

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2008-0801-PST-E TCEQ ID: RN103992962 CASE NO.: 35887**

**RESPONDENT NAME: ELUTERIO ELIZONDO**

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input 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:** Highway 59 ten miles northwest of Freer, Duval County

**TYPE OF OPERATION:** Former retail gasoline service station

**SMALL BUSINESS:**  Yes  No  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 December 7, 2009. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Ms. Stephanie Frazee, Litigation Division, MC 175, (512) 239-3693  
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

**TCEQ Enforcement Coordinator:** Mr. Rajesh Acharya, Waste Enforcement Section, MC 128, (512) 239-0577

**TCEQ Regional Contact:** Ms. Rose Luna-Pirtle, Laredo Regional Office, MC R-16, (956) 753-4052

**Respondent:** Mr. Eluterio Elizondo, P. O. Box 748, Benavides, Texas 78357

**Respondent's Attorney:** Mr. David D. Towler, Attorney, Law Office of David D. Towler, 410 East Collins, P.O. Box 569, San Diego, Texas 78384

<b>VIOLATION SUMMARY CHART:</b>		
<b>VIOLATION INFORMATION</b>	<b>PENALTY CONSIDERATIONS</b>	<b>CORRECTIVE ACTIONS TAKEN/REQUIRED</b>
<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> April 9, 2008</p> <p><b>Date of NOE Relating to this Case:</b> May 28, 2008</p> <p><b>Background Facts:</b> The EDPRP was filed on October 30, 2008. The Respondent filed an answer and the case was referred to SOAH. The preliminary hearing was waived and the parties engaged in discovery. Settlement was achieved and the Respondent signed the Agreed Order on September 29, 2009.</p> <p><b>Current Compliance Status:</b> The tanks were permanently removed from service on April 6, 2009, however, soil sampling is still being conducted and the Release Determination Report has not yet been completed. Respondent does not have a delivery certificate.</p> <p><b>PST:</b></p> <ol style="list-style-type: none"> <li>Failed to permanently remove from service, no later than 60 days after the prescribed update 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> <li>Failed to ensure that any residue from stored regulated substances which remained in the temporarily out of service UST system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity [30 TEX. ADMIN. CODE § 334.54(d)(2)].</li> <li>Failed to maintain all piping, pump, 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)].</li> </ol>	<p><b>Total Assessed:</b> \$2,625</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid/Due to General Revenue:</b> \$125/\$2,500</p> <p>The Respondent paid \$125 of the administrative penalty. The remaining amount of \$2,500 shall be payable in twenty-five monthly payments of \$100 each.</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>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent permanently removed the tanks from service on April 6, 2009.</p> <p><b>Ordering Provisions:</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Within 30 days, submit all data and information necessary to complete the Release Determination Report for the removal of the UST system.</li> <li>Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the removal of the UST system within 30 days after the date of such requests, or by any other deadline specified in writing.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision April 29, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	8-May-2008			
	<b>PCW</b>	5-Aug-2008	<b>Screening</b>	9-May-2008	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>					
<b>Respondent</b>	Eluterio Elizondo				
<b>Reg. Ent. Ref. No.</b>	RN103992962				
<b>Facility/Site Region</b>	16-Laredo	<b>Major/Minor Source</b>	Minor		

<b>CASE INFORMATION</b>					
<b>Enf./Case ID No.</b>	35887	<b>No. of Violations</b>	1		
<b>Docket No.</b>	2008-0801-PST-E	<b>Order Type</b>	1660		
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Enf. Coordinator</b>	Rajesh Acharya		
<b>Multi-Media</b>		<b>EC's Team</b>	Enforcement Team 6		
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000		

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$2,500
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	5.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$125
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Notes: Enhancement for one NOV for same or similar violations.

<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</b>	0.0% Reduction	<b>Subtotal 5</b>	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

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

	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$3,378
Approx. Cost of Compliance	\$6,750

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$2,625
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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** \$2,625

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$2,625
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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>	\$2,625
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Screening Date 9-May-2008

Docket No. 2008-0801-PST-E

PCW

Respondent Eluterio Elizondo

Policy Revision 2 (September 2002)

Case ID No. 35887

PCW Revision April 29, 2008

Reg. Ent. Reference No. RN103992962

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

### 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

Enhancement for one NOV for same or similar violations.

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

Screening Date 9-May-2008

Docket No. 2008-0801-PST-E

PCW

Respondent Eluterio Elizondo

Policy Revision 2 (September 2002)

Case ID No. 35887

PCW Revision April 29, 2008

Reg. Ent. Reference No. RN103992962

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

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 the temporarily out of service UST system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity. Also, failed to maintain all piping, pump, 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.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

>> 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 1 30 Number of violation days

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,500

One monthly event is recommended from the investigation date of April 9, 2008 to the screening date of May 9, 2008.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3,378

Violation Final Penalty Total \$2,625

This violation Final Assessed Penalty (adjusted for limits) \$2,625

## Economic Benefit Worksheet

**Respondent** Eluterio Elizondo  
**Case ID No.** 35887  
**Reg. Ent. Reference No.** RN103992962  
**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)	\$6,750	22-Dec-1998	22-Dec-2008	10.01	\$3,378	n/a	\$3,378

**Notes for DELAYED costs**  
 Estimated cost to permanently remove three USTs with a combined capacity of 9,000 gallons at \$0.75 per gallon  
 Date Required is the date when the Respondent was required to upgrade the UST system. Final Date is the estimated compliance date.

### Avoided Costs

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

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

**Notes for AVOIDED costs**

Approx. Cost of Compliance	\$6,750	<b>TOTAL</b>	\$3,378
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# Compliance History

Customer/Respondent/Owner-Operator:	CN603122433 ELIZONDO, ELUTERIO	Classification: AVERAGE	Rating: 4.50
Regulated Entity:	RN103992962 LOUS TRUCK STOP	Classification: AVERAGE	Site Rating: 4.50
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	64809
Location:	HWY 59 10 MI NW OF FREER, DUVAL COUNTY, TX,		Rating Date: September 01 07 Repeat Violator: NO
TCEQ Region:	REGION 16 - LAREDO		
Date Compliance History Prepared:	May 14, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	May 14, 2003 to May 14, 2008		

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

Name: Rajesh Acharya Phone: (512) 239-0577

## Site Compliance History Components

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

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
 

N/A
- B. Any criminal convictions of the state of Texas and the federal government.
 

N/A
- C. Chronic excessive emissions events.
 

N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 

1	11/27/2006	(518373)
2	04/29/2008	(654497)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 

Date:	11/27/2006	(518373)		
Self Report?	NO		Classification:	Moderate
Citation:	30 TAC Chapter 334, SubChapter C 334.47(a)(2)			
Description:	Failure to have an out of service UST upgraded to meet all technical requirements.			
Self Report?	NO		Classification:	Moderate
Citation:	30 TAC Chapter 334, SubChapter C 334.54(d)(2)			
Description:	Failure to empty the UST's to less than 2.5 centimeters (1 inch) of product.			
Self Report?	NO		Classification:	Moderate
Citation:	30 TAC Chapter 334, SubChapter C 334.54(b)			
Description:	Failure to assure that all piping, pumps, man ways, and ancillary equipment has been capped, plugged, locked and/or otherwise secured to prevent access, tampering or vandalism by unauthorized persons.			
- 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  
ELUTERIO ELIZONDO;  
RN10103992962**

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§  
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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2008-0801-PST-E**

**I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality (“Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding Eluterio Elizondo (“Mr. Elizondo”) under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Eluterio Elizondo, represented by David D. Towler of the Law Office of David D. Towler, appear before the Commission and together stipulate that:

1. Mr. Elizondo owns a former retail gasoline service station located on Highway 59 ten miles northwest of Freer, Duval County, Texas (the “Facility”).
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and Mr. Elizondo agree that the Commission has jurisdiction to enter this Agreed Order and that Mr. Elizondo is subject to the Commission's jurisdiction.
4. Mr. Elizondo received notice of the violations alleged in Section II (“Allegations”) on or about June 2, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Elizondo of any violation alleged in Section II (“Allegations”), nor of any statute or rule.
6. An administrative penalty in the amount of two thousand six hundred twenty five dollars (\$2,625.00) is assessed by the Commission in settlement of the violations alleged in Section II (“Allegations”). Mr. Elizondo paid one hundred twenty five dollars (\$125.00) of the

administrative penalty. The remaining amount of two thousand five hundred dollars (\$2,500.00) of the administrative penalty shall be payable in 25 monthly payments of one hundred dollars (\$100.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Mr. Elizondo fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Mr. Elizondo's failure to meet the payment schedule of this Agreed Order constitutes the failure by Mr. Elizondo to timely and satisfactorily comply with all of the terms of this Agreed Order

7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Mr. Elizondo agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that Mr. Elizondo removed the tanks from the property on April 6, 2009, in response to this enforcement action.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Mr. Elizondo has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

1. During an investigation conducted on April 9, 2008, a TCEQ Laredo Regional Office investigator documented that Mr. Elizondo violated:
  - a. 30 TEX. ADMIN. CODE § 334.47(a)(2) by failing to permanently remove from service, no later than 60 days after the prescribed update implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements

- b. 30 TEX. ADMIN. CODE § 334.54(d)(2) by failing to ensure that any residue from stored regulated substances that remained in the temporarily out of service UST system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity.
- c. 30 TEX. ADMIN. CODE § 334.54(b) by failing to maintain all piping, pump, 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.

### **III. DENIALS**

Mr. Elizondo generally denies each allegation in Section II (“Allegations”).

### **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that Mr. Elizondo pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Elizondo’s compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to “Texas Commission on Environmental Quality” and shall be sent with the notation “Re: Eluterio Elizondo, Docket No. 2008-0801-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. Elizondo shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order, Mr. Elizondo shall submit all data and information necessary to complete the Release Determination Report for the removal of the UST system.
  - b. Mr. Elizondo shall respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the removal of the UST system within 30 days after the date of such requests, or by any other deadline specified in writing.

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Elizondo. Mr. Elizondo is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Mr. Elizondo fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Elizondo's failure to comply is not a violation of this Agreed Order. Mr. Elizondo shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Elizondo shall notify the Executive Director within seven days after Mr. Elizondo becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Elizondo shall be made in writing to the Executive Director. Extensions are not effective until Mr. Elizondo receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Elizondo in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Agreed Order to Mr. Elizondo, or three days after the date on which the Commission mails notice of this Agreed Order to Mr. Elizondo, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

*J. Bergeson Pender*  
For the Executive Director

12/14/09  
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on Mr. Elizondo's compliance history;
- Greater scrutiny of any permit applications submitted by Mr. Elizondo;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against Mr. Elizondo;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Mr. Elizondo; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

*Eluterio Elizondo*  
Signature

9-24-09  
Date

Eluterio Elizondo  
Name (Printed or typed)

\_\_\_\_\_  
Title