

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-1909-PST-E RN102281565 CASE NO. 38761
RESPONDENT NAME: REYNALDO CALDERON DBA REYS MEAT MARKET

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

SITE WHERE VIOLATION(S) OCCURRED: 408 South Salinas Boulevard, Donna, Hidalgo County

TYPE OF OPERATION: Convenience store with two inactive USTs

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 31, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Mr. Tate Barrett, Waste Enforcement Section, MC R-12, (713) 422-8968

TCEQ Regional Contact: Mr. Jaime Garza, Harlingen Regional Office, MC R-13, (956) 430-6030

Respondent: Mr. Reynaldo Calderon, 408 South Salinas Boulevard, Donna, TX 78537

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

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input 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: September 22, 2009</p> <p>Date of NOE Relating to this Case: November 16, 2009</p> <p>Background Facts: The EDPRP was filed on March 11, 2010, and mailed to Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on March 15, 2010. 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. 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 [30 TEX. ADMIN. CODE § 334.47(a)(2)]. Failed to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons [30 TEX. ADMIN. CODE § 334.54(b)(2)]. 	<p>Total Assessed: \$7,875</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: \$7,875</p> <p>This is a Default Order. Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>Respondent's UST fuel delivery certificate is revoked immediately. Respondent may submit an application for a new fuel delivery certificate only after he has complied with all of the requirements of this Order.</p> <p>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Within 10 days, send his UST fuel delivery certificate to TCEQ. Immediately, cap and lock the fill pipes at the Facility. Within 30 days, permanently remove the UST system from service. Within 45 days, submit written certification demonstrating compliance with Ordering Provision Nos. 2 and 3.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	23-Nov-2009	Screening	23-Nov-2009	EPA Due	
	PCW	2-Mar-2010				

RESPONDENT/FACILITY INFORMATION

Respondent	Reynaldo Calderon dba Reys Meat Market				
Reg. Ent. Ref. No.	RN102281565				
Facility/Site Region	15-Harlingen	Major/Minor Source	Minor		

CASE INFORMATION

Enf./Case ID No.	38761	No. of Violations	1
Docket No.	2009-1909-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Tate Barrett
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$7,500
---	-------------------	---------

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	\$375
Notes	Enhancement for one previous NOV with same or similar violations.		
Culpability	No	0.0% Enhancement	Subtotal 4
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	\$5,533	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$10,500		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$7,875
-----------------------------	-----------------------	---------

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
	Final Penalty Amount
	\$7,875

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$7,875
-----------------------------------	-------------------------------	---------

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

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

Notes	Deferral not offered for non-expedited settlement.
--------------	--

PAYABLE PENALTY	\$7,875
------------------------	---------

Screening Date 23-Nov-2009

Docket No. 2009-1909-PST-E

PCW

Respondent Reynaldo Calderon dba Reys Meat Market

Policy Revision 2 (September 2002)

Case ID No. 38761

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102281565

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Tate Barrett

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%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

Enhancement for one previous NOV with same or similar violations.

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

Screening Date 23-Nov-2009

Docket No. 2009-1909-PST-E

PCW

Respondent Reynaldo Calderon dba Reys Meat Market

Policy Revision 2 (September 2002)

Case ID No. 38761

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102281565

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Tate Barrett

Violation Number 1

Rule Cite(s)

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

Violation Description

Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements. Also, failed to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons. Specifically, fill pipes were not capped and locked.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>>Programmatic Matrix

	Major	Moderate	Minor
Falsification			

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

63 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 based on documentation of the violation during the September 22, 2009 investigation to the November 23, 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 \$7,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$5,533

Violation Final Penalty Total \$7,875

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

Economic Benefit Worksheet

Respondent Reynaldo Calderon dba Reys Meat Market
Case ID No. 38761
Req. Ent. Reference No. RN102281565
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)	\$10,500	10-Jan-2000	23-Jul-2010	10.54	\$5,533	n/a	\$5,533

Notes for DELAYED costs

Estimated cost to permanently remove from service two USTs with a combined capacity of 14,000 gallons at \$0.75 per gallon. The date required is the date of ownership change 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				0.00	\$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

\$10,500

TOTAL

\$5,533

Compliance History Report

Customer/Respondent/Owner-Operator:	CN601460108	Calderon, Reynaldo	Classification: AVERAGE	Rating: 4.00
Regulated Entity:	RN102281565	Reys Meat Market	Classification: AVERAGE	Site Rating: 4.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	30809
Location:	408 S SALINAS BLVD, DONNA, TX, 78537			
TCEQ Region:	REGION 15 - HARLINGEN			
Date Compliance History Prepared:	November 23, 2009			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	November 23, 2004 to November 23, 2009			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	<u>Tate Barrett</u>	Phone:	<u>(713) 422-8968</u>	

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 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	08/15/2008	(684307)	
2	11/16/2009	(763320)	
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 08/18/2008 (684307)			
Self Report?	NO	Classification:	Moderate
Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)			
Description: Failure to update the UST registration form			
Self Report?	NO	Classification:	Major
Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)			
Description: Failure to perform the permanent removal of an underground storage tank (UST) that has not met upgrade requirements			
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
REYNALDO CALDERON DBA
REYS MEAT MARKET;
RN102281565**

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER
DOCKET NO. 2009-1909-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 and revocation of the respondent’s fuel delivery certificate. The respondent made the subject of this Order is Reynaldo Calderon dba Reys Meat Market (“Reynaldo Calderon”).

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

FINDINGS OF FACT

1. Reynaldo Calderon owns two inactive underground storage tanks (“USTs”) and a convenience store located at 408 South Salinas Boulevard, Donna, Hidalgo County, Texas (the “Facility”).
2. Reynaldo Calderon’s USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contain a regulated substance as defined in the rules of the TCEQ.
3. During an investigation conducted on September 22, 2009, a TCEQ Harlingen Regional Office investigator documented that Reynaldo Calderon:
 - 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
 - b. Failed to maintain all piping, pumps, manways, tank access points, 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 pipes were not capped and locked.

4. Reynaldo Calderon received notice of the violations on or about November 21, 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 Reynaldo Calderon dba Reys Meat Market” (the “EDPRP”) in the TCEQ Chief Clerk’s office on March 11, 2010.
6. By letter dated March 11, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Reynaldo Calderon with notice of the EDPRP. According to the return receipt “green card,” Reynaldo Calderon received notice of the EDPRP on March 15, 2010, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Reynaldo Calderon received notice of the EDPRP, provided by the Executive Director. Reynaldo Calderon 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, Reynaldo Calderon 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., Reynaldo Calderon 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. 3.b., Reynaldo Calderon failed to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons, in violation of 30 TEX. ADMIN. CODE § 334.54(b)(2).
4. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Reynaldo Calderon 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, Reynaldo Calderon 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 Reynaldo Calderon 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 Reynaldo Calderon 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 seven thousand eight hundred seventy-five dollars (\$7,875.00) 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.
9. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Reynaldo Calderon's UST fuel delivery certificate if the Commission finds that good cause exists.
10. Good cause for revocation of Reynaldo Calderon's UST fuel delivery certificate exists as justified by Finding of Fact Nos. 3 and 5 through 7, and Conclusions of Law Nos. 2 through 5.

ORDERING PROVISIONS

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

1. Reynaldo Calderon is assessed an administrative penalty in the amount of seven thousand eight hundred seventy-five dollars (\$7,875.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Reynaldo Calderon'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: Reynaldo Calderon dba Reys Meat Market; Docket No. 2009-1909-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. Reynaldo Calderon's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Reynaldo Calderon may submit an application for a new fuel delivery certificate only after Reynaldo Calderon has complied with all of the requirements of this Order.
3. Within 10 days after the effective date of this Order, Reynaldo Calderon shall send his UST fuel delivery certificate to:

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

4. Reynaldo Calderon shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Reynaldo Calderon shall cap and lock the fill pipes at the Facility in accordance with 30 TEX. ADMIN. CODE § 334.54;
 - b. Within 30 days after the effective date of this Order, Reynaldo Calderon shall permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55; and
 - c. Within 45 days after the effective date of this Order, Reynaldo Calderon shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 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.”

Reynaldo Calderon shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 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:

Jaime Garza, Waste Section Manager
Texas Commission on Environmental Quality
Harlingen Regional Office
1804 West Jefferson Avenue
Harlingen, Texas 75880-5247

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

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF PHILLIP M. GOODWIN

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Phillip M. Goodwin, P.G.. 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 Reynaldo Calderon dba Reys Meat Market” (the “EDPRP”) was filed with the Office of the Chief Clerk on March 11, 2010.

The EDPRP was mailed to Reynaldo Calderon at his last known address on March 11, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Reynaldo Calderon received notice of the EDPRP on March 15, 2010, as evidenced by the signature on the card.

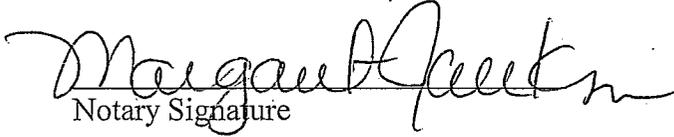
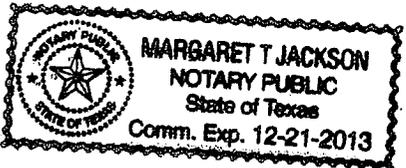
More than 20 days have elapsed since Reynaldo Calderon received notice of the EDPRP. Reynaldo Calderon failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.”



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 9 day of April, A.D., 2010.



Notary Signature