

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-1967-PST-E TCEQ ID RN101886356 CASE NO. 38803
RESPONDENT NAME: R B ROGERS

ORDER TYPE:		
<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	

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 OCCURRED: 119 East Brown Street, Pampa, Gray County

TYPE OF OPERATION: Former convenience store with retail sales of gasoline

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 July 5, 2010. No comments were received.

CONTACTS AND MAILING LIST:
TCEQ Attorney: Mr. Marshall Coover, Litigation Division, MC 175, (512) 239-0620
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400
TCEQ Enforcement Coordinator: Mr. Wallace Myers, Waste Enforcement Section, MC 128, (512) 239-6580
TCEQ Regional Contact: Mr. Eddy Vance, Amarillo Regional Office, MC R-1, (806) 468-0510
Respondent: Mr. R B Rogers, 1915 Dogwood Lane, Pampa, Texas 79065
Respondent's Attorney: Mr. Robert L. Finney, Robert L. Finney, P.C., 309 West Foster Avenue, Pampa, Texas 79065

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: November 20, 2009 and December 17, 2009</p> <p>Date of NOE Relating to this Case: November 24, 2009</p> <p>Background Facts: The EDP RP was filed on April 9, 2010. Settlement was achieved and the agreed order was signed on May 5, 2010..</p> <p>Current Compliance Status: Respondent has not yet submitted documentation to certify compliance with the technical requirements. Respondent does not have a delivery certificate. As of June 30, 2010, Respondent owes \$2,380.35 in past-due fees.</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 pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0038010U for fiscal years 1995 through 2006 [30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702]. 	<p>Total Assessed: \$2,625</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 Paid/Due to General Revenue: \$325/\$2,300</p> <p>Respondent paid \$325 of the administrative penalty. The remaining amount of \$2,300 shall be payable in 23 monthly payments of \$100 each.</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 shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Within 45 days, submit payment for all outstanding fees, including any associated penalties and interest. Within 90 days, permanently remove the UST system from service. Within 180 days, submit written certification demonstrating compliance.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	30-Nov-2009			
	PCW	31-Mar-2010	Screening	1-Dec-2009	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	R B Rogers
Reg. Ent. Ref. No.	RN101886356
Facility/Site Region	1-Amarillo
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	38803	No. of Violations	2
Docket No.	2009-1967-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Wallace Myers
		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	\$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.

Compliance History	5.0% Enhancement	Subtotals 2, 3, & 7	\$125
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Notes	Enhancement for one NOV with same or similar violations.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$5,704	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$9,750	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,625
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$2,625
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,625
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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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.
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PAYABLE PENALTY	\$2,625
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Screening Date 1-Dec-2009

Docket No. 2009-1967-PST-E

PCW

Respondent R B Rogers

Policy Revision 2 (September 2002)

Case ID No. 38803

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101886356

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

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)	1	5%
	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%
<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 with same or similar violations.

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

Screening Date	1-Dec-2009	Docket No.	2009-1967-PST-E	PCW
Respondent	R B Rogers	<i>Policy Revision 2 (September 2002)</i>		
Case ID No.	38803	<i>PCW Revision October 30, 2008</i>		
Reg. Ent. Reference No.	RN101886356			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Wallace Myers			
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 334.47(a)(2)			
Violation Description	Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.			
Base Penalty	\$10,000			

>> Environmental, Property and Human Health Matrix

OR	Harm			
	Release	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	Number of violation days	11	
<i>mark only one with an x</i>	daily			Violation Base Penalty \$2,500
	weekly			
	monthly	x		
	quarterly			
	semiannual			
	annual			
	single event			
One monthly event is recommended based on documentation of the violation during the November 20, 2009 record review to the December 1, 2009 screening date.				

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

	Before NOV	NOV to EDRP/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 **Statutory Limit Test**

Estimated EB Amount	\$5,704	Violation Final Penalty Total	\$2,625
This violation Final Assessed Penalty (adjusted for limits)		\$2,625	

Economic Benefit Worksheet

Respondent R B Rogers
Case ID No. 38803
Reg. Ent. Reference No. RN101886356
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)	\$9,750	22-Dec-1998	1-Sep-2010	11.70	\$5,704	n/a	\$5,704

Notes for DELAYED costs

Estimated cost to permanently remove from service three USTs with a combined capacity of 13,000 gallons at \$0.75 per gallon. The date required is the date when the Respondent was required to upgrade the UST system 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

\$9,750

TOTAL

\$5,704

Screening Date 1-Dec-2009 **Docket No.** 2009-1967-PST-E **PCW**
Respondent R B Rogers *Policy Revision 2 (September 2002)*
Case ID No. 38803 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN101886356
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Wallace Myers

Violation Number
Rule Cite(s)
Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual	<input type="text"/>	<input type="text"/>	
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>		

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
<input type="text"/>					

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="(mark with x)"/>	

Notes

Violation Subtotal

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

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent R B Rogers
Case ID No. 38803
Reg. Ent. Reference No. RN101886356
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

n/a

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

\$0

TOTAL

\$0

Compliance History Report

Customer/Respondent/Owner-Operator:	CN601029036 R B Rogers	Classification: AVERAGE	Rating: 1.50
Regulated Entity:	RN101886356 Gas N Go	Classification: AVERAGE	Site Rating: 1.50
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	62701
Location:	119 E BROWN ST, PAMPA, TX, 79065		
TCEQ Region:	REGION 01 - AMARILLO		
Date Compliance History Prepared:	December 01, 2009		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	December 01, 2004 to December 01, 2009		

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

Name: Wallace Myers Phone: 512-239-6580

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	04/01/2009	(738283)
2	11/24/2009	(783432)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 03/31/2009	(738283)
Self Report? NO	Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)	
Description: Failure to perform the permanent removal of a 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
R B ROGERS;
RN101886356**

§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2009-1967-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 R B Rogers (“Mr. Rogers”) under the authority of TEX. WATER CODE chs. 5, 7, and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Rogers, represented by Mr. Robert L. Finney of Robert L. Finney, P.C., appear before the Commission and together stipulate that:

1. Mr. Rogers owns three underground storage tanks (“USTs”) and a former retail service station located at 119 East Brown Street, Pampa, Gray County, Texas (the “Facility”). The USTs at the Facility 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 TCEQ.
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. Rogers agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Rogers is subject to the Commission’s jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Rogers of any violation alleged in Section II (“Allegations”), nor of any statute or rule.
5. 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. Rogers paid three hundred twenty-five dollars (\$325.00) of the administrative penalty. The remaining amount of two thousand three hundred dollars (\$2,300.00) of the administrative penalty shall be payable in 23 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. Rogers 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. Rogers's failure to meet the payment schedule of this Agreed Order constitutes the failure by Mr. Rogers to timely and satisfactorily comply with all of the terms of this Agreed Order.

6. 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.
7. The Executive Director of the TCEQ and Mr. Rogers agree on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. 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. Rogers has not complied with one or more of the terms or conditions in this Agreed Order.
9. 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.
10. 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 a record review conducted on November 20, 2009, a TCEQ Amarillo Regional Office investigator documented that Mr. Rogers violated 30 TEX. ADMIN. CODE § 334.47(a)(2) by failing 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.
2. During a record review conducted on December 17, 2009, TCEQ Central Office staff documented that Mr. Rogers violated 30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702 by failing to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0038010U for fiscal years 1995 through 2006.

3. Mr. Rogers received notice of the violation documented in Section II, Paragraph 1 on or about November 29, 2009. Mr. Rogers received notice of the violation documented in Section II, Paragraph 2 on or about January 29, 2010.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Rogers pay an administrative penalty as set forth in Section I, Paragraph 5, above, for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Mr. Rogers’ 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: R B Rogers, Docket No. 2009-1967-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. Rogers shall undertake the following technical requirements:
 - a. Within 45 days after the effective date of this Agreed Order, Mr. Rogers shall submit payment for all outstanding fees, including any associated penalties and interest, with the notation, “Re: R B Rogers, TCEQ Financial Administration Account No. TCEQ 0038010U”, to the address listed in Ordering Provision No. 1.
 - b. Within 90 days after the effective date of this Agreed Order, Mr. Rogers shall permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55.
 - c. Within 180 days after the effective date of this Agreed Order, Mr. Rogers shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a. through 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. Rogers shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. through 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:

Eddy Vance, Waste Section Manager
Texas Commission on Environmental Quality
Amarillo Regional Office
3918 Canyon Drive
Amarillo, Texas 79109-4933

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Rogers. Mr. Rogers 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. Rogers 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. Rogers' failure to comply is not a violation of this Agreed Order. Mr. Rogers shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Rogers shall notify the Executive Director within seven days after Mr. Rogers 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. Rogers shall be made in writing to the Executive Director. Extensions are not effective until Mr. Rogers

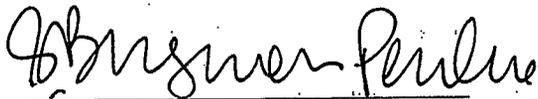
receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Rogers 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 this Agreed Order to Mr. Rogers, or three days after the date on which the Commission mails notice of this Agreed Order to Mr. Rogers, 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



For the Executive Director

6/25/2010

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

- A negative impact on Mr. Rogers's compliance history;
- Greater scrutiny of any permit applications submitted by Mr. Rogers;
- 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. Rogers;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Mr. Rogers; and
- TCEQ seeking other relief as authorized by law.

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

R. B. Rogers
Signature

May 5, 2010
Date

Name R. B. Rogers

Owner
Title