

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO. 2009-1313-PST-E**

**RN102239852**

**CASE NO. 38150**

**RESPONDENT NAME: MIROS STRITZ**

<b>ORDER TYPE:</b>		
<input type="checkbox"/> AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input checked="" 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	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 1620 Texas Avenue, Texas City, Galveston County</p> <p><b>TYPE OF OPERATION:</b> inactive underground storage tanks</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints related to this enforcement action. There is no record of additional pending enforcement action regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and Respondent expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired March 7, 2011. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Steven M. Fishburn, Litigation Division, MC 175, (512) 239-3400                  Lena Roberts, Litigation Division, MC 175, (512) 239-3400  <b>TCEQ Enforcement Coordinator:</b> Brianna Carlson, Waste Enforcement Section, MC R-15, (956) 430-6021  <b>TCEQ Regional Contact:</b> Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623  <b>Respondent:</b> Miros Stritz, 2322 16<sup>th</sup> Avenue, Texas City, Texas 77590  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter.</p>		

<b>VIOLATION SUMMARY CHART:</b>		
<b>VIOLATION INFORMATION</b>	<b>PENALTY CONSIDERATIONS</b>	<b>CORRECTIVE ACTIONS TAKEN/REQUIRED</b>
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date of Complaint:</b> N/A</p> <p><b>Date of Investigation:</b> June 24, 2009</p> <p><b>Date of NOE:</b> July 16, 2009</p> <p><b>Background Facts:</b>                      The EDPRP was filed on August 10, 2010. Respondent filed an answer and the case was referred to SOAH. On November 9, 2010, the TCEQ Chief Clerk mailed notice of the December 9, 2010, preliminary hearing to Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid to Respondent. According to the return receipt "green card," Respondent received notice of the December 9, 2010, preliminary hearing on November 16, 2010. On December 9, 2010, the ALJ convened the preliminary hearing, but Respondent failed to appear. The ALJ entered a finding that Respondent was served with proper notice of the preliminary hearing, and remanded the matter to the Executive Director so that TCEQ may dispose of this case on a default basis.</p> <p><b>Current Compliance Status:</b>                      Respondent has not yet submitted documentation demonstrating compliance with the technical requirements.</p> <p><b>PST:</b></p> <ol style="list-style-type: none"> <li>Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)].</li> <li>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. [30 TEX. ADMIN. CODE § 334.47(a)(2)].</li> </ol>	<p><b>Total Assessed:</b> \$6,500</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Due to General Revenue:</b> \$6,500</p> <p>This is a Default Order. Respondent has not actually paid any of the assessed administrative penalty but will be required to do so within 30 days under the terms of this Order.</p> <p><b>Compliance History Classifications:</b>  <i>Person/CN – Average</i>  <i>Site/RN – Average</i></p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b>                      The Executive Director recognizes that on August 19, 2010, Respondent updated the UST registration to reflect the current contact information, date of ownership change, and operational status of the UST system.</p> <p><b>Ordering Provisions:</b>                      Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Within 30 days, permanently remove the UST system from service.</li> <li>Within 45 days, submit written certification demonstrating compliance.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	20-Jul-2009			
	<b>PCW</b>	2-Jun-2010	<b>Screening</b>	14-Aug-2009	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Miros Stritz
<b>Reg. Ent. Ref. No.</b>	RN102239852
<b>Facility/Site Region</b>	12-Houston
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	38150	<b>No. of Violations</b>	2
<b>Docket No.</b>	2009-1313-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>	Brianna Carlson
		<b>EC's Team</b>	Enforcement Team 7
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$6,000</b>
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	10.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$600</b>
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Notes: Enhancement for two NOVs with same or similar violations.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>\$100</b>
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts	\$1,915
Approx. Cost of Compliance	\$22,600

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$6,500</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount** **\$6,500**

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$6,500</b>
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	<b>\$0</b>
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

<b>PAYABLE PENALTY</b>	<b>\$6,500</b>
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**Screening Date** 14-Aug-2009

**Docket No.** 2009-1313-PST-E

**PCW**

**Respondent** Miros Stritz

*Policy Revision 2 (September 2002)*

**Case ID No.** 38150

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN102239852

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** Brianna Carlson

### Compliance History Worksheet

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

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

**Adjustment Percentage (Subtotal 2)** 10%

>> **Repeat Violator (Subtotal 3)**

No

**Adjustment Percentage (Subtotal 3)** 0%

>> **Compliance History Person Classification (Subtotal 7)**

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%

>> **Compliance History Summary**

**Compliance History Notes**

Enhancement for two NOVs with same or similar violations.

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

**Screening Date** 14-Aug-2009 **Docket No.** 2009-1313-PST-E **PCW**  
**Respondent** Miros Stritz *Policy Revision 2 (September 2002)*  
**Case ID No.** 38150 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN102239852  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Brianna Carlson

**Violation Number**

**Rule Cite(s)**

**Violation Description**

Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an underground storage tank ("UST") system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.

**Base Penalty**

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="25%"/>
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

**Matrix Notes**

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

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

*mark only one with an x*

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"/>

**Violation Base Penalty**

Two monthly events are recommended based on documentation of the violation during the June 24, 2009 record review to the August 14, 2009 screening date.

**Good Faith Efforts to Comply**  Reduction

	Before NOV	NOV to EDPRP/Settlement
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	(mark with x)

**Notes**

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

**Violation Subtotal**

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount**

**Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** Miros Stritz  
**Case ID No.** 38150  
**Reg. Ent. Reference No.** RN102239852  
**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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	\$22,500	8-Jul-2008	21-Mar-2010	1.70	\$1,914	n/a	\$1,914

#### Notes for DELAYED costs

Estimated cost to permanently remove from service three USTs with a combined capacity of 30,000 gallons at \$0.75 per gallon. The date required is the date of ownership change and the final date is the estimated date of compliance.

### Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$22,500

**TOTAL**

\$1,914

**Screening Date** 14-Aug-2009 **Docket No.** 2009-1313-PST-E **PCW**  
**Respondent** Miros Stritz *Policy Revision 2 (September 2002)*  
**Case ID No.** 38150 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN102239852  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Brianna Carlson

**Violation Number**   
**Rule Cite(s)**   
**Violation Description**

**Base Penalty**

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

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

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

*mark only one with an x*

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 checked="" type="text" value="x"/>

**Violation Base Penalty**

**Good Faith Efforts to Comply**  Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input checked="" type="text" value="x"/>
N/A	<input type="text"/>	(mark with x)

**Notes**

**Violation Subtotal**

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount**  **Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** Miros Stritz  
**Case ID No.** 38150  
**Reg. Ent. Reference No.** RN102239852  
**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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	24-Jun-2009	19-Aug-2009	0.15	\$1	n/a	\$1

Notes for DELAYED costs

Estimated cost to accurately prepare and submit an updated UST registration. The date required is the date of the record review and the final date is the date of compliance.

### Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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**

\$1

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603420035 Stritz, Miros Classification: AVERAGE Rating: 3.00  
Regulated Entity: RN102239852 COOKS AUTO & A C STORE Classification: AVERAGE Site Rating: 3.00  
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 62561  
REGISTRATION  
Location: 1620 TEXAS AVE, TEXAS CITY, TX, 77590  
TCEQ Region: REGION 12 - HOUSTON  
Date Compliance History Prepared: August 25, 2009  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: August 25, 2004 to August 25, 2009  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:  
Name: Brianna Carlson Phone: 956/430-6021

## 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? OWN MIROS STRITZ
4. If Yes, who was/were the prior owner(s)/operator(s)? OWN E.W. Drager
5. When did the change(s) in owner or operator occur? 07/08/2008 OWN E.W. Drager
6. Rating Date: 9/1/2008 Repeat Violator: NO

## Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgements, 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 | 03/26/2007 | (543155) |
| 2 | 11/20/2008 | (706850) |
| 3 | 07/16/2009 | (759769) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- Date: 03/26/2007 (543155)**
- Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)  
Description: Failure to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing 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 C 334.54(d)(2)  
Description: Failure to ensure that any residue from stored regulated substances which remains in the system shall not exceed a depth of 2.5 centimeters at the deepest point and shall not exceed 0.3% by weight of the system at full capacity.
- Date: 11/20/2008 (706850)**
- Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)  
Description: Failure to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing 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 C 334.54(d)(2)  
Description: Failure to ensure that any residue from stored regulated substances which remains in the system shall not exceed a depth of 2.5 centimeters at the deepest point and shall not exceed 0.3% by weight of the system at full capacity.
- Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)

Description: Failure to provide amended registration for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first became aware of the change or addition, as applicable.

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  
MIROS STRITZ;  
RN102239852**

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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2009-1313-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 Miros Stritz ("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 inactive underground storage tank ("UST") system located at 1620 Texas Avenue in Texas City, Galveston 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 24, 2009, a TCEQ Houston 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
  - b. Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current contact information, date of ownership change, and operational status of the UST system.
3. Respondent received notice of the violations on or about July 21, 2009.

4. The Executive Director recognizes that on August 19, 2010, Respondent updated the UST registration to reflect the current contact information, date of ownership change, and operational status of the UST system.
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 Miros Stritz" (the "EDPRP") in the TCEQ Chief Clerk's office on August 10, 2010.
6. By letter dated August 10, 2010, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on August 13, 2010, as evidenced by the signature on the card.
7. Respondent filed an answer requesting a hearing on August 31, 2010, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on October 4, 2010.
8. On November 9, 2010, the TCEQ Chief Clerk mailed notice of the December 9, 2010, preliminary hearing to Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid.
9. On December 9, 2010, 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 preliminary 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.
10. The ALJ remanded the matter to the Executive Director by SOAH Order No. 1, Granting Motion to Dismiss and Remand, issued on December 9, 2010, 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, in violation of 30 TEX. ADMIN. CODE § 334.47(a)(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 occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(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(a).
5. As evidenced by Finding of Fact No. 7, 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, 155.101(a)(3), and 30 TEX. ADMIN. CODE § 70.109.
6. As evidenced by Finding of Fact No. 8, 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), 155.401(a), and 155.501(c) and (e)(2), and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.425, 70.104, and 80.6(b)(3).
7. As evidenced by Findings of Fact Nos. 9 and 10, Respondent failed to appear for the preliminary hearing, and pursuant to TEX. GOV'T CODE § 2001.056, TEX. WATER CODE § 7.057, 1 TEX. ADMIN. CODE § 155.501(e)(1)(A), and 30 TEX. ADMIN. CODE § 70.106(b), 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.
8. 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.
9. An administrative penalty in the amount of six thousand five hundred dollars (\$6,500.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
10. 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 six thousand five hundred dollars (\$6,500.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here.
2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Miros Stritz; Docket No. 2009-1313-PST-E" to:

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

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

Ms. Nicole Bealle, Waste Section Manager  
Houston Regional Office  
Texas Commission on Environmental Quality  
5425 Polk Ave., Ste. H  
Houston, Texas 77023-1452.

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon 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 STEVEN M. FISHBURN

STATE OF TEXAS

§  
§  
§

COUNTY OF TRAVIS

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

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Miros Stritz," (the "EDPRP") was filed in the TCEQ Chief Clerk's office on August 10, 2010.

The EDPRP was mailed to Respondent's last known address on August 10, 2010 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on August 13, 2010, as evidenced by the signature on the card.

Respondent filed an answer requesting a hearing on August 31, 2010, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on October 4, 2010. On November 9, 2010, the TCEQ Chief Clerk mailed notice of the December 9, 2010 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 December 9, 2010. 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), 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 and the referring agency's rules."

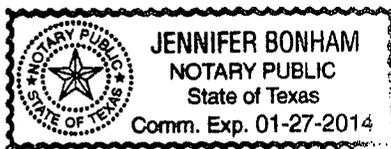
The ALJ remanded the matter to the Executive Director by SOAH Order No. 1, Granting Motion to Dismiss and Remand, issued on December 9, 2010, so that TCEQ may dispose of this case on a default basis."



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

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

Given under my hand and seal of office this 6<sup>th</sup> day of January, A.D. 2011.



Notary Without Bond

  
Notary Signature