frequency options: daily, weekly, monthly (marked with x), quarterly, semiannual, annual, single event.

Violation Base Penalty \$5,000

Two monthly events are recommended based on documentation of the violation during the January 22, 2009 investigation to the March 13, 2009 screening date.

Good Faith Efforts to Comply 0.0% Reduction \$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (marked with x).

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

Violation Subtotal \$5,000

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount \$2,017 Violation Final Penalty Total \$5,250

This violation Final Assessed Penalty (adjusted for limits) \$5,250

## Economic Benefit Worksheet

**Respondent** R. Bruce Wilkins, Trustee of the Road Runner Investment Trust aka Road Runner Real Estate Investment Trust  
**Case ID No.** 37338  
**Reg. Ent. Reference No.** RN105600159  
**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
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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)	\$5,000	20-Nov-2001	13-Dec-2009	8.07	\$2,017	n/a	\$2,017

Notes for DELAYED costs

Estimated minimum cost to permanently remove the UST system from service. 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

\$5,000

**TOTAL**

\$2,017

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603395260 ROAD RUNNER REAL ESTATE INVESTMENT TRUST Classification: AVERAGE Rating: 3.01  
Regulated Entity: RN105600159 VACANT GAS STATION Classification: AVERAGE Site Rating: 3.01  
BY DEFAULT  
ID Number(s):  
Location: 2027 S ARMSTRONG AVE, DENISON, TX, 75020  
TCEQ Region: REGION 04 - DFW METROPLEX  
Date Compliance History Prepared: March 13, 2009  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: March 13, 2004 to March 13, 2009  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: John Shelton Phone: (512) 239-2563

## 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
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 02/24/2009 (724875)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
Date: 08/26/2008 (687924)  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 334, SubChapter A 334.7(a)(1)  
Description: Failure to register the three Underground Ground Storage Tanks (UST) with the TCEQ.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)  
Description: Failure to upgrade or remove the existing UST to bring it into timely compliance with upgrade requirements no later than sixty (60) days after the prescribed implementation deadline (December 1998).
- 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



<b>IN THE MATTER OF AN</b>	§	<b>BEFORE THE</b>
<b>ENFORCEMENT ACTION</b>	§	
<b>CONCERNING</b>	§	
<b>R. BRUCE WILKINS, TRUSTEE</b>	§	
<b>OF THE ROAD RUNNER</b>	§	<b>TEXAS COMMISSION ON</b>
<b>INVESTMENT TRUST AKA ROAD</b>	§	
<b>RUNNER REAL ESTATE</b>	§	
<b>INVESTMENT TRUST;</b>	§	
<b>RN105600159</b>	§	<b>ENVIRONMENTAL QUALITY</b>

**DEFAULT ORDER**  
**DOCKET NO. 2009-0405-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. 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 R. Bruce Wilkins, Trustee of the Road Runner Investment Trust aka Road Runner Real Estate Investment Trust (“Road Runner”).

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

**FINDINGS OF FACT**

1. Road Runner owns three inactive underground storage tanks (“USTs”) on property located at 2027 South Armstrong Avenue, Denison, Grayson County, Texas (the “Facility”).
2. Road Runner’s three USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Road Runner’s USTs contain a regulated substance as defined in the rules of the Commission.
3. During an investigation conducted on January 22, 2009, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Road Runner:
  - a. Failed to register USTs with the Commission. Specifically, the three USTs located at the Facility were not registered; and

- b. Failed to permanently remove from service no later than 60 days from 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. Road Runner received notice of the violations on or about March 1, 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 R. Bruce Wilkins, Trustee of the Road Runner Investment Trust aka Road Runner Real Estate Investment Trust” (the “EDPRP”) in the TCEQ Chief Clerk’s office on July 9, 2009.
6. By letter dated July 9, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Road Runner with notice of the EDPRP. The United States Postal Service returned the wrappers sent by certified mail and first class mail as “refused.”
7. The Executive Director refiled the EDPRP on July 27, 2009, and served Road Runner with notice of the EDPRP via facsimile on July 28, 2009. According to the facsimile transmission report, the facsimile was successfully transmitted, indicating that Road Runner received notice of the EDPRP.
8. 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 R. Bruce Wilkins, Trustee of the Road Runner Investment Trust aka Road Runner Real Estate Investment Trust” (the “EDFARP”) in the TCEQ Chief Clerk’s office on October 5, 2009.
9. By letter dated October 5, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Road Runner with notice of the EDFARP. According to the return receipt “green card,” Road Runner received notice of the EDFARP on October 7, 2009, as evidenced by the signature on the card.
10. Road Runner filed an answer requesting a hearing on October 16, 2009, and, pursuant to 30 TEX. ADMIN. CODE § 70.109, the matter was referred to the State Office of Administrative Hearings (“SOAH”) on November 16, 2009.
11. The preliminary hearing was waived. On January 5, 2010, the Administrative Law Judge (“ALJ”) issued Order No. 1, Establishing Procedural Schedule; Setting Hearing on the Merits, which set the evidentiary hearing for April 23, 2010. The SOAH docket clerk mailed a copy of Order No. 1 to Road Runner at its last known address via first class mail, postage pre-paid.

12. On March 4, 2010, Road Runner withdrew its answer.
13. On March 10, 2010, SOAH remanded this case back to the Executive Director for final resolution.

### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact Nos. 1 and 2, Road Runner is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Road Runner failed to register USTs with the Commission, in violation of 30 TEX. ADMIN. CODE § 334.7(a)(1).
3. As evidenced by Finding of Fact No. 3.b., Road Runner 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).
4. As evidenced by Finding of Fact No. 7, the Executive Director timely served Road Runner with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(3).
5. As evidenced by Finding of Fact Nos. 8 and 9, the Executive Director timely served Road Runner 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. 10, Road Runner filed a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105.
7. As evidenced by Finding of Fact No. 12, Road Runner withdrew its answer pursuant to 30 TEX. ADMIN. CODE § 80.31(a).
8. As evidenced by Finding of Fact No. 13, the case was remanded to the Executive Director in accordance with 30 TEX. ADMIN. CODE § 80.101. Pursuant to TEX. WATER CODE §§ 7.056 and 7.507 and 30 TEX. ADMIN. CODE § 76.106, the Commission may enter a Default Order against Road Runner 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 Road Runner 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 six thousand three hundred dollars (\$6,300.00) 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 Road Runner's UST fuel delivery certificate if the Commission finds that good cause exists.
13. Good cause for revocation of Road Runner's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2, 3, and 5 through 12, and Conclusions of Law Nos. 2 through 7.

### **ORDERING PROVISIONS**

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

1. Road Runner is assessed an administrative penalty in the amount of six thousand three hundred dollars (\$6,300.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Road Runner'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: R. Bruce Wilkins, Trustee of the Road Runner Investment Trust aka Road Runner Real Estate Investment Trust; Docket No. 2009-0405-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. Road Runner's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Road Runner may submit an application for a new fuel delivery certificate only after Road Runner has complied with all of the requirements of this Order.

3. Within 10 days after the effective date of this Order, Road Runner shall send its 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. Road Runner shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Order, Road Runner 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, Road Runner shall submit a properly completed UST registration form to the TCEQ, 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

- c. Within 60 days after the effective date of this Order, Road Runner shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 3, 4.a., and 4.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.”

Road Runner shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 3, 4.a., and 4.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:

Sam Barrett, Waste Section Manager  
Texas Commission on Environmental Quality  
Dallas/Fort Worth Regional Office  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

5. All relief not expressly granted in this Order is denied.
6. The provisions of this Order shall apply to and be binding upon Road Runner. Road Runner 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 Road Runner 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, Road Runner's failure to comply is not a violation of this Order. Road Runner shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Road Runner shall notify the Executive Director within seven days after Road Runner 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 Road Runner shall be made in writing to the Executive Director. Extensions are not effective until Road Runner 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 Road Runner

if the Executive Director determines that Road Runner 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.

**R. Bruce Wilkins, Trustee of the Road Runner Investment Trust aka Road Runner Real Estate Investment Trust**  
**Docket No. 2009-0405-PST-E**  
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**S I G N A T U R E   P A G E**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF PHILLIP M. GOODWIN**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Phillip M. Goodwin. 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 R. Bruce Wilkins, Trustee of the Road Runner Investment Trust aka Road Runner Real Estate Investment Trust” (the “EDPRP”) was filed with the Office of the Chief Clerk on July 9, 2009.

The EDPRP was mailed to Road Runner at its last known address on July 9, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrappers sent by certified mail and first class mail as “refused.” The Executive Director refiled the EDPRP on July 27, 2009 and served Road Runner with notice of the EDPRP via facsimile on July 28, 2009, indicating that Road Runner received notice of the EDPRP.

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 R. Bruce Wilkins, Trustee of the Road Runner Investment Trust aka Road Runner Real Estate Investment Trust” (the “EDFARP”) was filed with the Office of the Chief Clerk on October 5, 2009.

The EDFARP was mailed to Road Runner at its last known address on October 5, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Road Runner received notice of the EDFARP on October 7, 2009, as evidenced by the signature on the card.

Road Runner filed an answer requesting a hearing on October 16, 2009, and the matter was referred to the State Office of Administrative Hearings (“SOAH”) on November 16, 2009. On March 4, 2010, Road Runner withdrew its answer. On March 10, 2010, SOAH remanded this case back to the Executive Director in accordance with 30 TEX. ADMIN. CODE § 80.101.



Phillip M. Goodwin, Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Phillip M. Goodwin, 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 16<sup>th</sup> day of March, A.D., 2010.



Notary Signature