

Executive Summary – Enforcement Matter – Case No. 39842
Rafael Mendoza III d/b/a Kwik-E-Mart Convenience Store
RN101687614
Docket No. 2010-0934-PST-E

Order Type:
Default Order

Findings Order Justification:
N/A

Media:
PST

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
Northwestern intersection of Mile 9 Road North and Mile 2 Road East, Mercedes, Hidalgo County

Type of Operation:
inactive UST system and convenience store

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: January 21, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed:	\$5,408
Amount Deferred for Expedited Settlement:	N/A
Amount Deferred for Financial Inability to Pay:	N/A
Total Paid to General Revenue:	\$0
Total Due to General Revenue:	\$5,408
SEP Conditional Offset:	N/A

Compliance History Classifications:
Person/CN – Average
Site/RN – Average by Default

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: March 29, 2010
Date(s) of NOV(s): August 12, 2009
Date(s) of NOE(s): May 21, 2010

Violation Information

1. Failed to notify the agency of any change or additional information regarding the UST system within 30 days of the occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)].
2. Failed to monitor for releases a UST system that has not been emptied of all regulated substances at the time it was temporarily removed from service and failed to ensure that any residue from stored regulated substances, which remained in the temporarily out-of-service UST system, did not exceed a depth of 2.4 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity [30 TEX. ADMIN. CODE § 334.54(c), (c)(2), and (d)].
3. Failed to demonstrate acceptable financial assurance for taking corrective action and/or compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

1. Within 30 days:
 - a. Submit an amended registration to reflect the correct ownership and operational status of the UST system; and
 - b. Permanently remove the UST system from service.
 - c. Or, in lieu of Technical Requirement No. 1.b.:
 - i. Temporarily remove the UST system from service; and
 - ii. Provide acceptable financial assurance for the UST system.
2. Within 45 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: October 22, 2010
Date(s) Green Card(s) Signed: Unclaimed
Date(s) Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s):
Preliminary hearing: N/A
Evidentiary hearing: N/A

Executive Summary – Enforcement Matter – Case No. 39842
Rafael Mendoza III d/b/a Kwik-E-Mart Convenience Store
RN101687614
Docket No. 2010-0934-PST-E

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Contact Information

TCEQ Attorneys: Steven M. Fishburn, Litigation Division, MC 175, (512) 239-3400
Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ SEP Coordinator: N/A

TCEQ Enforcement Coordinator: Harvey Wilson, Air Enforcement Section, (512) 239-0321

TCEQ Regional Contact: Jaime Garza, Harlingen Regional Office, MC R-15, (956) 430- 6030

Respondent: Rafael Mendoza III, Owner, Kwik-E-Mart Convenience Store, 2207 West Expressway
83, Westlaco, Texas 78596

Respondent's Attorney: N/A

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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	7-Jun-2010			
	PCW	30-Sep-2010	Screening	8-Jun-2010	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	Rafael Mendoza III dba Kiwk-E-Mart Convenience Store				
Reg. Ent. Ref. No.	RN101687614				
Facility/Site Region	15-Harlingen	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	39842	No. of Violations	3		
Docket No.	2010-0934-PST-E	Order Type	1660		
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Harvey Wilson		
		EC's Team	Enforcement Team 3		
Admin. Penalty \$ Limit	Minimum	\$0	Maximum	\$10,000	

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$4,500
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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	\$225
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Notes	Enhancement for one previous NOV for a same/similar violation.
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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	\$855	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$4 750	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$4,725
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OTHER FACTORS AS JUSTICE MAY REQUIRE	14.5%	Adjustment	\$683
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Recommended enhancement to capture the avoided cost of compliance associated with violation no. 3.
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Final Penalty Amount	\$5,408
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$5,408
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DEFERRAL		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	\$5,408
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Screening Date 8-Jun-2010

Docket No. 2010-0934-PST-E

PCW

Respondent Rafael Mendoza III dba Kiwk-E-Mart Convenience Store

Policy Revision 2 (September 2002)

Case ID No. 39842

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101687614

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Harvey Wilson

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 (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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 (number of judgements or consent decrees meeting criteria)	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 (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	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 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one previous NOV for a same/similar violation.

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

Screening Date 8-Jun-2010

Docket No. 2010-0934-PST-E

PCW

Respondent Rafael Mendoza III dba Kiwk-E-Mart Convenience Store

Policy Revision 2 (September 2002)

Case ID No. 39842

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101687614

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Harvey Wilson

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 334.7(d)(3)

Violation Description

Failed to notify the agency of any change or additional information regarding the Underground Storage Tank (UST) within 30 days of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the correct ownership information and current operational status of the UST system.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor
			x	

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 71

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the March 29, 2010 investigation.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDRP/Settlement
	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 \$4

Violation Final Penalty Total \$1,202

This violation Final Assessed Penalty (adjusted for limits) \$1,202

Economic Benefit Worksheet

Respondent Rafael Mendoza III dba Kiwk-E-Mart Convenience Store
Case ID No. 39842
Reg. Ent. Reference No. RN101687614
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)	\$100	29-Mar-2010	30-Jan-2011	0.84	\$4	n/a	\$4

Notes for DELAYED costs

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

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$4

Screening Date 8-Jun-2010 **Docket No.** 2010-0934-PST-E **PCW**
Respondent Rafael Mendoza III dba Kiwk-E-Mart Convenience Store *Policy Revision 2 (September 2002)*
Case ID No. 39842 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN101687614
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Harvey Wilson

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="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

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" value="x"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDCRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	<input type="text" value="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 Rafael Mendoza III dba Kiwk-E-Mart Convenience Store
Case ID No. 39842
Reg. Ent. Reference No. RN101687614
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)	\$4,000	29-Mar-2010	30-Jan-2011	0.84	\$168	n/a	\$168

Notes for DELAYED costs

Estimated cost to permanently remove from service one UST with a capacity of 4,000 gallons at \$1.00 per gallon. The date required is the date of the investigation. Final Date is the projected 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

\$4,000

TOTAL

\$168

Screening Date 8-Jun-2010 **Docket No.** 2010-0934-PST-E **PCW**
Respondent Rafael Mendoza III dba Kiwk-E-Mart Convenience Store *Policy Revision 2 (September 2002)*
Case ID No. 39842 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN101687614
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Harvey Wilson

Violation Number 3
Rule Cite(s) 30 Tex. Admin. Code § 37.815(a) and (b)
Violation Description Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs. Specifically, the Respondent had no financial assurance.
Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual			
Potential					

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			x		
100% of the rule requirement was not met.					
Adjustment					\$9,000

Adjustment \$9,000 **Final Penalty** \$1,000

Violation Events

Number of Violation Events: 1
 Number of violation days: 71
mark only one with an x
 daily:
 weekly:
 monthly:
 quarterly:
 semiannual:
 annual:
 single event:

Violation Base Penalty \$1,000

One single event is recommended for the one tank.

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	mark with x
Notes	The Respondent does not meet the good faith criteria for this violation.	

Violation Subtotal \$1,000

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

Estimated EB Amount \$683 **Violation Final Penalty Total** \$1,202
This violation Final Assessed Penalty (adjusted for limits) \$1,202

Economic Benefit Worksheet

Respondent Rafael Mendoza III dba Kiwk-E-Mart Convenience Store
Case ID No. 39842
Reg. Ent. Reference No. RN101687614
Media Petroleum Storage Tank
Violation No. 3

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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

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]	\$650	29-Mar-2009	29-Mar-2010	1.00	\$33	\$650	\$683
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to provide financial assurance for one petroleum UST (\$650 per tank). The date required is one year prior to the investigation date and the final date is the investigation date.

Approx. Cost of Compliance

\$650

TOTAL

\$683

Compliance History Report

Customer/Respondent/Owner-Operator: CN603516964 MENDOZA, RAFAEL III Classification: AVERAGE Rating: 3.01
Regulated Entity: RN101687614 KWIK-E-MART CONVENIENCE STORE Classification: AVERAGE BY DEFAULT Site Rating: 3.01
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 61092
Location: INTERSECTION OF MILE 9 RD N AND MILE 2 RD W (KIKA DE LA GARZA), MERCEDES, TX
TCEQ Region: REGION 15 - HARLINGEN
Date Compliance History Prepared: May 25, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: May 25, 2005 to May 25, 2010
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Harvey Wilson Phone: 239 - 1000

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2009 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 08/03/2009 (764531)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 08/12/2009 (764531)
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 334, SubChapter 334.7
Description: Failure to update UST registration
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 334, Subchapter 334.54
Description: Failure to monitor UST for releases
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 37, Subchapter 37.815
Description: Failure to provide financial assurance
- 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
RAFAEL MENDOZA III
d/b/a KWIK-E-MART
CONVENIENCE STORE;
RN101687614**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2010-0934-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 Rafael Mendoza III d/b/a Kwik-E-Mart Convenience Store ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns and operates, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), an inactive underground storage tank ("UST") system and a convenience store located at the northwestern intersection of Mile 9 Road North and Mile 2 Road East (legal description: OLD REBEL HEIGHTS BLK 2 LOT 40, Property I.D. No. 250919) in Mercedes, Hidalgo County, Texas (the "Facility"). The UST at the Facility is 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 an investigation conducted on March 29, 2010, a TCEQ Harlingen Regional Office investigator documented that Respondent:
 - a. Failed to notify the agency of any change or additional information regarding the UST system within 30 days of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the correct ownership information and current operational status of the UST system;
 - b. Failed to monitor for releases a UST system that has not been emptied of all regulated substances at the time it was temporarily removed from service and failing to ensure that any residue from stored regulated substances, which remained in the temporarily out-of-service UST system, did not exceed a depth of 2.4 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity. Specifically, the tank contained approximately three (3) feet of regulated substance; and

- c. Failed to demonstrate acceptable financial assurance for taking corrective action and/or compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.
3. Respondent received notice of the violations on or about May 26, 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 Rafael Mendoza III d/b/a Kwik-E-Mart Convenience Store" (the "EDPRP") in the TCEQ Chief Clerk's office on October 22, 2010.
5. By letter dated October 22, 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. 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.
6. More than 20 days have elapsed since Respondent received notice of the EDPRP provided by the Executive Director. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.

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 notify the agency of any change or additional information regarding the UST system within 30 days of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to monitor for releases a UST system that has not been emptied of all regulated substances at the time it was temporarily removed from service and failing to ensure that any residue from stored regulated substances, which remained in the temporarily out-of-service UST system, did not exceed a depth of 2.4 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity, in violation of 30 TEX. ADMIN. CODE § 334.54(c), (c)(2), and (d).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to demonstrate acceptable financial assurance for taking corrective action and/or compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b).

5. As evidenced by Findings of Fact Nos. 4 and 5, 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).
6. As evidenced by Finding of Fact No. 6, 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.
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 five thousand four hundred eight dollars (\$5,408.00) 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 five thousand four hundred eight dollars (\$5,408.00) 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: Rafael Mendoza III d/b/a Kwik-E-Mart Convenience Store; Docket No. 2010-0934-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:
- i. Submit an amended registration to reflect the correct ownership and operational status of the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.7; and
 - ii. Permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55.
 - iii. Or, in lieu of Ordering Provision No. 3.a.ii.:
 - A. Temporarily remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.54(c); and
 - B. Provide acceptable financial assurance for the UST system pursuant to 30 TEX. ADMIN. CODE § 37.815(a) and (b).
- 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 Nos. 3.a.i. and either 3.a.ii. or 3.a.iii., as applicable. 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:

Mr. Jaime Garza, Waste Section Manager
Harlingen Regional Office
Texas Commission on Environmental Quality
1804 W. Jefferson Ave.
Harlingen, Texas 78550-5247

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 STEVEN M. FISHBURN

STATE OF TEXAS

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COUNTY OF TRAVIS

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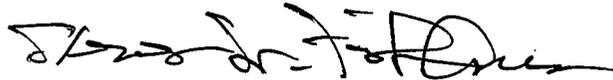
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"My name is Steven M. Fishburn. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Rafael Mendoza III d/b/a Kwik-E-Mart Convenience Store," (the "EDPRP") was filed in the TCEQ Chief Clerk's office on October 22, 2010.

The EDPRP was mailed to Respondent's last known address on October 22, 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).

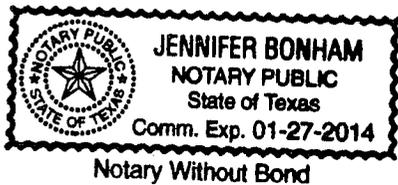
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference."

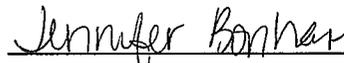


Steven M. Fishburn, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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 22 day of December, A.D. 2010.




Notary Signature