

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

January 21, 2011

Mr. Dustin Whaley
5507 Emil Avenue
Amarillo, Texas 79106

TCEQ Enforcement Action
Dustin Whaley
Docket No. 2010-0530-PST-E

Dear Mr. Whaley:

Enclosed, for your records, are copies of documents which were filed in the Chief Clerk's Office of the Texas Commission on Environmental Quality (TCEQ) so that the above-referenced matter may be included on the agenda of items to be considered for approval by the commission at a public meeting scheduled for **February 9, 2011, at 9:30 a.m.** The meeting will be held at the TCEQ Park 35 Campus, located at 12118 North I-35, in Building E, Room 201S, in Austin, Texas. If you have any questions you may contact me at the TCEQ Litigation Division at (512) 239-0205.

Sincerely,

/s/

Rudy Calderon
Attorney
Litigation Division
Rudy.Calderon@tceq.texas.gov

Enclosure

cc: Trina Greico, Waste Enforcement Section
Eddy Vance, Amarillo, Regional Office
Lena Roberts, Agenda Coordinator, Litigation Division

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO. 2010-0530-PST-E

RN101805059

CASE NO. 39415

RESPONDENT NAME: DUSTIN WHALEY

ORDER TYPE:		
<input type="checkbox"/> AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 1107 Vega Boulevard, Vega, Oldham County</p> <p>TYPE OF OPERATION: former convenience store with retail sales of gasoline</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints related to this enforcement action. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and Respondent expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired November 8, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Rudy Calderon, Litigation Division, MC 175, (512) 239-3400 Lena Roberts, Litigation Division, MC 175, (512) 239-3400 TCEQ Enforcement Coordinator: Trina Greico, Waste Enforcement Section, MC R-13, (210) 403-4006 TCEQ Regional Contact: Eddy Vance, Amarillo Regional Office, MC R-1, (806) 468-0510 Respondent: Dustin Whaley, 5507 Emil Avenue, Amarillo, Texas 79106-4609 Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

**RESPONDENT NAME: DUSTIN WHALEY
DOCKET NO. 2010-0530-PST-E**

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaint(s): N/A</p> <p>Date(s) of Investigation: March 9, 2010</p> <p>Date(s) of NOE(s): March 10, 2010</p> <p>Background Facts: The EDRP was filed on July 29, 2010, and mailed to Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDRP sent by certified mail as "unclaimed." The first class mail has not been returned. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Respondent has not yet submitted documentation certifying compliance. Respondent does not have a delivery certificate.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date of December 22, 1998, 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)(20)]. Failed to update UST registration information to reflect current ownership within 30 days after the ownership change of January 15, 2007 [30 TEX. ADMIN. CODE § 334.7(d)(1)(A) and (d)(3)]. 	<p>Total Assessed: \$3,675</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Due to General Revenue: \$3,675</p> <p>This is a Default Order. Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Compliance History Classifications: <i>Person/CN</i> – Average <i>Site/RN</i> – Average</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Within 30 days, permanently remove the UST from service. Within 45 days, submit an amended registration to reflect current ownership and the status of the UST. Within 60 days, submit written certification to demonstrate compliance.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	22-Mar-2010	Screening	29-Mar-2010	EPA Due	N/A
	PCW	14-Jun-2010				

RESPONDENT/FACILITY INFORMATION	
Respondent	Dustin Whaley
Reg. Ent. Ref. No.	RN101805059
Facility/Site Region	1-Amarillo
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	39415	No. of Violations	2
Docket No.	2010-0530-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Trina Grieco
		EC's Team	Enforcement Team 5
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	Penalty enhancement due to one previous NOV issued for the same violations at this facility in the past five years.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$1,811	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$9,050	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,675
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$3,675
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,675
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$3,675
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Screening Date 29-Mar-2010

Docket No. 2010-0530-PST-E

PCW

Respondent Dustin Whaley

Policy Revision 2 (September 2002)

Case ID No. 39415

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101805059

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Trina Grieco

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	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)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

Penalty enhancement due to one previous NOV issued for the same violations at this facility in the past five years.

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

Screening Date 29-Mar-2010	Docket No. 2010-0530-PST-E	PCW			
Respondent Dustin Whaley		Policy Revision 2 (September 2002)			
Case ID No. 39415		PCW Revision October 30, 2008			
Reg. Ent. Reference No. RN101805059					
Media [Statute] Petroleum Storage Tank					
Enf. Coordinator Trina Grieco					
Violation Number <input type="text" value="1"/>					
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 334.47(a)(2)"/>				
Violation Description	<input any="" applicable="" brought="" compliance="" component="" for="" into="" is="" not="" of="" requirements."="" system="" the="" timely="" type="text" upgrade="" ust")="" value="Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date of December 22, 1998, an underground storage tank (" which="" with=""/>				
	Base Penalty	<input type="text" value="\$10,000"/>			
>> Environmental, Property and Human Health Matrix					
OR	Release	Harm			
		Major Moderate Minor			
	Actual	<input type="text"/>	<input type="text"/>		
Potential	<input type="text" value="x"/>	<input type="text"/>	Percent <input type="text" value="25%"/>		
>>Programmatic Matrix					
	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>
Matrix Notes	<input type="text" value="Human health or the environment 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				<input type="text" value="\$7,500"/>
					<input type="text" value="\$2,500"/>
Violation Events					
	Number of Violation Events	<input type="text" value="1"/>	<input type="text" value="20"/>	Number of violation days	
		daily	<input type="text"/>		
		weekly	<input type="text"/>		
		monthly	<input type="text" value="x"/>		
		quarterly	<input type="text"/>		
		semiannual	<input type="text"/>		
		annual	<input type="text"/>		
		single event	<input type="text"/>		
mark only one with an x					Violation Base Penalty <input type="text" value="\$2,500"/>
<input type="text" value="One monthly event is recommended from the investigation date of March 9, 2010 to the screening date of March 29, 2010."/>					
Good Faith Efforts to Comply					
		<input type="text" value="0.0%"/>	Reduction		<input type="text" value="\$0"/>
			Before NOV	NOV to EDPRP/Settlement	
	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"/>	(mark with x)	
	Notes	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>			
					Violation Subtotal <input type="text" value="\$2,500"/>
Economic Benefit (EB) for this violation					
			Statutory Limit Test		
	Estimated EB Amount	<input type="text" value="\$1,801"/>		Violation Final Penalty Total	<input type="text" value="\$2,625"/>
					This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$2,625"/>

Economic Benefit Worksheet

Respondent Dustin Whaley
Case ID No. 39415
Reg. Ent. Reference No. RN101805059
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)	\$9,000	15-Jan-2007	15-Jan-2011	4.00	\$1,801	n/a	\$1,801

Notes for DELAYED costs: Estimated cost to permanently remove from service one UST with a capacity of 12,000 gallons at \$0.75 per gallon. The date required is the date the Respondent bought the UST system that was not upgraded and the final date is the date corrective actions are projected to be completed.

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	\$9,000	TOTAL	\$1,801
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Screening Date	29-Mar-2010	Docket No.	2010-0530-PST-E	PCW
Respondent	Dustin Whaley	<i>Policy Revision 2 (September 2002)</i>		
Case ID No.	39415	<i>PCW Revision October 30, 2008</i>		
Reg. Ent. Reference No.	RN101805059			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Trina Grieco			
Violation Number	2			
Rule Cite(s)	30 Tex. Admin. Code § 334.7(d)(1)(A) and (d)(3)			
Violation Description	Failed to update UST registration information to reflect current ownership within 30 days after the ownership change of January 15, 2007.			
Base Penalty	\$10,000			

>> Environmental, Property and Human Health Matrix

OR	Harm				Percent
	Release	Major	Moderate	Minor	
	Actual				
Potential				0%	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
		x			10%

Matrix Notes: The Respondent failed to comply with 100% of the rule requirements.

Adjustment: \$9,000

\$1,000

Violation Events

Number of Violation Events: 1 20 Number of violation days

<i>mark only one with an x</i>	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty: \$1,000

One single event is recommended based on documentation of the violation during the March 9, 2010 investigation.

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOV	NOV to EDRP/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: \$10	Violation Final Penalty Total: \$1,050
This violation Final Assessed Penalty (adjusted for limits): \$1,050	

Economic Benefit Worksheet

Respondent Dustin Whaley
Case ID No. 39415
Reg. Ent. Reference No. RN101805059
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)	\$50	15-Feb-2007	15-Jan-2011	3.92	\$10	n/a	\$10

Notes for DELAYED costs Estimated cost to amend the registration to show current ownership information. The date required is 30 days after the Respondent bought the UST system and the final date is the date corrective actions are projected to be completed.

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 \$50

TOTAL \$10

Compliance History Report

Customer/Respondent/Owner-Operator: CN603451006 Dustin Whaley Classification: AVERAGE Rating: 3.00
Regulated Entity: RN101805059 TEXACO SERVICE STATION Classification: AVERAGE Site Rating: 3.00
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 52799
REGISTRATION
Location: HWY 66 2 BLKS W HWY 38
TCEQ Region: REGION 01 - AMARILLO
Date Compliance History Prepared: March 25, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: March 25, 2005 to March 25, 2010
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Trina Grieco Phone: (210) 403-4006

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? Yes
3. If Yes, who is the current owner/operator? Dustin Whaley
4. If Yes, who was/were the prior owner(s)/operator(s)? J. W. Buck
Greg Pollard
5. When did the change(s) in owner or operator occur? 01/15/2007
06/15/2004
6. Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 02/23/2009 (736350)
2 03/10/2010 (777830)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 02/24/2009 (736350) CN603451006
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)
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.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(1)(A)
30 TAC Chapter 334, SubChapter A 334.7(d)(3)
Description: Failed to update UST registration information to reflect current ownership within 30 days after the ownership change took 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
DUSTIN WHALEY;
RN101805059**

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§
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§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2010-0530-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 respondent. The respondent made the subject of this Order is Dustin Whaley ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns one underground storage tank ("UST") and a former service station located at 1107 Vega Blvd. in Vega, Oldham County, Texas (the "Facility").
2. The UST at the Facility is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contains a regulated substance as defined in the rules of the Commission.
3. During an investigation conducted on March 9, 2010, a TCEQ Amarillo Regional Office investigator documented that Respondent:
 - a. Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date of December 22, 1998, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and
 - b. Failed to update UST registration information to reflect current ownership within 30 days after the ownership change of January 15, 2007.
4. Respondent received notice of the violations on or about March 15, 2010.
5. 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 Dustin Whaley" (the "EDPRP") in the TCEQ Chief Clerk's office on July 29, 2010.

6. By letter dated July 29, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.
7. More than 20 days have elapsed since Respondent received notice of the EDPRP, provided by the Executive Director. Respondent failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact Nos. 1 and 2, 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. 3.a., Respondent failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date of December 22, 1998, 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 Finding of Fact No. 3.b., Respondent failed to update UST registration information to reflect current ownership within 30 days after the ownership change of January 15, 2007, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(1)(A) and (d)(3).
4. As evidenced by Findings of Fact Nos. 5 and 6, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
5. As evidenced by Finding of Fact No. 7, Respondent 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 Respondent and assess the penalty recommended by the Executive Director.
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
7. 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.
8. 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: Dustin Whaley; Docket No. 2010-0530-PST-E" to:

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

3. Respondent shall undertake the following technical requirements:

a. Within 30 days after the effective date of this Order, Respondent shall permanently remove the UST from service, in accordance with 30 TEX. ADMIN. CODE § 334.55;

b. Within 45 days after the effective date of this Order, Respondent shall submit an amended registration to reflect current ownership and the status of the UST, in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

Petroleum Storage Tank Registration Team, MC 138
Texas Commission on Environmental Quality
P.O. Box 12087
Austin, Texas 78711-308700

c. Within 60 days after the effective date of this Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 3.a. and 3.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 3.a. and 3.b. to:

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

with a copy to:

Eddy Vance, Waste Section Manager
Amarillo Regional Office
Texas Commission on Environmental Quality
3918 Canyon Drive
Amarillo, Texas 79109-4933

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 RUDY CALDERON

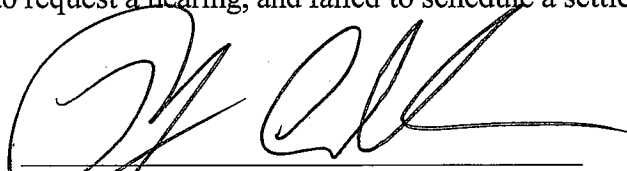
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Rudy Calderon. 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 Dustin Whaley” (the “EDPRP”) was filed with the Office of the Chief Clerk on July 29, 2010.

The EDPRP was mailed to Respondent at his last known address on July 29, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

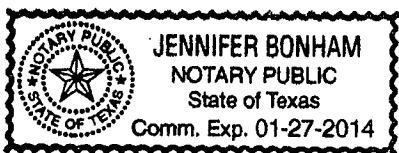
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.”



Rudy Calderon, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Rudy Calderon, 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 22nd day of September, A.D., 2010.



Notary Without Bond



Notary Signature