

**Executive Summary – Enforcement Matter – Case No. 40056**  
**ROBBIE MOSLEY**  
**RN101830685**  
**Docket No. 2010-1168-PST-E**

Page 1 of 2

**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

**Executive Summary – Enforcement Matter – Case No. 40056**  
**ROBBIE MOSLEY**  
**RN101830685**  
**Docket No. 2010-1168-PST-E**

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***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**

<b>DATES</b>	<b>Assigned</b>	6-Jul-2010	<b>Screening</b>	16-Jul-2010	<b>EPA Due</b>	
	<b>PCW</b>	7-Jul-2011				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Robbie Mosley		
<b>Reg. Ent. Ref. No.</b>	RN101830685		
<b>Facility/Site Region</b>	2-Lubbock	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	40056	<b>No. of Violations</b>	2
<b>Docket No.</b>	2010-1168-PST-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Lanae Foard
		<b>EC's Team</b>	Enforcement Team 1
<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>	\$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.

<b>Compliance History</b>	-5.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	-\$175
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<b>Notes</b>	Enhancement for one same/similar NOV and reduction for high performer classification.
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<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$3,554	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$8,100	

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

<b>Notes</b>	Because this is a Default Order, the Executive Director recommends an upward adjustment to offset the reduction for compliance history.
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<b>Final Penalty Amount</b>	\$3,675
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$3,675
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>Notes</b>	Deferral not offered for non-expedited settlement.
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<b>PAYABLE PENALTY</b>	\$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

## &gt;&gt; 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%
Please Enter Yes or No			
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%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

## &gt;&gt; Compliance History Summary

Compliance History Notes

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

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

<b>Screening Date</b>	16-Jul-2010	<b>Docket No.</b> 2010-1168-PST-E	<b>PCW</b>																	
<b>Respondent</b>	Robbie Mosley	<i>Policy Revision 2 (September 2002)</i>																		
<b>Case ID No.</b>	40056	<i>PCW Revision October 30, 2008</i>																		
<b>Reg. Ent. Reference No.</b>	RN101830685																			
<b>Media [Statute]</b>	Petroleum Storage Tank																			
<b>Enf. Coordinator</b>	Lanae Foard																			
<b>Violation Number</b>	1																			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code §§ 334.47(a)(2) and 334.54(b)(2)																			
<b>Violation Description</b>	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.																			
<b>Base Penalty</b>			\$10,000																	
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>																				
<b>OR</b>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <th colspan="3" style="text-align: center;">Harm</th> </tr> <tr> <td style="text-align: center;">Release</td> <th style="text-align: center;">Major</th> <th style="text-align: center;">Moderate</th> <th style="text-align: center;">Minor</th> </tr> <tr> <td style="text-align: center;">Actual</td> <td style="border: 1px solid black;"></td> <td style="border: 1px solid black;"></td> <td style="border: 1px solid black;"></td> </tr> <tr> <td style="text-align: center;">Potential</td> <td style="border: 1px solid black; text-align: center;">x</td> <td style="border: 1px solid black;"></td> <td style="border: 1px solid black;"></td> </tr> </table>				Harm			Release	Major	Moderate	Minor	Actual				Potential	x			<b>Percent</b> <span style="border: 1px solid black; padding: 0 10px;">25%</span>
		Harm																		
	Release	Major	Moderate	Minor																
Actual																				
Potential	x																			
<b>&gt;&gt; Programmatic Matrix</b>																				
	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <th style="text-align: center;">Major</th> <th style="text-align: center;">Moderate</th> <th style="text-align: center;">Minor</th> </tr> <tr> <td style="text-align: center;">Falsification</td> <td style="border: 1px solid black;"></td> <td style="border: 1px solid black;"></td> <td style="border: 1px solid black;"></td> </tr> </table>				Major	Moderate	Minor	Falsification				<b>Percent</b> <span style="border: 1px solid black; padding: 0 10px;">0%</span>								
	Major	Moderate	Minor																	
Falsification																				
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.																			
<b>Adjustment</b>			\$7,500																	
			\$2,500																	
<b>Violation Events</b>																				
Number of Violation Events		1	Number of violation days																	
		17																		
<i>mark only one with an x</i>	daily		<b>Violation Base Penalty</b> <span style="border: 1px solid black; padding: 0 10px;">\$2,500</span>																	
	weekly																			
	monthly	x																		
	quarterly																			
	semiannual																			
	annual																			
	single event																			
One monthly event is recommended from the investigation date (June 28, 2010) to the screening date (July 15, 2010).																				
<b>Good Faith Efforts to Comply</b>		<b>0.0%</b> Reduction	\$0																	
		<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <th style="text-align: center;">Before NOV</th> <th style="text-align: center;">NOV to EDPRP/Settlement Offer</th> </tr> <tr> <td style="text-align: center;">Extraordinary</td> <td style="border: 1px solid black;"></td> <td style="border: 1px solid black;"></td> </tr> <tr> <td style="text-align: center;">Ordinary</td> <td style="border: 1px solid black;"></td> <td style="border: 1px solid black;"></td> </tr> <tr> <td style="text-align: center;">N/A</td> <td style="border: 1px solid black; text-align: center;">x</td> <td style="border: 1px solid black; text-align: center;">(mark with x)</td> </tr> </table>		Before NOV	NOV to EDPRP/Settlement Offer	Extraordinary			Ordinary			N/A	x	(mark with x)						
	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.																		
<b>Violation Subtotal</b>			\$2,500																	
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>																		
Estimated EB Amount		\$3,551	Violation Final Penalty Total																	
		\$2,625																		
<b>This violation Final Assessed Penalty (adjusted for limits)</b>			\$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

<b>Screening Date</b>	16-Jul-2010	<b>Docket No.</b>	2010-1168-PST-E	<b>PCW</b>	
<b>Respondent</b>	Robbie Mosley				<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b>	40056				<i>PCW Revision October 30, 2008</i>
<b>Reg. Ent. Reference No.</b>	RN101830685				
<b>Media [Statute]</b>	Petroleum Storage Tank				
<b>Enf. Coordinator</b>	Lanae Foard				
<b>Violation Number</b>	<input type="text" value="2"/>				
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 334.7(d)(3)"/>				
<b>Violation Description</b>	<input type="text" value="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."/>				
		<b>Base Penalty</b>	<input type="text" value="\$10,000"/>		

**>> Environmental, Property and Human Health Matrix**

<b>OR</b>		<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
				<b>Percent</b>	<input type="text" value="0%"/>

**>> Programmatic Matrix**

	<b>Falsification</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	
	<input type="text"/>	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	
					<b>Percent</b> <input type="text" value="10%"/>
<b>Matrix Notes</b>	<input type="text" value="100% of rule requirement was not met."/>				
				<b>Adjustment</b>	<input type="text" value="\$9,000"/>

**Violation Events**

Number of Violation Events	<input type="text" value="1"/>	<input type="text" value="17"/>	Number of violation days	
<i>mark only one with an x</i>	daily	<input type="text"/>		
	weekly	<input type="text"/>		
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input type="text" value="x"/>		
	<input type="text" value="One single event is recommended."/>			
<b>Violation Base Penalty</b>	<input type="text" value="\$1,000"/>			

**Good Faith Efforts to Comply**

	<b>0.0%</b>	Reduction	
		Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	<input type="text" value="(mark with x)"/>	
<b>Notes</b>	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>		
	<b>Violation Subtotal</b>	<input type="text" value="\$1,000"/>	

**Economic Benefit (EB) for this violation**

<b>Statutory Limit Test</b>	
<b>Estimated EB Amount</b>	<input type="text" value="\$3"/>
<b>Violation Final Penalty Total</b>	<input type="text" value="\$1,050"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b>	<input type="text" value="\$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**

**§  
§  
§  
§  
§**

**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 50<sup>th</sup> 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

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For the Commission



**AFFIDAVIT OF MARSHALL COOVER**

**STATE OF TEXAS**

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**COUNTY OF TRAVIS**

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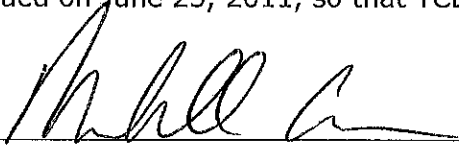
"My name is Marshall Coover. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

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."

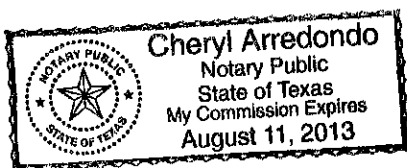
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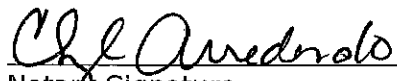


Marshall Coover, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

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 15<sup>th</sup> day of July, A.D. 2011.



  
Notary Signature