

ROBBIE MOSLEY

RN101830685

Docket No. 2010-1168-PST-E

Order Type:

Default Order Following SOAH Hearing

Findings Order Justification:

N/A

Media:

PST

Small Business:

N/A

Location(s) Where Violation(s) Occurred:

northwest corner of the intersection of United States Highways 70 and 385, Springlake, Lamb County

Type of Operation:

two inactive underground storage tanks

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 5, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed: \$3,675

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: \$3,675

Compliance History Classifications:

Person/CN – High
Site/RN – Not yet rated

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

ROBBIE MOSLEY

RN101830685

Docket No. 2010-1168-PST-E

Investigation Information

Complaint Date: N/A
Date of Investigation: June 28, 2010
Date of NOV: October 20, 2009
Date of NOE: June 30, 2010

Violation Information

1. 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; and failed to maintain all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons [30 TEX. ADMIN. CODE §§ 334.47(a)(2) and 334.54(b)(2)].
2. Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the date of the occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)].

Corrective Actions/Technical Requirements

Corrective Action Completed:
N/A

Technical Requirements:

1. Immediately, begin maintaining all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secure manner.
2. Within 30 days, permanently remove the UST system from service.
3. Within 45 days, submit a properly completed UST registration form to reflect the current ownership information of the UST system,
4. Within 60 days, submit written certification demonstrating compliance.

Litigation Information

Date Petition Filed: November 18, 2010
Date Green Card Signed: December 6, 2010
Date Answer Filed: November 30, 2010
SOAH Referral Date: May 4, 2011
Hearing Date(s):
Preliminary hearing: June 23, 2011 (defaulted)

Contact Information

TCEQ Attorneys: Jeff Huhn, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
TCEQ Enforcement Coordinator: Lanae Foard, Water Enforcement Section, (512) 239-2554
TCEQ Regional Contact: Patrick Cooke, Lubbock Regional Office, (806) 796- 7092
Respondent: Robbie Mosley, P.O. Box 63, Springlake, Texas 79082
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	6-Jul-2010	Screening	16-Jul-2010	EPA Due	
	PCW	7-Jul-2011				

RESPONDENT/FACILITY INFORMATION	
Respondent	Robbie Mosley
Reg. Ent. Ref. No.	RN101830685
Facility/Site Region	2-Lubbock
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	40056	No. of Violations	2
Docket No.	2010-1168-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Lanae Foard
		EC's Team	Enforcement Team 1
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 same/similar NOV and reduction for high performer classification.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

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: \$3,554
 Approx. Cost of Compliance: \$8,100
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,325
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OTHER FACTORS AS JUSTICE MAY REQUIRE	10.5%	Adjustment	\$350
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Because this is a Default Order, the Executive Director recommends an upward adjustment to offset the reduction for compliance history.

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 indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$3,675
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Screening Date 16-Jul-2010

Docket No. 2010-1168-PST-E

PCW

Respondent Robbie Mosley

Case ID No. 40056

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101830685

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Lanae Foard

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>)	1	5%
	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) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Enhancement for one same/similar NOV and reduction for high performer classification.

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

Screening Date 16-Jul-2010

Docket No. 2010-1168-PST-E

PCW

Respondent Robbie Mosley

Policy Revision 2 (September 2002)

Case ID No. 40056

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101830685

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Lanae Foard

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 334.47(a)(2) and 334.54(b)(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. Also failed to maintain all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (0%).

Matrix Notes Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 Number of violation days 17

Table for frequency: daily, weekly, monthly (marked with x), quarterly, semiannual, annual, single event.

Violation Base Penalty \$2,500

One monthly event is recommended from the investigation date (June 28, 2010) to the screening date (July 15, 2010).

Good Faith Efforts to Comply

0.0% Reduction

\$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (marked with x).

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

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3,551

Violation Final Penalty Total \$2,625

This violation Final Assessed Penalty (adjusted for limits) \$2,625

Economic Benefit Worksheet

Respondent Robbie Mosley
Case ID No. 40056
Req. Ent. Reference No. RN101830685
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)	\$8,000	4-Apr-2002	16-Feb-2011	8.88	\$3,551	n/a	\$3,551

Notes for DELAYED costs

Estimated cost and to permanently remove from service two USTs with a combined capacity of 8,000 gallons at \$1.00 per gallon. Date required is the date the Respondent purchased the UST system. 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

\$8,000

TOTAL

\$3,551

Screening Date 16-Jul-2010

Docket No. 2010-1168-PST-E

PCW

Respondent Robbie Mosley

Policy Revision 2 (September 2002)

Case ID No. 40056

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101830685

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Lanae Foard

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.7(d)(3)

Violation Description Failed to notify the agency of any change or additional information regarding USTs, within 30 days from the date of occurrence of the change or addition. Specifically, the registration was not updated to reflect the current ownership information.

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 rule requirement was not met.					

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 17 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$1,000

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction \$0

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

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

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3

Violation Final Penalty Total \$1,050

This violation Final Assessed Penalty (adjusted for limits) \$1,050

Economic Benefit Worksheet

Respondent Robbie Mosley
Case ID No. 40056
Req. Ent. Reference No. RN101830685
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	28-Jun-2010	3-Mar-2011	0.68	\$3	n/a	\$3

Notes for DELAYED costs

Estimated cost to prepare and submit an updated UST registration form. Date required is the record review date. 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

\$3

Compliance History

Customer/Respondent/Owner-Operator: CN601482839 MOSLEY, ROBBIE Classification: HIGH Rating: 0.00
Regulated Entity: RN101830685 ROBBIE MOSLEY Classification: Site Rating:
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 15644

Location: On the northwest corner of the intersection of United States Highways 70 and 385,
Springlake, Lamb County, Texas

TCEQ Region: REGION 02 - LUBBOCK

Date Compliance History Prepared: July 15, 2010

Agency Decision Requiring Compliance History: Enforcement
Compliance Period: July 15, 2005 to July 15, 2010

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

Name: Lanae Foard Phone: (512) 239-2554

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

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 10/20/2009 (777467)
2 01/06/2010 (783434)
3 06/30/2010 (790276)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 10/20/2009 (777467) CN601482839
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)
Description: Failure of the owner/operator to amend, update, or change UST registration information.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)
Description: Failure of the owner to permanently remove from service empty and out of service UST systems that are non-compliant with the required technical upgrades.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.54(b)(2)
Description: Failure of the owner to lock, or otherwise secure, the fill pipe cap of each tank, or tank compartment, to prevent access, tampering, or vandalism by unauthorized persons.
- 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

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
ROBBIE MOSLEY;
RN101830685**

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§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2010-1168-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, corrective action of the respondent, and revocation of the respondent's fuel delivery certificate. The respondent made the subject of this Order is Robbie Mosley ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns, as defined in 30 TEX. ADMIN. CODE § 334.2(73), an underground storage tank ("UST") system and a former convenience store with retail sales of gasoline located on the northwest corner of the intersection of United States Highways 70 and 385 in Springlake, Lamb 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 June 28, 2010, a TCEQ Lubbock Regional Office investigator documented that Respondent:
 - a. 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; and failed to maintain all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; and
 - b. Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the date of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current ownership information.
3. Respondent received notice of the violations on or about July 5, 2010.

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 Robbie Mosley" (the "EDPRP") in the TCEQ Chief Clerk's office on November 18, 2010.
5. Respondent filed an answer requesting a hearing on November 30, 2010, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on May 4, 2011.
6. On May 25, 2011, the TCEQ Chief Clerk mailed notice of the June 23, 2011, preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Respondent.
7. On June 23, 2011, the Administrative Law Judge ("ALJ") convened the preliminary hearing, but Respondent failed to appear. The ALJ entered a finding that Respondent was served with proper notice of the hearing, and the Executive Director requested that the matter be remanded to the Executive Director so that a Default Order may be entered and the case may be dismissed from the SOAH Docket.
8. The ALJ remanded the matter to the Executive Director by SOAH Order No. 1, Granting Motion to Dismiss and Remand, issued on June 23, 2011, so that TCEQ may dispose of this case on a default basis.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent 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. 2.a., Respondent 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; and failed to maintain all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons, in violation of 30 TEX. ADMIN. CODE §§ 334.47(a)(2) and 334.54(b)(2).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to notify the agency of any change or additional information regarding the USTs within 30 days of the date of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3).
4. As evidenced by Finding of Fact No. 5, Respondent filed an answer requesting a hearing as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105, and the matter was referred to SOAH pursuant to 1 TEX. ADMIN. CODE §§ 155.53(b) and 155.101(a)(3) and 30 TEX. ADMIN. CODE § 70.109.

5. As evidenced by Finding of Fact No. 6, Respondent was provided proper notice of the preliminary hearing in accordance with TEX. GOV'T CODE §§ 2001.051(1) and 2001.052, TEX. WATER CODE § 7.058, 1 TEX. ADMIN. CODE §§ 155.103(a) and (c)(3), 155.401 and 155.501(c) and (e)(2), and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.23, 39.25, 39.405, 39.413, 39.423, 39.425 and 80.6.
6. As evidenced by Findings of Fact Nos. 7 and 8, Respondent failed to appear for the preliminary hearing, and pursuant to TEX. GOV'T CODE § 2001.056(4), TEX. WATER CODE § 7.057, and 1 TEX. ADMIN. CODE § 155.501(e)(1)(A), the ALJ dismissed the case from the SOAH docket so that the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director pursuant to 30 TEX. ADMIN. CODE § 70.106(b).
7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent 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.
8. An administrative penalty in the amount of three thousand six hundred seventy-five dollars (\$3,675.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
9. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of three thousand six hundred seventy-five dollars (\$3,675.00) 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: Robbie Mosley; Docket No. 2010-1168-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. Immediately upon the effective date of this Order, Respondent shall begin maintaining all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secure manner, in accordance with 30 TEX. ADMIN. CODE § 334.54.
 - b. Within 30 days after the effective date of this Order, Respondent 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 Order, Respondent shall submit a properly completed UST registration form to reflect the current ownership information of the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

Registration and Reporting Section
Permitting and Registration Support Division, MC 138
Texas Commission on Environmental Quality
P. O. Box 13087
Austin, Texas 78711-3087

- d. Within 60 days after the effective date of this Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision Nos. 3.a. through 3.c. The certification 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."

Respondent shall submit the written certification and copies of 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:

Patrick Cooke, Waste Section Manager
Texas Commission on Environmental Quality
Lubbock Regional Office
5012 50th Street, Suite 100
Lubbock, Texas 79414-3421

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

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF MARSHALL COOVER

STATE OF TEXAS

§
§
§

COUNTY OF TRAVIS

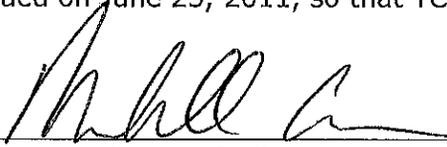
"My name is Marshall Coover. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

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 Robbie Mosley," (the "EDPRP") was filed in the TCEQ Chief Clerk's office on November 18, 2010.

Respondent filed an answer requesting a hearing on November 30, 2010, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on May 4, 2011. On May 25, 2011, the TCEQ Chief Clerk mailed notice of the June 23, 2011, preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Respondent.

Respondent failed to appear at the hearing on June 23, 2011. At that hearing, I requested and received a finding that Respondent was served with proper notice of the hearing pursuant to 1 TEX. ADMIN. CODE § 155.501(e)(2). I also requested that the matter be remanded to the Executive Director pursuant to 1 TEX. ADMIN. CODE § 155.501(e)(1)(A), which gives an ALJ the authority to remand the case back to the agency "to allow the agency to dispose of the case on a default basis under TEX. GOV'T CODE § 2001.056(4) and the referring agency's rules."

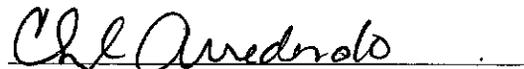
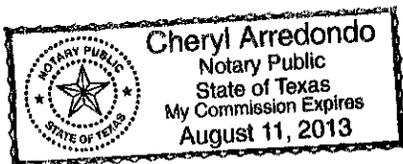
The ALJ remanded the matter to the Executive Director by SOAH Order No. 1, Granting Motion to Dismiss and Remand, issued on June 23, 2011, so that TCEQ may dispose of this case on a default basis."



Marshall Coover, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Marshall Coover, 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 15th day of July, A.D. 2011.


Notary Signature