

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-1495-PST-E RN101737393 CASE NO. 38380
RESPONDENT NAME: MATTHEW A. PRYOR

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	

CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATIONS OCCURRED: 500 Reverend Ransom Howard Street, Port Arthur, Jefferson County

TYPE OF OPERATION: former retail gasoline station with three underground storage tanks

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired May 24, 2010. No comments were received.

CONTACTS AND MAILING LIST:
TCEQ Attorney: Ms. Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400
TCEQ Enforcement Coordinator: Ms. Theresa Hagood, Waste Enforcement Section, MC 128, (512) 239-2540
TCEQ Regional Contact: Mr. Derek Eades, Beaumont Regional Office, MC R-10, (409) 898-3838
Respondent: Mr. Matthew A. Pryor, 2228 Thomas Boulevard, Port Arthur, Texas 77640
Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: July 9, 2009</p> <p>Date of NOE Relating to this Case: September 4, 2009</p> <p>Background Facts: The EDPRP was filed on February 1, 2010, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on February 26, 2010. The Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Not yet in compliance. The Respondent does not have a delivery certificate.</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; failed to ensure that any residue from stored regulated substances which remained in a temporarily out of service UST did not exceed 2.5 centimeters at the deepest point and did not exceed 0.3 percent by weight of the system at full capacity; and failed to maintain all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons [30 TEX. ADMIN. CODE §§ 334.47(a)(2), 334.54(b), and 334.54(d)(2)]. Failed to notify the agency of any change or additional information regarding USTs within 30 days from the date of occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)]. 	<p>Total Assessed: \$8,925</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: \$8,925</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: None - the CN was not in existence on September 1, 2009.</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>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 an updated registration to reflect the current ownership information and status of the tanks. Within 60 days, submit written certification to demonstrate compliance with Ordering Provision Nos. 1 and 2.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	8-Sep-2009			
	PCW	11-Jan-2010	Screening	15-Sep-2009	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	Matthew A. Pryor				
Reg. Ent. Ref. No.	RN101737393				
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	38380	No. of Violations	2		
Docket No.	2009-1495-PST-E	Order Type	1660		
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Theresa Hagood		
		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	\$8,500
---	-------------------	----------------

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	5.0% Enhancement	Subtotals 2, 3, & 7	\$425
---------------------------	------------------	--------------------------------	--------------

Notes: Enhancement for one NOV 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	\$2,880	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$5,100	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$8,925
-----------------------------	-----------------------	----------------

OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
---	------	-------------------	------------

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$8,925**

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$8,925
-----------------------------------	-------------------------------	----------------

DEFERRAL	0.0% Reduction	Adjustment	\$0
-----------------	----------------	-------------------	------------

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	\$8,925
------------------------	----------------

Screening Date 15-Sep-2009

Docket No. 2009-1495-PST-E

PCW

Respondent Matthew A. Pryor

Policy Revision 2 (September 2002)

Case ID No. 38380

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101737393

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Theresa Hagood

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)**

N/A

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 15-Sep-2009 **Docket No.** 2009-1495-PST-E **PCW**
Respondent Matthew A. Pryor *Policy Revision 2 (September 2002)*
Case ID No. 38380 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN101737393
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Theresa Hagood

Violation Number 1
Rule Cite(s) 30 Tex. Admin. Code §§ 334.47(a)(2), 334.54(b) and 334.54(d)(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 ensure that any residue from stored regulated substances which remained in a temporarily out of service UST did not exceed 2.5 centimeters at the deepest point and did not exceed 0.3 percent by weight of the system at full capacity. Specifically, tank number 1 contained 5.5 inches of a regulated substance, tank number 2 contained 6 inches of a regulated substance and 2 inches of water, and tank number 3 contained 4 inches of regulated substance and 1 inch of water. Failed to maintain all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons. Specifically, the fill ports were not locked.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				
	Potential	x			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 3 68 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$7,500

Three monthly events are recommended from the July 9, 2009 investigation date to the September 15, 2009 screening date.

Good Faith Efforts to Comply 0.0% Reduction \$0

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

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

Violation Subtotal \$7,500

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

Estimated EB Amount \$2,875 **Violation Final Penalty Total** \$7,875

This violation Final Assessed Penalty (adjusted for limits) \$7,875

Economic Benefit Worksheet

Respondent Matthew A. Pryor
Case ID No. 38380
Reg. Ent. Reference No. RN101737393
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)	\$5,000	22-Dec-1998	20-Jun-2010	11.50	\$2,875	n/a	\$2,875

Notes for DELAYED costs

Estimated minimum cost to permanently remove from service three USTs. 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

\$2,875

Screening Date 15-Sep-2009 **Docket No.** 2009-1495-PST-E **PCW**
Respondent Matthew A. Pryor *Policy Revision 2 (September 2002)*
Case ID No. 38380 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN101737393
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Theresa Hagood

Violation Number 2
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 USTs, within 30 days from the date of occurrence of the change or addition. Specifically, the registration was not updated to reflect the current ownership information.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual				
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
		x			

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 68 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 July 9, 2009 investigation to the September 15, 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 **Statutory Limit Test**

Estimated EB Amount \$5 **Violation Final Penalty Total** \$1,050

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

Economic Benefit Worksheet

Respondent Matthew A. Pryor
Case ID No. 38380
Reg. Ent. Reference No. RN101737393
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	9-Jul-2009	20-Jun-2010	0.95	\$5	n/a	\$5

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

\$5

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603537283 Pryor, Matthew A.	Classification:	Rating:
Regulated Entity:	RN101737393 PARKER TIRE & SERVICE	Classification: AVERAGE	Site Rating: 6.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	48133
Location:	500 REV RANSOM HOWARD ST, PORT ARTHUR, TX, 77640		
TCEQ Region:	REGION 10 - BEAUMONT		
Date Compliance History Prepared:	September 23, 2009		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	September 23, 2004 to September 23, 2009		

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

Name: Theresa Hagood Phone: 239 - 2540

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the state of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 - 1 02/02/2007 (537688)
 - 2 09/03/2009 (765367)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	02/02/2007 (537688)	Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 334, SubChapter C 334.47(a)(2)				
Description:	Failure to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date.				
Self Report?	NO	Classification:	Moderate		
Citation:	30 TAC Chapter 334, SubChapter C 334.54(d)(2)				
Description:	Failure to ensure that any residue from stored regulated substances which remain in a temporarily out of service UST shall not exceed 2.5 centimeters at the deepest point and shall not exceed 0.3 percent by weight of the system at full capacity.				
Self Report?	NO	Classification:	Moderate		
Citation:	30 TAC Chapter 334, SubChapter C 334.54(b)				
Description:	Failure to assure that, with the exception of vent lines, all piping, pumps, manways, and ancillary equipment shall be capped, plugged, locked, and/or otherwise secured to prevent access, tampering, or vandalism by unauthorized persons.				
Self Report?	NO	Classification:	Moderate		
Citation:	30 TAC Chapter 334, SubChapter A 334.7(d)(3)				
Description:	Failure to provide amended registration for any change or additional information regarding 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	§	BEFORE THE
AN ENFORCEMENT ACTION	§	
AGAINST	§	TEXAS COMMISSION ON
MATTHEW A. PRYOR;	§	
RN101737393	§	ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2009-1495-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality, (“Commission” or “TCEQ”) considered the Executive Director’s Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Matthew A. Pryor (“Mr. Pryor”).

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

FINDINGS OF FACT

1. Mr. Pryor owns three underground storage tanks (“USTs”) and a former retail gasoline station located at 500 Reverend Ransom Howard Street, Port Arthur, Jefferson County, Texas (the “Facility”).
2. Mr. Pryor’s three USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Pryor’s USTs contain a regulated petroleum substance as defined in the rules of the Commission.
3. During an investigation conducted on July 9, 2009, a TCEQ Beaumont Regional Office investigator documented that Mr. Pryor:
 - a. 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; and failed to ensure that any residue from stored regulated substances which remained in a temporarily out of service UST did not exceed 2.5 centimeters at the deepest point and did not exceed 0.3 percent by weight of the system at full capacity. Specifically, tank number 1 contained 5.5 inches of a regulated substance, tank number 2 contained 6 inches of a regulated substance and 2 inches of water, and tank number 3 contained 4 inches of a regulated substance and 1 inch of water. Also failed to maintain all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked

and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons. Specifically, the fill ports were not locked; and

- b. Failed to notify the agency of any change or additional information regarding USTs, within 30 days from the date of occurrence of the change or addition. Specifically, the registration was not updated to reflect the current ownership information.
4. Mr. Pryor received notice of the violations on or about September 9, 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 Matthew A. Pryor” (the “EDPRP”) in the TCEQ Chief Clerk’s office on February 1, 2010.
6. By letter dated February 1, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Pryor with notice of the EDPRP. According to the return receipt “green card,” Mr. Pryor received notice of the EDPRP on February 26, 2010, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Mr. Pryor received notice of the EDPRP, provided by the Executive Director. Mr. Pryor 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. Pryor 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., Mr. Pryor 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 ensure that any residue from stored regulated substances which remained in a temporarily out of service UST did not exceed 2.5 centimeters at the deepest point and did not exceed 0.3 percent by weight of the system at full capacity; and 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 §§ 334.47(a)(2), 334.54(b), and 334.54(d)(2).
3. As evidenced by Finding of Fact No. 3.b., Mr. Pryor failed to notify the agency of any change or additional information regarding USTs within 30 days from the date of occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3).

4. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. Pryor with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
5. As evidenced by Finding of Fact No. 7, Mr. Pryor failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Pryor and assess the penalty recommended by the Executive Director.
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Pryor for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of eight thousand nine hundred twenty-five dollars (\$8,925.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Mr. Pryor is assessed an administrative penalty in the amount of eight thousand nine hundred twenty-five dollars (\$8,925.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Mr. Pryor'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: Matthew A. Pryor; Docket No. 2009-1495-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. Pryor shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order, Mr. Pryor 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. Pryor shall submit an updated registration to reflect the current ownership information and status of the tanks, in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

Registration and Reporting Section
Permitting and Registration 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, Mr. Pryor 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. Pryor 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:

Derek L. Eades, Waste Section Manager
Texas Commission on Environmental Quality
Beaumont Regional Office
3870 Eastex Fwy.
Beaumont, Texas 77703-1830

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

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF SHARESAS Y. ALEXANDER

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

“My name is Sharesa Y. Alexander. 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 Matthew A. Pryor’ (the ‘EDPRP’) was filed with the Office of the Chief Clerk on February 1, 2010.

The EDPRP was mailed to Mr. Pryor at his last known address on February 1, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt ‘green card,’ Mr. Pryor received notice of the EDPRP on February 26, 2010, as evidenced by the signature on the card.

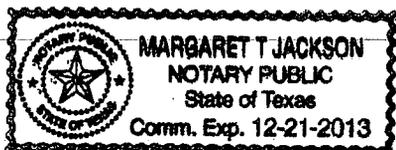
More than 20 days have elapsed since Mr. Pryor received notice of the EDPRP. Mr. Pryor failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.”

Sharesa Y. Alexander

Sharesa Y. Alexander, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Sharesa Y. Alexander, 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 2th day of April, A.D., 2010.



Margaret Jackson
Notary Signature