

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO. 2008-0377-PST-E**

**RN101737773**

**CASE NO. 21549**

**RESPONDENT NAME: HECTOR SILVA, SR.**

<b>ORDER TYPE:</b>		
<input type="checkbox"/> AGREED ORDER	<input checked="" type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 604 West Comal Street, Pearsall, Frio County</p> <p><b>TYPE OF OPERATION:</b> inactive underground storage tanks</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints related to this enforcement action. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and Respondent expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired November 8, 2010. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Peipey Tang, Litigation Division, MC 175, (512) 239-3400                  Lena Roberts, Litigation Division, MC 175, (512) 239-3400  <b>TCEQ Enforcement Coordinator:</b> Rajesh Acharya, Waste Enforcement Section, MC 128, (512) 239-0577  <b>TCEQ Regional Contact:</b> Joel Anderson, San Antonio Regional Office, MC R-13, (210) 403-4010  <b>Respondent:</b> Hector Silva, Sr., 424 West Davila, Pearsall, Texas 78061  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input checked="" type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaint(s):</b> N/A</p> <p><b>Date(s) of Investigation:</b> February 7, 2008</p> <p><b>Date(s) of NOE(s):</b> February 20, 2008</p> <p><b>Background Facts:</b> The EDPRP was filed on July 21, 2008. Respondent filed an answer and the case was referred to SOAH. The Agreed Order was signed on August 24, 2010.</p> <p><b>Current Compliance Status:</b> Respondent has not yet submitted documentation demonstrating compliance with the technical requirements. Respondent does not have a delivery certificate.</p> <p><b>PST:</b></p> <ol style="list-style-type: none"> <li>Failed to provide valid, complete written construction notification to the TCEQ at least 30 days prior to initiating construction activities [30 TEX. ADMIN. CODE §§ 334.47(a)(2) and 334.55, and TCEQ Agreed Order Docket No. 2004-1776-PST-E, Ordering Provision No. 2.a.i.].</li> <li>Failed to properly permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, two USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements [30 TEX. ADMIN. CODE § 334.6].</li> </ol>	<p><b>Total Assessed:</b> \$56,550</p> <p><b>Total Deferred:</b> \$52,950  <input type="checkbox"/> Expedited Order  <input checked="" type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid/Due to General Revenue:</b> \$100/\$3,500</p> <p>Respondent paid \$100 of the administrative penalty. The remaining amount of \$3,500 shall be payable in 35 monthly payments of \$100 each.</p> <p><b>Compliance History Classifications:</b>  <i>Person/CN</i> – Average  <i>Site/RN</i> – Average</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> <p><b>Findings Order Justification:</b> Indifference to legal duty based on violation of a previous order.</p>	<p><b>Ordering Provisions:</b></p> <p>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Immediately, submit a construction notification for the permanent removal from service of the UST system.</li> <li>Within 30 days after the effective date of this Agreed Order, Mr. Silva shall permanently remove the UST system from service.</li> <li>Within 45 days, submit written certification demonstrating compliance.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision January 29, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	25-Feb-2008	<b>Screening</b>	4-Mar-2008	<b>EPA Due</b>	
	<b>PCW</b>	2-Jun-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>			
<b>Respondent</b>	Hector Silva, Sr.		
<b>Reg. Ent. Ref. No.</b>	RN101737773		
<b>Facility/Site Region</b>	13-San Antonio	<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	21549	<b>No. of Violations</b>	2
<b>Docket No.</b>	2008-0377-PST-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Enf. Coordinator</b>	Rajesh Acharya
<b>Multi-Media</b>		<b>EC's Team</b>	Enforcement Team 6
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$43,500</b>
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	<b>30% Enhancement</b>	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$13,050</b>
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Notes: Enhancement for two NOVs with same or similar violations and one prior enforcement order containing a denial of liability.

<b>Culpability</b>	No	<b>0% Enhancement</b>	<b>Subtotal 4</b>	<b>\$0</b>
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Notes: The Respondent does not meet the culpability criteria.

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

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

<b>Total EB Amounts</b>	<b>\$1,156</b>	<b>0% Enhancement*</b>	<b>Subtotal 6</b>	<b>\$0</b>
<b>Approx. Cost of Compliance</b>	<b>\$10,600</b>	<i>*Capped at the Total EB \$ Amount</i>		

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$56,550</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	<b>0%</b>	<b>Adjustment</b>	<b>\$0</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount** **\$56,550**

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$56,550</b>
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<b>DEFERRAL</b>	<b>0%</b>	<b>Reduction</b>	<b>Adjustment</b>	<b>\$0</b>
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

No deferral is recommended for Findings Orders.

<b>PAYABLE PENALTY</b>	<b>\$56,550</b>
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**Screening Date** 4-Mar-2008

**Docket No.** 2008-0377-PST-E

**PCW**

**Respondent** Hector Silva, Sr.

*Policy Revision 2 (September 2002)*

**Case ID No.** 21549

*PCW Revision January 29, 2008*

**Reg. Ent. Reference No.** RN101737773

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** Rajesh Acharya

### Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	2	10%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 30%

>> **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 two NOVs with same or similar violations and one prior enforcement order containing a denial of liability.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 30%

Screening Date 4-Mar-2008

Docket No. 2008-0377-PST-E

PCW

Respondent Hector Silva, Sr.

Policy Revision 2 (September 2002)

Case ID No. 21549

PCW Revision January 29, 2008

Reg. Ent. Reference No. RN101737773

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.6

Violation Description Failed to provide valid, complete written construction notification to the TCEQ at least 30 days prior to initiating construction activities. Specifically, the San Antonio Regional Office received an incomplete construction notification submitted by an unlicensed contractor after initiation of construction activities to remove two dispensers and piping associated with the UST system.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>>Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			10%
100% of the rule requirement was not met.					

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 26 Number of violation days

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the February 7, 2008 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$105

Violation Final Penalty Total \$1,300

This violation Final Assessed Penalty (adjusted for limits) \$1,300

## Economic Benefit Worksheet

**Respondent** Hector Silva, Sr.  
**Case ID No.** 21549  
**Reg. Ent. Reference No.** RN101737773  
**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				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	\$0	\$0
Record Keeping System				0.0	\$0	\$0	\$0
Training/Sampling				0.0	\$0	\$0	\$0
Remediation/Disposal				0.0	\$0	\$0	\$0
Permit Costs				0.0	\$0	\$0	\$0
Other (as needed)	\$100	7-Jan-2008	7-Feb-2008	1.0	\$5	\$100	\$105

Notes for DELAYED costs

Estimated cost to notify the agency prior to initiating the construction activities. Date Required is 30 days prior to the commencement of the removal of the dispensers and piping. Final Date is the date of the investigation.

### Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

**TOTAL**

\$105

**Screening Date** 4-Mar-2008 **Docket No.** 2008-0377-PST-E **PCW**  
**Respondent** Hector Silva, Sr. *Policy Revision 2 (September 2002)*  
**Case ID No.** 21549 *PCW Revision January 29, 2008*  
**Reg. Ent. Reference No.** RN101737773  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Rajesh Acharya

**Violation Number**

**Rule Cite(s)** TCEQ Agreed Order Docket No. 2004-1776-PST-E, Ordering Provision Nos. 2.a.i., 30 Tex. Admin. Code §§ 334.47(a)(2) and 334.55

**Violation Description**  
 Failed to properly permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, two USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements. Specifically, Respondent failed to use qualified personnel possessing the appropriate license or certification to remove the USTs from the ground.

**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**  
 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**

**Violation Events**

Number of Violation Events   Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	monthly	<input type="text" value="x"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

**Violation Base Penalty**

Seventeen monthly events are recommended from the order effective date of October 19, 2006 to the screening date of March 4, 2008.

**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** Hector Silva, Sr.  
**Case ID No.** 21549  
**Reg. Ent. Reference No.** RN101737773  
**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				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$10,500	19-Oct-2006	19-Oct-2008	2.0	\$1,051	n/a	\$1,051

#### Notes for DELAYED costs

Estimated cost to permanently remove two USTs with a combined capacity of 14,000 gallons at \$0.75 per gallon. Date Required is the effective date of the agreed order. Final Date is the estimated compliance date.

### Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

#### Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,500

**TOTAL**

\$1,051

# Compliance History

Customer/Respondent/Owner-Operator:	CN602736001 SILVA SR, HECTOR	Classification: AVERAGE	Rating: 31.75
Regulated Entity:	RN101737773 CHAPARRAL MINI MART	Classification: AVERAGE	Site Rating: 31.75
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	14303
Location:	604 W COMAL ST, PEARSALL, TX, 78061	Rating Date: September 01 07	Repeat Violator: NO
TCEQ Region:	REGION 13 - SAN ANTONIO		
Date Compliance History Prepared:	March 07, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	March 07, 2003 to March 07, 2008		

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

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

## Site Compliance History Components

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

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
- Effective Date: 10/19/2006 ADMINORDER 2004-1776-PST-E
- Classification: Moderate
- Citation: 30 TAC Chapter 334, SubChapter A 334.6
- Description: Failure to comply with UST construction notification requirements.
- Classification: Moderate
- Citation: 30 TAC Chapter 334, SubChapter C 334.55(b)
- Description: Failure to comply with permanent-removal-from-service requirements
- Classification: Minor
- Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)
- Description: Failure to permanently remove from service any UST system that was not brought into timely compliance w/in upgrade requirements no later than sixty (60) days after the prescribed implementation date
- 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.)
- N/A
- |   |            |          |
|---|------------|----------|
| 1 | 04/29/2004 | (270128) |
| 2 | 09/28/2004 | (287730) |
| 3 | 03/30/2007 | (554917) |
| 4 | 02/19/2008 | (617857) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- Date: 04/29/2004 (270128)
- Self Report? NO Classification: Moderate
- Citation: 30 TAC Chapter 334, SubChapter A 334.6
- Description: Failure to comply with UST construction notification requirements.
- Self Report? NO Classification: Moderate
- Citation: 30 TAC Chapter 334, SubChapter C 334.55(b)
- Description: Failure to comply with permanent-removal-from-service requirements

Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 334, SubChapter A 334.10(b)(2)		
Description:	Failure to provide records for underground storage tanks.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 334, SubChapter C 334.47(a)(2)		
Description:	Failure to permanently remove from service any UST system that was not brought into timely compliance w/in upgrade requirements no later than sixty (60) days after the prescribed implementation date		
Date:	03/27/2007 (554917)		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 334, SubChapter A 334.6		
Description:	Failure to comply with UST construction notification requirements.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 334, SubChapter C 334.55(b)		
Description:	Failure to comply with permanent-removal-from-service requirements		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 334, SubChapter C 334.47(a)(2)		
Description:	Failure to permanently remove from service any UST system that was not brought into timely compliance w/in upgrade requirements no later than sixty (60) days after the prescribed implementation date		
Self Report?	NO	Classification:	Major
Citation:	2A TWC Chapter 7, SubChapter A 7.101		
Rqmt Prov:	ORDER Ordering Provisions 2.a-2.b.		
Description:	Failure to comply with Ordering Provisions of Commission Docket No. 2004-1776-PST-E.		

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  
HECTOR SILVA, SR.;  
RN101737773**

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

## **AGREED ORDER DOCKET NO. 2008-0377-PST-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Hector Silva, Sr. ("Mr. Silva" or "Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Silva presented this agreement to the Commission.

Mr. Silva understands that he has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, Mr. Silva agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon Mr. Silva.

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

### **FINDINGS OF FACT**

1. Mr. Silva owns two underground storage tanks ("USTs") located at 604 West Comal Street, Pearsall, Frio County, Texas (the "Facility").
2. 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.
3. During an investigation conducted on February 7, 2008, a TCEQ San Antonio Regional Office investigator documented that Mr. Silva:
  - a. Failed to provide valid, complete written construction notification to the TCEQ at least 30 days prior to initiating construction activities. Specifically, the San Antonio Regional Office received an incomplete construction notification submitted by an unlicensed contractor after initiation of construction activities to remove two dispensers and piping associated with the UST system; and

- b. Failed to properly permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, two USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements. Specifically, Mr. Silva failed to use qualified personnel possessing the appropriate license or certification to remove the USTs from the ground.
4. Mr. Silva received notice of the violations on or about February 25, 2008.

#### **CONCLUSIONS OF LAW**

1. As evidenced by Findings of Fact Nos. 1 and 2, Mr. Silva is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Silva failed to provide written notification to the agency at least 30 days prior to initiating construction activities, in violation of 30 TEX. ADMIN. CODE § 334.6.
3. As evidenced by Finding of Fact No. 3.b., Mr. Silva failed to properly permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, two USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, in violation of 30 TEX. ADMIN. CODE §§ 334.47(a)(2), 334.55, and TCEQ Agreed Order Docket No. 2004-1776-PST-E, Ordering Provision No. 2.a.i.<sup>1</sup>
4. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Silva for violations of the Texas Water Code and the Texas Health and 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.
5. An administrative penalty in the amount of fifty-six thousand five hundred fifty dollars (\$56,550.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Financial Assurance Section of the Commission's Financial Administration Division reviewed the financial documentation submitted by Mr. Silva and determined that Mr. Silva is unable to pay part of the administrative penalty. Therefore, fifty-two thousand nine hundred fifty dollars (\$52,950.00) of the penalty is deferred contingent upon Mr. Silva's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Mr. Silva fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require Mr. Silva to pay all or part of the deferred penalty.

Mr. Silva paid one hundred dollars (\$100.00) of the administrative penalty. The remaining amount of three thousand five hundred dollars (\$3,500.00) of the administrative penalty 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 be remitted not

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<sup>1</sup> TCEQ Agreed Order Docket No. 2004-1776-PST-E was an enforcement action against Hector Silva and Petra Silva. Petra Silva no longer owns the Facility.

later than 30 days following the due date of the previous payment. If Mr. Silva 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, the failure of Mr. Silva to meet the payment schedule of this Agreed Order constitutes the failure by Mr. Silva to timely and satisfactorily comply with all of the terms of this Agreed Order.

### ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Silva is assessed an administrative penalty in the amount of fifty-six thousand five hundred fifty dollars (\$56,550) as set forth in Conclusion of Law No. 5, above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and Mr. Silva's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that 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: Hector Silva, Sr.; Docket No. 2008-0337-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. Silva shall undertake the following technical requirements:
  - a. Immediately after the effective date of this Agreed Order, Mr. Silva shall submit a construction notification for the permanent removal from service of the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.6(b)(2).
  - b. Within 30 days after the effective date of this Agreed Order, Mr. Silva shall permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55.
  - c. Within 45 days after the effective date of this Agreed Order, Mr. Silva shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or 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."

The certification shall be submitted 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:

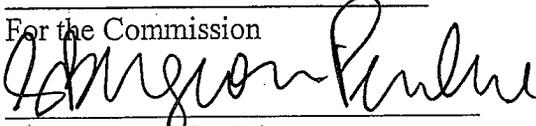
Joel Anderson, Waste Section Manager  
San Antonio Regional Office  
Texas Commission on Environmental Quality  
14250 Judson Road  
San Antonio, Texas 78233-4480

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Silva. Mr. Silva is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Mr. Silva 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. Silva's failure to comply is not a violation of this Agreed Order. Mr. Silva has the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Silva shall notify the Executive Director within seven days after Mr. Silva 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. Silva shall be made in writing to the Executive Director. Extensions are not effective until Mr. Silva receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. 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 Mr. Silva if the Executive Director determines that Mr. Silva has not complied with one or more of the terms or conditions in this Agreed Order.
7. 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.
8. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Silva 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.

9. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission" "owner" "person" "writing" and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date is the date of hand-delivery of this Agreed Order to Mr. Silva, or three days after the date on which the Commission mails notice of this Agreed Order to Mr. Silva, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission  
  
For the Executive Director

12/17/2010  
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Hector Silva, Sr. I represent that I am authorized to agree to the attached Agreed Order on behalf of Hector Silva, Sr., and do agree to the specified terms and conditions. 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 in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on Mr. Silva's compliance history;
- Greater scrutiny of any permit applications submitted by Mr. Silva;
- 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. Silva;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Mr. Silva; 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.

  
Signature

8-29-10  
Date

Hector Silva  
Name (printed or typed)  
Hector Silva, Sr.

Yes  
Owner