

**Executive Summary – Enforcement Matter – Case No. 41209
Humberto Montalvo and Ninfa Montalvo
RN101896447
Docket No. 2011-0301-PST-E**

Order Type:
Default Order

Findings Order Justification:
N/A

Media:
PST

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
5019 Fulton Street, Houston, Harris County

Type of Operation:
inactive underground storage tank (“UST”) system

Other Significant Matters:
Additional Pending Enforcement Actions: None
Past-Due Penalties: None
Past-Due Fees: None
Other: None
Interested Third-Parties: None

Texas Register Publication Date: August 19, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed:	\$5,500
Amount Deferred for Expedited Settlement:	N/A
Amount Deferred for Financial Inability to Pay:	N/A
Total Paid to General Revenue:	\$0
Total Due to General Revenue:	\$5,500

Compliance History Classifications:
Person/CN – Average (Both Respondents)
Site/RN – Average

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

**Executive Summary – Enforcement Matter – Case No. 41209
Humberto Montalvo and Ninfa Montalvo
RN101896447
Docket No. 2011-0301-PST-E**

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: January 12, 2011
Date(s) of NOV(s): July 5, 2007; September 20, 2010
Date(s) of NOE(s): February 16, 2011

Violation Information

Failed to permanently remove from service, no later than 60 days after the prescribed 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)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

1. Within 30 days, permanently remove the UST system from service.
2. Within 45 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: June 16, 2011
Date(s) Green Card(s) Signed: June 18, 2011
Date(s) Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A

Contact Information

TCEQ Attorneys: Steven M. Fishburn, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400

TCEQ Enforcement Coordinator: Clinton Sims, Waste Enforcement Section, (512) 239-6933

TCEQ Regional Contact: Nicole Bealle, Houston Regional Office, (713) 767-3623

Respondent: Humberto Montalvo and Ninfa Montalvo, 5009 Fulton Street, Houston, Texas 77009

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	22-Feb-2011	Screening	25-Feb-2011	EPA Due	
	PCW	31-May-2011				

RESPONDENT/FACILITY INFORMATION						
Respondent	Humberto Montalvo and Ninfa Montalvo					
Reg. Ent. Ref. No.	RN101896447					
Facility/Site Region	12-Houston	Major/Minor Source	Minor			

CASE INFORMATION						
Enf./Case ID No.	41209	No. of Violations	1			
Docket No.	2011-0301-PST-E	Order Type	1660			
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No			
Multi-Media		Enf. Coordinator	Clinton Sims			
		EC's Team	Enforcement Team 6			
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000			

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$5,000
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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	10.0% Enhancement	Subtotals 2, 3, & 7	\$500
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Notes	Enhancement for two NOVs with same/similar violations.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondents do 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	\$3,220	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$5,000	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$5,500
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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	\$5,500
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$5,500
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$5,500
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Screening Date 25-Feb-2011

Docket No. 2011-0301-PST-E

PCW

Respondent Humberto Montalvo and Ninfa Montalvo

Policy Revision 2 (September 2002)

Case ID No. 41209

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101896447

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Clinton Sims

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

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

Adjustment Percentage (Subtotal 2) 10%

>> 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/similar violations.

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

Screening Date 25-Feb-2011

Docket No. 2011-0301-PST-E

PCW

Respondent Humberto Montalvo and Ninfa Montalvo

Policy Revision 2 (September 2002)

Case ID No. 41209

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101896447

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Clinton Sims

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, an underground storage tank ("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

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (25%).

>> Programmatic Matrix

Table with columns: 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 2 44 Number of violation days

Table with columns: Frequency (daily, weekly, monthly, quarterly, semiannual, annual, single event), mark only one with an x.

Violation Base Penalty \$5,000

Two monthly events are recommended based on documentation of the violation during the January 12, 2011 record review to the February 25, 2011 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Table with columns: Extraordinary, Ordinary, N/A, Before NOV, NOV to EDPRP/Settlement Offer.

Notes The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$5,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3,220

Violation Final Penalty Total \$5,500

This violation Final Assessed Penalty (adjusted for limits) \$5,500

Economic Benefit Worksheet

Respondent Humberto Montalvo and Ninfa Montalvo
Case ID No. 41209
Req. Ent. Reference No. RN101896447
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
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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)	\$5,000	22-Dec-1998	5-Nov-2011	12.88	\$3,220	n/a	\$3,220

Notes for DELAYED costs

Estimated minimum cost to permanently remove the UST from service. The Date Required is the date when the Respondent was required to upgrade the UST system and the Final Date is the estimated compliance date.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

TOTAL

\$3,220

Compliance History

Customer/Respondent/Owner-Operator: CN601035496 Humberto Montalvo Classification: AVERAGE Rating: 1.50
 Regulated Entity: RN101896447 AUTO CLINIC Classification: AVERAGE Site Rating: 1.50
 ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 67828
 REGISTRATION
 Location: 5019 FULTON ST, HOUSTON, TX, 77009
 TCEQ Region: REGION 12 - HOUSTON
 Date Compliance History Prepared: February 24, 2011
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: February 24, 2006 to February 24, 2011
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:
 Name: Clinton Sims Phone: (512) 239-6933

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: 9/1/2010 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	07/05/2007	(565518)
2	09/20/2010	(843924)
3	02/16/2011	(895081)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	07/05/2007	(565518)	CN601035496
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 334, SubChapter C 334.47(a)(2)		
Description:	At the time of the investigation conducted on April 24, 2007, the underground storage tanks located on the property were not in operation, had not been upgraded, and still existed in place.		
Date:	09/20/2010	(843924)	CN601035496
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 334, SubChapter C 334.47(a)(2)		
Description:	At the time of the investigation conducted on April 24, 2007, the underground storage tanks located on the property were not in operation, had not been upgraded, and still existed in place.		
 - 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

Compliance History

Customer/Respondent/Owner-Operator: CN603805201 Ninfa Montalvo Classification: AVERAGE Rating: 1.50
 Regulated Entity: RN101896447 AUTO CLINIC Classification: AVERAGE Site Rating: 1.50
 ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 67828
 REGISTRATION
 Location: 5019 FULTON ST, HOUSTON, TX, 77009
 TCEQ Region: REGION 12 - HOUSTON
 Date Compliance History Prepared: February 24, 2011
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: February 24, 2006 to February 24, 2011
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:
 Name: Clinton Sims Phone: (512) 239-6933

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: 9/1/2010 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 | 07/05/2007 | (565518) |
| 2 | 09/20/2010 | (843924) |
| 3 | 02/16/2011 | (895081) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | |
|--------------|---|-----------------|--------------------------|
| Date: | 07/05/2007 | (565518) | CN601035496 |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 334, SubChapter C 334.47(a)(2) | | |
| Description: | At the time of the investigation conducted on April 24, 2007, the underground storage tanks located on the property were not in operation, had not been upgraded, and still existed in place. | | |
| Date: | 09/20/2010 | (843924) | CN601035496 |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 334, SubChapter C 334.47(a)(2) | | |
| Description: | At the time of the investigation conducted on April 24, 2007, the underground storage tanks located on the property were not in operation, had not been upgraded, and still existed in place. | | |
- 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
HUMBERTO MONTALVO AND
NINFA MONTALVO;
RN101896447**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2011-0301-PST-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondents. The respondents made the subject of this Order are Humberto Montalvo and Ninfa Montalvo ("Respondents").

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

FINDINGS OF FACT

1. Respondents own, as defined in 30 TEX. ADMIN. CODE § 334.2(73), an underground storage tank ("UST") system and a former gasoline service station located at 5019 Fulton Street in Houston, Harris 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. During a record review conducted on January 12, 2011, a TCEQ Houston Regional Office investigator documented that Respondents failed to permanently remove from service, no later than 60 days after the prescribed implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.
3. Respondents received notice of the violation on or about February 21, 2011.
4. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Humberto Montalvo and Ninfa Montalvo" (the "EDPRP") in the TCEQ Chief Clerk's office on June 16, 2011.
5. By letter dated June 16, 2011, sent to each Respondents' last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served each Respondent with notice of the EDPRP. According to the return receipt "green cards," each Respondent received notice of the EDPRP on June 18, 2011, as evidenced by the signatures on the cards.

6. More than 20 days have elapsed since Respondents received notice of the EDPRP. Respondents failed to file an answer and failed to request a hearing.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondents are 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. 2, Respondents failed to permanently remove from service, no later than 60 days after the prescribed implementation date, a UST system 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).
3. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondents with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 6, Respondents failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondents and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondents for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of five thousand five hundred dollars (\$5,500.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Respondents are assessed an administrative penalty in the amount of five thousand five hundred dollars (\$5,500.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here.

2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Humberto Montalvo and Ninfa Montalvo; Docket No. 2011-0301-PST-E" to:

Financial Administration Division, Revenues Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

3. Respondent shall undertake the following technical requirements:
- a. Within 30 days after the effective date of this Order, Respondents shall permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55; and
 - b. Within 45 days after the effective date of this Order, Respondents shall submit written certification and detailed supporting documentation, in accordance with Ordering Provision No. 3.c., below, to demonstrate compliance with Ordering Provision No. 3.a.
 - c. The certification required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall 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."

Respondents shall submit the written certification and supporting documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and:

Nicole Bealle, Waste Section Manger
Texas Commission on Environmental Quality
Houston Regional Office
5425 Polk St., Suite H
Houston, Texas 77023-1452

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondents. Respondents are ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
6. If Respondents fail to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondents' failure to comply is not a violation of this Order. Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondents shall notify the Executive Director within seven days after Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondents shall be made in writing to the Executive Director. Extensions are not effective until Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondents have not complied with one or more of the terms or conditions in this Order.
9. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
10. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF STEVEN M. FISHBURN

STATE OF TEXAS

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COUNTY OF TRAVIS

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"My name is Steven M. Fishburn. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Humberto Montalvo and Ninfa Montalvo" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on June 16, 2011.

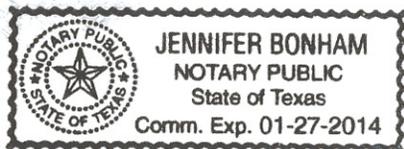
The EDPRP was mailed to each Respondent's last known address on June 16, 2011, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green cards," each Respondent received notice of the EDPRP on June 18, 2011, as evidenced by the signatures on the cards.

More than 20 days have elapsed since Respondents received notice of the EDPRP. Respondents failed to file an answer and failed to request a hearing."

Steven M. Fishburn, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Steven M. Fishburn, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 12th day of September, A.D. 2011.



Notary Without Bond

Notary Signature