

Edwin Davis

RN101833325

Docket No. 2010-1327-PST-E

Order Type:

Default Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

N/A

Location(s) Where Violation(s) Occurred:

10103 Tidwell Road, Houston, Harris County

Type of Operation:

inactive underground storage tanks

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: May 13, 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**Compliance History Classifications:**

Person/CN – Average

Site/RN – Average

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

Edwin Davis

RN101833325

Docket No. 2010-1327-PST-E

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: June 30, 2010
Date(s) of NOV(s): April 25, 2007; March 16, 2010
Date(s) of NOE(s): July 7, 2010

Violation Information

1. Failed to 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)].
2. Failed to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons [30 TEX. ADMIN CODE § 334.54(b)(1) and (2)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

1. Updated the registration to reflect the current ownership information and current operational status of the UST system; and
2. Began maintaining all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons.

Technical Requirements:

1. Respondent's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements of this Order.
2. Within 10 days, Respondent shall surrender his UST fuel delivery certificate to the TCEQ.

Litigation Information

Date Petition(s) Filed: January 18, 2011
Date(s) Green Card(s) Signed: January 20, 2011
Date(s) Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A

Contact Information

TCEQ Attorneys: Marshall Coover, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
TCEQ Enforcement Coordinator: Jennifer Graves, Waste Enforcement Section, (956) 430-6023
TCEQ Regional Contact: Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3500
Respondent: Edwin Davis, 8423 Claiborne Street, Houston, Texas 77078
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	19-Jul-2010	Screening	10-Aug-2010	EPA Due	
	PCW	15-Oct-2010				

RESPONDENT/FACILITY INFORMATION						
Respondent	Edwin Davis					
Reg. Ent. Ref. No.	RN101833325					
Facility/Site Region	12-Houston	Major/Minor Source	Minor			

CASE INFORMATION						
Enf./Case ID No.	40197	No. of Violations	2			
Docket No.	2010-1327-PST-E	Order Type	1660			
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No			
Multi-Media		Enf. Coordinator	Jennifer Graves			
		EC's Team	Enforcement Team 1			
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 NOV's with same/similar violations.
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Culpability	No	0.0%	Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0%	Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$1	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$200	

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	
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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 10-Aug-2010

Docket No. 2010-1327-PST-E

PCW

Respondent Edwin Davis

Policy Revision 2 (September 2002)

Case ID No. 40197

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101833325

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jennifer Graves

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 NOVs with same/similar violations.

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

Screening Date 10-Aug-2010

Docket No. 2010-1327-PST-E

PCW

Respondent Edwin Davis

Policy Revision 2 (September 2002)

Case ID No. 40197

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101833325

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jennifer Graves

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 tanks ("USTs") within 30 days of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current ownership information and current operational status of the UST system.

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%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 41 Number of violation days

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 June 30, 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 \$1

Violation Final Penalty Total \$1,100

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

Economic Benefit Worksheet

Respondent Edwin Davis
Case ID No. 40197
Req. Ent. Reference No. RN101833325
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	30-Jun-2010	11-Aug-2010	0.12	\$1	n/a	\$1

Notes for DELAYED costs

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

\$1

Screening Date 10-Aug-2010

Docket No. 2010-1327-PST-E

PCW

Respondent Edwin Davis

Policy Revision 2 (September 2002)

Case ID No. 40197

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101833325

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jennifer Graves

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.54(b)(1) and (2)

Violation Description

Failed to maintain all piping, pump, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons. Specifically, failed to keep all vent lines open and functioning and failed to lock the fill risers and dispenser nozzles.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
				0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 41 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$2,500

One quarterly event is recommended based on documentation of the violation during the June 30, 2010 investigation to the August 10, 2010 screening date.

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 \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$2,750

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

Economic Benefit Worksheet

Respondent Edwin Davis
Case ID No. 40197
Req. Ent. Reference No. RN101833325
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	30-Jun-2010	11-Aug-2010	0.12	\$1	n/a	\$1

Notes for DELAYED costs

Actual cost to cap off the fill risers and the Stage I Vapor Recovery Riser, remove the dispensers, and assure the vent lines were open and functioning. Date required is the investigation date. Final date is the 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

\$1

Compliance History Report

Customer/Respondent/Owner-Operator: CN603689894 DAVIS, EDWIN Classification: AVERAGE Rating: 4.00
Regulated Entity: RN101833325 A & E MINI MART Classification: AVERAGE Site Rating: 4.00
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 59800
REGISTRATION
Location: 10103 TIDWELL RD, HOUSTON, TX, 77078
TCEQ Region: REGION 12 - HOUSTON
Date Compliance History Prepared: October 15, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: October 15, 2005 to October 15, 2010
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Jennifer Graves Phone: (956) 430-6023

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? EDWIN AND AUDREY DAVIS
4. If yes, who was/were the prior owner(s)/operator(s)? HESSNI, MALLAMOHAMED
5. When did the change(s) in owner or operator occur? 02/28/2007
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 | 04/25/2007 | (557978) |
| 2 | 03/16/2010 | (792940) |
| 3 | 05/07/2010 | (800939) |
| 4 | 07/07/2010 | (829394) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 04/25/2007 (557978) CN603689894
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)
Description: Failure to perform the permanent removal of an UST system that has not met upgrade requirements.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)
Description: Failure to update UST Registration Form.

Date: 03/16/2010 (792940) CN603689894
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)
Description: Failure to perform the permanent removal of an UST system that has not met upgrade requirements.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)
Description: Failure to update UST Registration Form.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.54(b)(2)
Description: The owner failed to lock the fill risers and dispenser nozzles. The USTs are not secured against tampering, vandalism or unauthorized access.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.54(b)(1)
Description: The vent lines were not open or functioning.

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
EDWIN DAVIS;
RN101833325**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2010-1327-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 revocation of the respondent's fuel delivery certificate. The respondent made the subject of this Order is Edwin Davis ("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), two inactive underground storage tanks ("USTs") and a former convenience store with retail sales of gasoline located at 10103 Tidwell Road in Houston, Harris 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 30, 2010, a TCEQ Houston Regional Office investigator documented that Respondent:
 - a. 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 ownership information and current operational status of the UST system; and
 - b. Failed to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons. Specifically, Respondent failed to keep all vent lines open and functioning and failed to lock the fill risers and dispenser nozzles.
3. Respondent received notice of the violations on or about July 12, 2010.

4. The Executive Director recognizes that on or about August 11, 2010, Respondent implemented the following corrective measures at the Facility:
 - a. Updated the registration to reflect the current ownership information and current operational status of the UST system; and
 - b. Began maintaining all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons.
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 Edwin Davis" (the "EDPRP") in the TCEQ Chief Clerk's office on January 18, 2011.
6. By letter dated January 18, 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. According to the return receipt "green card," Respondent received notice of the EDPRP on January 20, 2011, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Respondent received notice of the EDPRP provided by the Executive Director. Respondent failed to file an answer, 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 USTs 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 maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons, in violation of 30 TEX. ADMIN. CODE § 334.54(b)(1) and (2).
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 failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.

6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of 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.
7. 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.
8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.
9. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Respondent's UST fuel delivery certificate if the Commission finds that good cause exists.
10. Good cause for revocation of Respondent's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2, 3, and 5 through 7, and Conclusions of Law Nos. 2 through 5.

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: Edwin Davis; Docket No. 2010-1327-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's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements of this Order.
4. Within 10 days after the effective date of this Order, Respondent shall send his UST fuel delivery certificate to:

Petroleum Storage Tank Registration Team, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

5. All relief not expressly granted in this Order is denied.
6. 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.
7. 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.
8. 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.
9. 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.
10. 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.
11. 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 MARSHALL COOVER

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

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

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Edwin Davis," (the "EDPRP") was filed in the TCEQ Chief Clerk's office on January 18, 2011.

The EDPRP was mailed to Respondent's last known address on January 18, 2011 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 January 20, 2011, as evidenced by the signature on the card.

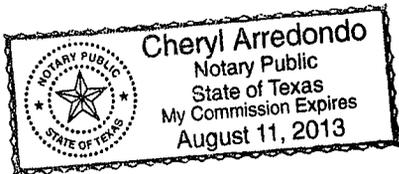
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference."

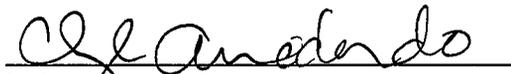


Marshall Coover, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 18th day of March, A.D. 2011.





Notary Signature