EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-1393-PST-E TCEQ ID RN102838844 CASE NO. 38270
RESPONDENT NAME: M & F, INC. DBA MARATHON PHILLIPS

ORDER TYPE:		
__1660 AGREED ORDER	___FINDINGS AGREED ORDER	___FINDINGS ORDER FOLLOWING SOAH HEARING
_X_FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	___IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
___AIR	___MULTI-MEDIA (check all that apply)	___INDUSTRIAL HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	_X_PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
___WATER QUALITY	__SEWAGE SLUDGE	___UNDERGROUND INJECTION CONTROL
___MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 6345 Windswept Lane, Houston, Harris County

TYPE OF OPERATION: convenience store with retail sales of gasoline

SMALL BUSINESS: __X__ 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 June 21, 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: Ms. Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623

Respondent: Mr. Abo Obydah T. Abdel-Salam, Director, M & F, INC., 6345 Windswept Lane, Houston, Texas 77057;
Mr. Abo Obydah T. Abdel-Salam, Director, M & F, INC., 3120 Southwest Freeway, Ste. 600, Houston, Texas 77098

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

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: ___ Complaint _X_ Routine ___ Enforcement Follow-up ___ Records Review **Date of Complaint Relating to this Case**: None **Date of Investigation Relating to this Case**: August 12, 2009 **Date of NOE Relating to this Case**: August 17, 2009 **Background Facts**: The EDPRP was filed on January 12, 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 January 16, 2010. The EDFARP was filed on February 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 EDFARP on February 18, 2010. Respondent failed to answer either the EDPRP or the EDFARP, failed to request a hearing, and failed to schedule a settlement conference. **Current Compliance Status:** No outstanding technical requirements. Respondent's delivery certificate expires in October 2010. **PST:** 1. Failed to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months and upon major system replacement or modification [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. 2. Failed to maintain Stage II records at the Station and make them available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 115.246(4) and (6) and TEX. HEALTH & SAFETY CODE § 382.085(b)].	**Total Assessed**: $4,696 **Total Deferred**: $0 ___ Expedited Order ___ Financial Inability to Pay ___ SEP Conditional Offset **Total Due to General Revenue**: $4,696 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. **Site Compliance History Classification:** _X_ High ___ Average ___ Poor **Person Compliance History Classification:** _X_ High ___ Average ___ Poor **Major Source**: ___ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that Respondent implemented the following corrective measures at the Station: 1. Successfully conducted the required annual and triennial testing of the Stage II equipment on March 1, 2010; and 2. Began maintaining all Stage II records at the Station on March 1, 2010. **Ordering Provisions:** Respondents' UST fuel delivery certificate is revoked immediately. Respondent may submit an application for a new fuel delivery certificate only after compliance with all of the requirements of this Order. Within 10 days, Respondent shall send its UST fuel delivery certificate to TCEQ.

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision October 30, 2008*

TCEQ

DATES					
Assigned	24-Aug-2009				
PCW	18-Dec-2009	Screening	28-Aug-2009	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	M & F, INC dba Marathon Phillips		
Reg. Ent. Ref. No.	RN102838844		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	38270	No. of Violations	2
Docket No.	2009-1393-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* **$3,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — **-10.0%** Enhancement — *Subtotals 2, 3, & 7* **-$350**

Notes: Reduction for high performer classification.

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	$1,217
Approx. Cost of Compliance	$1,750

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal* **$3,150**

OTHER FACTORS AS JUSTICE MAY REQUIRE — **49.1%** — *Adjustment* **$1,546**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Respondent enhancement to capture the avoided cost of compliance associated with violation no. 1. and to offset High Performer reduction.

Final Penalty Amount **$4,696**

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* **$4,696**

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 **$4,696**

Screening Date	28-Aug-2009	**Docket No.**	2009-1393-PST-E	**PCW**
Respondent	M & F, INC dba Marathon Phillips			*Policy Revision 2 (September 2002)*
Case ID No.	38270			*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN102838844			
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 (*number of NOVs meeting criteria*)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which notices were submitted)*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%
		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) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Reduction for high performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) -10%

Screening Date	28-Aug-2009	**Docket No.** 2009-1393-PST-E	**PCW**
Respondent	M & F, INC dba Marathon Phillips		*Policy Revision 2 (September 2002)*
Case ID No.	38270		*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN102838844		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Theresa Hagood		

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 115.245(2) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months and upon major system replacement or modification. Specifically, the Respondent did not conduct the Stage II annual and triennial compliance testing.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm: Major	Moderate	Minor
	Actual			
	Potential	x		

Percent 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: 1 — 1095 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $2,500

One single event is recommended for the three-year period preceding the August 12, 2009 investigation.

Good Faith Efforts to Comply

0.0% Reduction — $0

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

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

Violation Subtotal $2,500

Economic Benefit (EB) for this violation

Estimated EB Amount $1,196

Statutory Limit Test

Violation Final Penalty Total $3,354

This violation Final Assessed Penalty (adjusted for limits) $3,354

Economic Benefit Worksheet

Respondent M & F, INC dba Marathon Phillips
Case ID No. 38270
Reg. Ent. Reference No. RN102838844
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)				0.00	$0	n/a	$0
Notes for DELAYED costs							
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]	$1,000	12-Aug-2006	12-Aug-2009	3.92	$196	$1,000	$1,196
Other (as needed)				0.00	$0	$0	$0
Notes for AVOIDED costs	Estimated avoided costs to conduct the testing. The Date Required is three years prior to the investigation date. The Final Date is the investigation date.						

Approx. Cost of Compliance	$1,000	TOTAL	$1,196

Screening Date	28-Aug-2009	**Docket No.** 2009-1393-PST-E	**PCW**
Respondent	M & F, INC dba Marathon Phillips		*Policy Revision 2 (September 2002)*
Case ID No.	38270		*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN102838844		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Theresa Hagood		

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 115.246(4) and (6) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to maintain Stage II records at the Station and make them available for inspection upon request by agency personnel. Specifically, completion of the Stage II employee training records and daily inspection logs were not available for review.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

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

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events: 1

16 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 August 12, 2009 investigation.

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

Estimated EB Amount $14

Statutory Limit Test

Violation Final Penalty Total $1,342

This violation Final Assessed Penalty (adjusted for limits) $1,342

Economic Benefit Worksheet

Respondent M & F, INC dba Marathon Phillips
Case ID No. 38270
Reg. Ent. Reference No. RN102838844
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	$500	12-Aug-2009	1-Mar-2010	0.55	$14	n/a	$14
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)				0.00	$0	n/a	$0
Notes for DELAYED costs	Estimated cost to maintain Stage II records at the Station. 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	$500	**TOTAL**	$14

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603514415	M & F, INC.	Classification: HIGH	Rating: 0.00
Regulated Entity:	RN102838844	MARATHON PHILLIPS	Classification: HIGH	Site Rating: 0.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	74164	
Location:	6345 WINDSWEPT LN, HOUSTON, TX, 77057			
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	August 27, 2009			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	August 27, 2004 to August 27, 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? Yes
3. If Yes, who is the current owner/operator? M & F, INC.
4. If Yes, who was/were the prior owner(s)/operator(s)? Abood Group Inc

   A. B. Marathon Gas and Go Coastal, Inc. dba Gulfway Quick Mart Citgo
5. When did the change(s) in owner or operator occur? 08/03/2007

   06/17/2009
6. Rating Date: 9/1/2008 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 08/17/2009 (765763)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

N/A

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 M & F, INC. DBA MARATHON PHILLIPS; RN102838844	**§ § § § § §**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

DEFAULT ORDER
DOCKET NO. 2009-1393-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's First Amended Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty, corrective action of the respondent, and revocation of the respondent's fuel delivery certificate. The respondent made the subject of this Order is M & F, INC. dba Marathon Phillips ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns and operates two underground storage tanks ("USTs") and a convenience store with retail sales of gasoline located at 6345 Windswept Lane, Houston, Harris County, Texas (the "Station").

2. The USTs at the Station are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission and contain a regulated petroleum substance as defined in the rules of the Commission. The Station consists of one or more sources as defined in TEX. HEATH & SAFETY CODE § 382.003(12).

3. During an investigation conducted on August 12, 2009, a University of Texas at Arlington Houston Stage II/PST Program investigator documented that Respondent:

   a. Failed to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months and upon major system replacement or modification. Specifically, Respondent did not conduct the Stage II annual and triennial compliance testing; and

b. Failed to maintain Stage II records at the Station and make them available for inspection upon request by agency personnel. Specifically, Stage II employee training records and daily inspection logs were not available for review.

4. Respondent received notice of the violations on or about August 22, 2009.

5. The Executive Director recognizes that Respondent implemented the following corrective measures at the Station:

   a. Successfully conducted the required annual and triennial testing of the Stage II equipment on March 1, 2010; and

   b. Began maintaining all Stage II records at the Station on March 1, 2010.

6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of M & F, INC. dba Marathon Phillips" (the "EDPRP") in the TCEQ Chief Clerk's office on January 12, 2010.

7. By letter dated January 12, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on January 16, 2010, as evidenced by the signature on the card.

8. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of M & F, INC. dba Marathon Phillips" (the "EDFARP") in the TCEQ Chief Clerk's office on February 11, 2010.

9. By letter dated February 11, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDFARP. According to the return receipt "green card," Respondent received notice of the EDFARP on February 18, 2010, as evidenced by the signature on the card.

10. More than 20 days have elapsed since Respondent received notice of the EDPRP and EDFARP, provided by the Executive Director. Respondent failed to file an answer to either the EDPRP or the EDFARP, 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, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the Commission.

2. As evidenced by Finding of Fact No. 3.a., Respondent failed to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months and upon major system replacement or modification, in violation of 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b).

3. As evidenced by Finding of Fact No. 3.b., Respondent failed to maintain Stage II records at the Station and make them available for inspection upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 115.246(4) and (6) and TEX. HEALTH & SAFETY CODE § 382.085(b).

4. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).

5. As evidenced by Finding of Fact Nos. 8 and 9, the Executive Director timely served Respondent with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).

6. As evidenced by Finding of Fact No. 10, Respondent 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 Respondent and assess the penalty recommended by the Executive Director.

7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of the Texas Water Code and the Texas Health & Safety 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.

8. An administrative penalty in the amount of four thousand six hundred ninety-six dollars ($4,696.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

9. 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.

10. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Respondent's UST fuel delivery certificate if the Commission finds that good cause exists.

11. Good cause for revocation of Respondent's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 3 and 6 through 10, and Conclusions of Law Nos. 2 through 6.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of four thousand six hundred ninety-six dollars ($4,696.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Respondent'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: M & F, INC. dba Marathon Phillips Docket No. 2009-1393-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. Respondent's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements of this Order.

3. Within 10 days after the effective date of this Order, Respondent shall send its UST fuel delivery certificate to:

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

4. All relief not expressly granted in this Order is denied.

5. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Station operations referenced in this Order.

6. If Respondent 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, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

7. 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

8. 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 Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.

9. 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.

10. 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.

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

AFFIDAVIT OF SHARESA 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 M & F, INC. dba Marathon Phillips" (the "EDPRP") was filed with the Office of the Chief Clerk on January 12, 2010.

The EDPRP was mailed to Respondent at its last known address on January 12, 2010, 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 January 16, 2010, as evidenced by the signature on the card.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of M & F, INC. dba Marathon Phillips" (the "EDFARP") was filed with the Office of the Chief Clerk on February 11, 2010.

The EDFARP was mailed to Respondent at its last known address on February 11, 2010, 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 EDFARP on February 18, 2010, as evidenced by the signature on the card.

More than 20 days have elapsed since Respondent received notice of the EDPRP and EDFARP. Respondent failed to file an answer to either the EDPRP or the EDFARP, 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 23rd day of April, A.D., 2010.

Jacque Lustig
Notary Public
State of Texas
My Commission Expires
April 25, 2011

Jacque Lustig

Notary Signature