

Felipe J. Aguirre

RN101823987

Docket No. 2010-1605-PST-E

Order Type:

Default Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

N/A

Location(s) Where Violation(s) Occurred:west side of FM 117, approximately ½ mile from the intersection of FM 117 and Highway 57,
Batesville, Zavala County**Type of Operation:**

former gas station

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	\$1,130.35
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: March 18, 2011**Comments Received:** None***Penalty Information*****Total Penalty Assessed:** \$3,850**Amount Deferred for Expedited Settlement:** N/A**Amount Deferred for Financial Inability to Pay:** N/A**Total Paid to General Revenue:** \$0**Total Due to General Revenue:** \$3,850**SEP Conditional Offset:** N/A**Compliance History Classifications:**

Person/CN – Average

Site/RN – Average

Major Source: No**Statutory Limit Adjustment:** N/A**Applicable Penalty Policy:** September 2002

Felipe J. Aguirre

RN101823987

Docket No. 2010-1605-PST-E

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: September 8, 2010
Date(s) of NOV(s): February 26, 2010
Date(s) of NOE(s): September 10, 2010

Violation Information

1. Failed to permanently remove from service, no later than 60 days after the prescribed 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)].
2. Failed to notify the agency of any change or additional information regarding the UST system within 30 days from the date of the occurrence of the change or addition [30 Tex. Admin. Code § 334.7(d)(3)].
3. Failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0019115U for fiscal years 2002 through 2007 [30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

1. Within 30 days:
 - a. Permanently remove the UST system from service; and
 - b. Submit payment for all outstanding fees, including any associated penalties and interest.
2. Within 45 days, submit an amended registration to reflect the current operational status of the UST system
3. Within 60 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: February 7, 2011

Date(s) Green Card(s) Signed: Unclaimed

Contact Information

TCEQ Attorneys: Mike 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: Heather Podlipny, Waste Enforcement Section, (512) 239-2603

TCEQ Regional Contact: Rose Luna-Pirtle, Laredo Regional Office, MC R-16, (956) 753-4052

Respondent: Felipe Aguirre, P.O. Box 188, Batesville, Texas 78829

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	13-Sep-2010	Screening	22-Sep-2010	EPA Due	
	PCW	13-Jan-2011				

RESPONDENT/FACILITY INFORMATION	
Respondent	Felipe J. Aguirre
Reg. Ent. Ref. No.	RN101823987
Facility/Site Region	16-Laredo
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	40455	No. of Violations	3
Docket No.	2010-1605-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Heather Podlipny
		EC's Team	Enforcement Team 4
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	10.0% Enhancement	Subtotals 2, 3, & 7	\$350
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Notes	Enhancement for two same/similar NOV's.
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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	\$3,104	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$5,100	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,850
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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	\$3,850
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,850
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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	\$3,850
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Screening Date 22-Sep-2010

Docket No. 2010-1605-PST-E

PCW

Respondent Felipe J. Aguirre

Policy Revision 2 (September 2002)

Case ID No. 40455

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101823987

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Heather Podlipny

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

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

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

Screening Date 22-Sep-2010

Docket No. 2010-1605-PST-E

PCW

Respondent Felipe J. Aguirre

Policy Revision 2 (September 2002)

Case ID No. 40455

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101823987

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Heather Podlipny

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.47(a)(2)

Violation Description Failed to permanently remove from service, no later than 60 days after the prescribed 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 \$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

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

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 14 Number of violation days

Table with columns: Frequency (daily, weekly, monthly, quarterly, semiannual, annual, single event), mark only one with an x.

Violation Base Penalty \$2,500

One monthly event is recommended based on the investigation date of September 8, 2010 to the screening date of September 22, 2010.

Good Faith Efforts to Comply

Table with columns: Reduction (0.0%), Before NOV, NOV to EDPRP/Settlement Offer.

\$0

Table with rows: Extraordinary, Ordinary, N/A.

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

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3,101

Violation Final Penalty Total \$2,750

This violation Final Assessed Penalty (adjusted for limits) \$2,750

Economic Benefit Worksheet

Respondent Felipe J. Aguirre
Case ID No. 40455
Reg. Ent. Reference No. RN101823987
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	\$5,000	22-Dec-1998	15-May-2011	12.40	\$3,101	n/a	\$3,101
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to permanently remove from service three USTs with a combined capacity of 2,500 gallons. The date required is the date when the Respondent was required to upgrade the UST system 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)

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

\$5,000

TOTAL

\$3,101

Screening Date 22-Sep-2010

Docket No. 2010-1605-PST-E

PCW

Respondent Felipe J. Aguirre

Policy Revision 2 (September 2002)

Case ID No. 40455

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101823987

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Heather Podlipny

Violation Number 2

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

Violation Description Failed to notify the agency of the change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the change in the owner's operational status from "in use" to "temporarily out of service".

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			10%
100% of the rule requirement was not met.					

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 14 Number of violation days

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

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the September 8, 2010 investigation.

Good Faith Efforts to Comply

0.0% Reduction \$0

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

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

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3 Violation Final Penalty Total \$1,100

This violation Final Assessed Penalty (adjusted for limits) \$1,100

Economic Benefit Worksheet

Respondent Felipe J. Aguirre
Case ID No. 40455
Req. Ent. Reference No. RN101823987
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
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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	8-Sep-2010	15-May-2011	0.68	\$3	n/a	\$3

Notes for DELAYED costs

Estimated cost to accurately prepare and submit an updated UST registration. The date required is the investigation date 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)

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$3

Screening Date 22-Sep-2010

Docket No. 2010-1605-PST-E

PCW

Respondent Felipe J. Aguirre

Policy Revision 2 (September 2002)

Case ID No. 40455

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101823987

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Heather Podlipny

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.22(a) and Tex. Water Code § 5.702

Violation Description Failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0019115U for fiscal years 2002 through 2007.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent

Adjustment \$10,000

\$0

Violation Events

Number of Violation Events [] Number of violation days []

mark only one with an x

daily	[]
weekly	[]
monthly	[]
quarterly	[]
semiannual	[]
annual	[]
single event	[]

Violation Base Penalty \$0

No additional administrative penalty was calculated as penalties and interest will be assessed on the next billing.

Good Faith Efforts to Comply

0.0% Reduction Before NOV NOV to EDPRP/Settlement Offer

\$0

Extraordinary	[]
Ordinary	[]
N/A	(mark w th x)
Notes	[]

Violation Subtotal \$0

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$0

This violation Final Assessed Penalty (adjusted for limits) \$0

Economic Benefit Worksheet

Respondent Felipe J. Aguirre
Case ID No. 40455
Req. Ent. Reference No. RN101823987
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

n/a

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

n/a

Approx. Cost of Compliance

\$0

TOTAL

\$0

Compliance History Report

Customer/Respondent/Owner-Operator: CN600991632 AGUIRRE, FELIPE J. Classification: AVERAGE Rating: 3.00
Regulated Entity: RN101823987 AGUIRRE GROC Classification: AVERAGE Site Rating: 3.00
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 41554
Location: West side of Farm-to-Market road 117, approximately one-half mile from the intersection of Farm-to-Market road 117 and Highway 57, Zavala County
TCEQ Region: REGION 16 - LAREDO
Date Compliance History Prepared: September 14, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: September 14, 2005 to September 14, 2010
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:
Name: Kirk Schoppe Phone: (512) 239-0489

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: 9/1/2010 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 | 02/28/2006 | (455687) |
| 2 | 02/25/2010 | (793720) |
| 3 | 09/10/2010 | (860449) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | |
|--------------|---|-----------------|--------------------------|
| Date: | 03/03/2006 | (455687) | CN600991632 |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 334, SubChapter A 334.7(d)(3) | | |
| Description: | Failure to amend, update or change registration information as required. | | |
| Date: | 02/26/2010 | (793720) | CN600991632 |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 334, SubChapter A 334.7(d)(3) | | |
| Description: | Failure to amend, update or change registration information as required. | | |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 334, SubChapter C 334.47(a)(2) | | |
| Description: | Failure to have an out of service UST system upgraded to meet all technical requirements. | | |
- 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
FELIPE J. AGUIRRE;
RN101823987**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2010-1605-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. 5, 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 Felipe J. Aguirre ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns, as defined in 30 TEX. ADMIN. CODE § 334.2(73), an underground storage tank ("UST") system and a former retail gasoline station and grocery store located on the west side of Farm-to-Market ("FM") 117, approximately one-half mile from the intersection of FM 117 and Highway 57 in Batesville, Zavala 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 an investigation conducted on September 8, 2010, a TCEQ Laredo Regional Office investigator documented that Respondent violated the following requirements:
 - a. Failed to permanently remove from service, no later than 60 days after the prescribed implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements;
 - b. Failed to notify the agency of any change or additional information regarding the UST system within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the change in the operational status of the UST system from "in use" to "temporarily out of service"; and
 - c. Failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0019115U for fiscal years 2002 through 2007.

3. Respondent received notice of the violations on or about September 15, 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 Felipe J. Aguirre" (the "EDPRP") in the TCEQ Chief Clerk's office on February 7, 2011.
5. By letter dated February 7, 2011, 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 and failed to request a hearing.

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 chs. 5 and 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 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 UST system within 30 days from the date of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0019115U for fiscal years 2002 through 2007, in violation of 30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702.
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 three thousand eight hundred fifty dollars (\$3,850.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
9. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of three thousand eight hundred fifty dollars (\$3,850.00) 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: Felipe J. Aguirre; Docket No. 2010-1605-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. Permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55; and
 - ii. Submit payment for all outstanding fees, including any associated penalties and interest and with the notation, "Re: Felipe J. Aguirre, TCEQ Financial Administration Account No. 0019115U," to the address listed in Ordering Provision No. 2.

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

Registration and Reporting Section
Permitting & Remediation Support Division, MC138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

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

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

Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and:

Rose Luna-Pirtle, Waste Section Manager
Texas Commission on Environmental Quality
Laredo Regional Office
707 E. Calton Rd., Ste. 304
Laredo, Texas 78041-3887

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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§
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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 Felipe J. Aguirre," (the "EDPRP") was filed in the TCEQ Chief Clerk's office on February 7, 2011.

The EDPRP was mailed to Respondent's last known address on February 7, 2011 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).

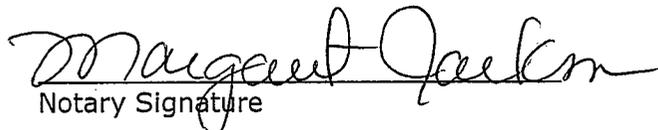
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference."



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 3rd day of March, A.D. 2011.



Notary Signature

