

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-1731-PST-E RN105000343 CASE NO. 38591
RESPONDENT NAME: JORGE MAGALLANES MARTINEZ

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(S) OCCURRED: 3102 North Arkansas Avenue, Laredo, Webb County

TYPE OF OPERATION: former convenience store with two underground storage tanks

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 Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired July 26, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Rudy Calderon, Litigation Division, MC 175, (512) 239-0205
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Mr. Tate Barrett, Waste Enforcement Section, MC R-12, (713) 767-3500

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

Respondent: Mr. Jorge Magallanes Martinez, 8795 Wyndum Terrace Trail, Laredo, Texas 78045

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

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint</p> <p><input checked="" type="checkbox"/> Routine</p> <p><input type="checkbox"/> Enforcement Follow-up</p> <p><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 23, 2009</p> <p>Date of NOE Relating to this Case: November 25, 2009</p> <p>Background Facts: The EDPRP was filed on March 4, 2010. Settlement was achieved and the agreed order was signed on May 17, 2010.</p> <p>Current Compliance Status: Respondent is not yet in compliance. Respondent does not have a delivery certificate.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)]. 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)]. 	<p>Total Assessed: \$3,675</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order</p> <p><input type="checkbox"/> Financial Inability to Pay</p> <p><input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid/Due to General Revenue: \$175/\$3,500</p> <p>Respondent paid \$175 of the administrative penalty. The remaining amount of \$3,500 shall be payable in 35 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 30 days, permanently remove the UST system from service. Within 45 days, submit an amended registration to reflect the operational status of the UST system and the current Facility ownership and contact information. Within 60 days, submit written certification demonstrating compliance.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	12-Oct-2009			
	PCW	25-Jan-2010	Screening	13-Oct-2009	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	Jorge Magallanes Martinez				
Reg. Ent. Ref. No.	RN105000343				
Facility/Site Region	16-Laredo	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	38591	No. of Violations	2		
Docket No.	2009-1731-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	\$3,500
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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	\$175
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Notes	Enhancement for one previous 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	\$1,966	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$12,100	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,675
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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	\$3,675
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,675
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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	\$3,675
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Screening Date 13-Oct-2009

Docket No. 2009-1731-PST-E

PCW

Respondent Jorge Magallanes Martinez

Policy Revision 2 (September 2002)

Case ID No. 38591

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105000343

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 (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 previous NOV with same or similar violations.

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

Screening Date 13-Oct-2009 **Docket No.** 2009-1731-PST-E **PCW**
Respondent Jorge Magallanes Martinez *Policy Revision 2 (September 2002)*
Case ID No. 38591 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN105000343
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Tate Barrett

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"/>	<input type="text"/>	<input type="text" value="0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>
<input type="text" value="100% of the rule requirement was not met."/>					

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 checked="" type="text" value="x"/>

Violation Base Penalty

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDPRP/Settlement
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	(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 Jorge Magallanes Martinez
Case ID No. 38591
Reg. Ent. Reference No. RN105000343
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)	\$100	14-Apr-2007	28-Jun-2010	3.21	\$16	n/a	\$16

Notes for DELAYED costs

Estimated cost to accurately prepare and submit an updated UST registration. The date required is thirty days after the change of ownership and the final date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$16

Screening Date 13-Oct-2009 **Docket No.** 2009-1731-PST-E **PCW**
Respondent Jorge Magallanes Martinez *Policy Revision 2 (September 2002)*
Case ID No. 38591 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN105000343
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Tate Barrett

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"/>	<input type="text"/>	<input type="text" value="25%"/>
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days
mark only one with an x
 daily
 weekly
 monthly
 quarterly
 semiannual
 annual
 single event
Violation Base Penalty

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	<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 Jorge Magallanes Martinez
Case ID No. 38591
Reg. Ent. Reference No. RN105000343
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
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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)	\$12,000	15-Mar-2007	13-Jun-2010	3.25	\$1,950	n/a	\$1,950

Notes for DELAYED costs
 Estimated cost to permanently remove from service two USTs with a combined capacity of 16,000 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	\$12,000	TOTAL	\$1,950
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Compliance History Report

Customer/Respondent/Owner-Operator: CN603453994 Magallanes Martinez, Jorge Classification: AVERAGE Rating: 3.01
Regulated Entity: RN105000343 R & M GROCERY Classification: AVERAGE Site Rating: 3.01
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 26896
REGISTRATION
Location: 3102 N ARKANSAS AVE, LAREDO, TX, 78043
TCEQ Region: REGION 16 - LAREDO
Date Compliance History Prepared: October 13, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: October 13, 2004 to October 13, 2009
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Tate Barrett Phone: (713) 422-8968

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? Magalles Martinez, Jorge
4. If Yes, who was/were the prior owner(s)/operator(s)? Vela, Andrea
5. When did the change(s) in owner or operator occur? 3/15/2007
6. Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 - 1 2/10/2009 (737569)
 - 2 9/23/2009 (778803)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 03/05/2009 (737569)

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)
Description: Failure to amend the site's PST Registration Information to reflect the current property owner's contact information and status of the UST system.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)
Description: Failure to perform the permanent removal of the UST system at the intersection of SH 37 and FM 71, Hagansport, Texas in accordance with 334.55 or provide documentation for the technical upgrade requirements in accordance with 334.47.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.54(d)(2)
Description: Failure to ensure that any residue from stored regulated substances which remain in a temporarily out of service UST shall not exceed 2.5 centimeters at the deepest point and shall not exceed 0.3 percent by weight of the system at full capacity.
 - 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
JORGE MAGALLANES
MARTINEZ;
RN105000343**

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§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2009-1731-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 Jorge Magallanes Martinez (“Mr. Martinez”) under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Martinez appear before the Commission and together stipulate that:

1. Mr. Martinez owns two underground storage tanks ("USTs") and a former convenience store with retail sales of gasoline located at 3102 North Arkansas Avenue, Laredo, Webb 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 Commission.
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. Martinez agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Martinez 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. Martinez of any violation alleged in Section II (“Allegations”), nor of any statute or rule.
5. An administrative penalty in the amount of three thousand six hundred seventy-five dollars (\$3,675.00) is assessed by the Commission in settlement of the violations alleged in Section II (“Allegations”). Mr. Martinez paid one hundred seventy-five dollars (\$175.00) of the administrative penalty. The remaining amount of three thousand five hundred dollars (\$3,500.00) shall be payable in 35 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 each be paid not later than 30 days following the due date of the previous payment until paid in full. If Mr. Martinez fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, 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, the acceleration of any remaining balance constitutes the failure by Mr. Martinez to timely and satisfactorily comply with all the terms of this Agreed Order and the Executive Director may demand payment of any deferred penalty amount.

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. Martinez agreed 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. Martinez 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 an investigation conducted on September 23, 2009, a TCEQ Laredo Regional Office investigator documented that Mr. Martinez violated:
 - a. 30 TEX. ADMIN. CODE § 334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current contact information, date of ownership change, and current facility name; and
 - b. 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. Mr. Martinez received notice of the violations on or about November 30, 2009.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Martinez pay an administrative penalty as set forth in Section I, Paragraph 5, above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and Mr. Martinez’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: Jorge Magallanes Martinez, Docket No. 2009-1731-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. Martinez shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, Mr. Martinez shall permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55.
 - b. Within 45 days after the effective date of this Agreed Order, Mr. Martinez shall submit an amended registration to reflect the operational status of the UST system, Facility ownership and contact information, name of the Facility, and the date of ownership change, in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

Registration and Reporting Section
Permitting and Remediation Support Division, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-30870

- c. Within 60 days after the effective date of this Agreed Order, Mr. Martinez shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Mr. Martinez shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. to:

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

and

Rose Luna-Pirtle, Air/Water/Waste Section Manager
Texas Commission on Environmental Quality
Laredo Regional Office
707 E. Calton Rd., Suite 304
Laredo, Texas 78041-3887

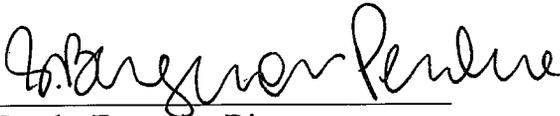
3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Martinez. Mr. Martinez is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Mr. Martinez fails to comply with any of 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. Martinez's failure to comply is not a violation of this Agreed Order. Mr. Martinez shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Martinez shall notify the Executive Director within seven days after Mr. Martinez 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. Martinez shall be made in writing to the Executive Director. Extensions are not effective until Mr. Martinez 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. Martinez 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. Martinez, or three days after the date on which the Commission mails notice of this Agreed Order to Mr. Martinez, 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

8/17/2010

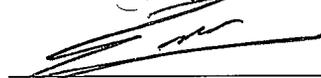
Date

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

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



Signature

05/17/10

Date

JORGE A. MARTINEZ MAGALLANES
Name (Printed or typed)

Owner
Title