

**Executive Summary – Enforcement Matter – Case No. 41349**  
**Carlos Reyes d/b/a Chucos Tire Shop and James A. Wilson**  
**RN102253937**  
**Docket No. 2011-0448-PST-E**

**Order Type:**

Default Order

**Findings Order Justification:**

N/A

**Media:**

PST

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

1106 North Dallas Avenue, Lancaster, Dallas County

**Type of Operation:**

inactive underground storage tank system and a tire and muffler repair facility

**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:** December 30, 2011

**Comments Received:** None

***Penalty Information***

**Total Penalty Assessed:** \$2,750

**Total Paid to General Revenue:** \$0

**Total Due to General Revenue:** \$2,750

**Compliance History Classifications:**

Person/CN – Average (Both Respondents)  
Site/RN – Average

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

**Docket No. 2011-0448-PST-E**

***Investigation Information***

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** January 26, 2010, and March 10, 2011  
**Date(s) of NOV(s):** February 22, 2010; September 15, 2010  
**Date(s) of NOE(s):** March 17, 2011

***Violation Information***

Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system from which any applicable component of the system is not brought into timely compliance with the upgrade requirements; failed to maintain all vent lines open and functioning; and 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 §§ 334.47(a)(2) and 334.54(b)(1) and (b)(2)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

1. Within 30 days, permanently remove the UST system from service.
2. Within 45 days, submit written certification to demonstrate compliance.

***Litigation Information***

**Date Petition(s) Filed:** July 29, 2011 (EDPRP); September 15, 2011 (EDFARP- re-filed October 20, 2011)  
**Date(s) Green Card(s) Signed:** August 1, 2011 (EDPRP-Reyes); September 17, 2011 (EDFARP-Reyes); November 1, 2011 (EDFARP-Wilson)  
**Date(s) Answer(s) Filed:** N/A

***Contact Information***

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

**TCEQ Enforcement Coordinator:** Bridgett Lee, Waste Enforcement Section, (512) 239-2565

**TCEQ Regional Contact:** Sid Slocum, Dallas/Fort Worth Regional Office, (817) 588-5901

**Respondent:** Carlos Reyes, 1106 North Dallas Avenue, Lancaster, Texas 75146;  
James A. Wilson, 1106 Luan Way, Kemp, Texas 75143

**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	21-Mar-2011	<b>Screening</b>	22-Mar-2011	<b>EPA Due</b>	
	<b>PCW</b>	23-Mar-2011				

<b>RESPONDENT/FACILITY INFORMATION</b>						
<b>Respondent</b>	Carlos Reyes dba Chucos Tire Shop and James A. Wilson					
<b>Reg. Ent. Ref. No.</b>	RN102253937					
<b>Facility/Site Region</b>	4-Dallas/Fort Worth	<b>Major/Minor Source</b>	Minor			

<b>CASE INFORMATION</b>						
<b>Enf./Case ID No.</b>	41349	<b>No. of Violations</b>	1			
<b>Docket No.</b>	2011-0448-PST-E	<b>Order Type</b>	1660			
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Government/Non-Profit</b>	No			
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Bridgett Lee			
		<b>EC's Team</b>	Enforcement Team 7			
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000			

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$2,500
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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.

<b>Compliance History</b>	10.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$250
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<b>Notes</b>	Enhancement for two previous NOV's with same/similar violations.
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<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$5,198	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$8,000	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$2,750
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	
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<b>Final Penalty Amount</b>	\$2,750
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$2,750
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<b>DEFERRAL</b>		Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>Notes</b>	Deferral not offered for non-expedited settlement.
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<b>PAYABLE PENALTY</b>	\$2,750
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**Screening Date** 22-Mar-2011

**Docket No.** 2011-0448-PST-E

**PCW**

**Respondent** Carlos Reyes dba Chucos Tire Shop and James A.

*Policy Revision 2 (September 2002)*

**Case ID No.** 41349

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN102253937

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** Bridgett Lee

### 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 previous NOVs with same/similar violations.

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

Screening Date 22-Mar-2011

Docket No. 2011-0448-PST-E

PCW

Respondent Carlos Reyes dba Chucos Tire Shop and James A. Wilson

Policy Revision 2 (September 2002)

Case ID No. 41349

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102253937

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Bridgett Lee

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 334.47(a)(2), 334.54(b)(1) and 334.54(b)(2)

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

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and 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 Number of violation days 12

Table for marking frequency: daily, weekly, monthly (x), quarterly, semiannual, annual, single event.

Violation Base Penalty \$2,500

One monthly event is recommended based on documentation of the violation during the March 10, 2011 record review date to the March 22, 2011 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (x), and Notes.

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 \$5,198

Violation Final Penalty Total \$2,750

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

## Economic Benefit Worksheet

**Respondent** Carlos Reyes dba Chucos Tire Shop and James A. Wilson  
**Case ID No.** 41349  
**Req. Ent. Reference No.** RN102253937  
**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)	\$8,000	22-Dec-1998	17-Dec-2011	12.99	\$5,198	n/a	\$5,198

Notes for DELAYED costs

Estimated cost to permanently remove from service three USTs with a combined capacity of 8,000 gallons at \$1 per gallon. The Date Required is the date required to upgrade the UST system. 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

\$8,000

**TOTAL**

\$5,198

# Compliance History

Customer/Respondent/Owner-Operator: CN601200819 Reyes, Carlos Classification: AVERAGE Rating: 4.50  
 Regulated Entity: RN102253937 Chucos Tire Shop Classification: AVERAGE Site Rating: 4.50  
 ID Number(s): PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 62616  
 Location: 1106 N DALLAS AVE, LANCASTER, TX, 75146  
 TCEQ Region: REGION 04 - DFW METROPLEX  
 Date Compliance History Prepared: 3/31/2011  
 Agency Decision Requiring Compliance History: Enforcement  
 Compliance Period: March 21, 2006 to March 21, 2011  
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:  
 Name: Bridgett Phone: (512) 239 - 2565

## 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 2/22/2010 (790331)
- 2 9/15/2010 (843516)
- 3 3/17/2011 (905373)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

**Date: 2/22/2010 (790331)**

**CN601200819**

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)

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

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.54(b)(2)

Description: Failure to secure USTs against tampering, vandalism or unauthorized access.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.54(b)(1)

Description: Failure to assure that the vent lines for out-of service tanks are kept open and functioning.

**Date: 9/15/2010 (843516)**

**CN601200819**

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)

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

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.54(b)(2)

Description: Failure to secure USTs against tampering, vandalism or unauthorized access.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.54(b)(1)

Description: Failure to assure that the vent lines for out-of service tanks are kept open and 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

## Compliance History

Customer/Respondent/Owner-Operator: CN602528192 James A. Wilson Classification: AVERAGE Rating: 3.60  
 Regulated Entity: RN102253937 Chucos Tire Shop Classification: AVERAGE Site Rating: 3.60  
 ID Number(s): PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 62616  
 Location: 1106 N DALLAS AVE, LANCASTER, TX, 75146  
 TCEQ Region: REGION 04 - DFW METROPLEX  
 Date Compliance History Prepared: 3/31/2011  
 Agency Decision Requiring Compliance History: Enforcement  
 Compliance Period: March 21, 2006 to March 21, 2011  
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:  
 Name: Bridgett Phone: (512) 239 - 2565

### 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 2/22/2010 (790331)

2 9/15/2010 (843516)

3 3/17/2011 (905373)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

**Date: 2/22/2010 (790331)**

**CN601200819**

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)

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

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.54(b)(2)

Description: Failure to secure USTs against tampering, vandalism or unauthorized access.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.54(b)(1)

Description: Failure to assure that the vent lines for out-of service tanks are kept open and functioning.

**Date: 9/15/2010 (843516)**

**CN601200819**

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)

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

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.54(b)(2)

Description: Failure to secure USTs against tampering, vandalism or unauthorized access.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.54(b)(1)

Description: Failure to assure that the vent lines for out-of service tanks are kept open and 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  
CARLOS REYES D/B/A  
CHUCOS TIRE SHOP AND  
JAMES A. WILSON;  
RN102253937**

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**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2011-0448-PST-E**

At its \_\_\_\_\_ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's First Amended 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 respondents. The respondents made the subject of this Order are Carlos Reyes d/b/a Chucos Tire Shop ("Mr. Reyes") and James A. Wilson ("Mr. Wilson") (collectively, "Respondents").

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

### **FINDINGS OF FACT**

1. Mr. Wilson owns, as defined in 30 TEX. ADMIN. CODE § 334.2(73), and Mr. Reyes operates, as defined in 30 TEX. ADMIN. CODE § 334.2(70), an inactive underground storage tank ("UST") system and a tire and muffler repair facility located at 1106 N. Dallas Avenue in Lancaster, Dallas 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 January 26, 2010, and a record review conducted on March 10, 2011, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Respondents failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system from which any applicable component of the system is not brought into timely compliance with the upgrade requirements; failed to maintain all vent lines open and functioning; and 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.
3. Respondents received notice of the violation on or about March 22, 2011.
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 Carlos Reyes d/b/a Chucos Tire Shop" (the "EDPRP") in the TCEQ Chief Clerk's office on July 29, 2011.

5. By letter dated July 29, 2011, sent to Mr. Reyes's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Reyes with notice of the EDPRP. According to the return receipt "green card," Mr. Reyes received notice of the EDPRP on August 1, 2011, as evidenced by the signature on the card.
6. The Executive Director filed the "Executive Director's First Amended 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 Carlos Reyes d/b/a Chucos Tire Shop and James A. Wilson d/b/a Chucos Tire Shop" (the "EDFARP") in the TCEQ Chief Clerk's office on September 15, 2011.
7. By letter dated September 15, 2011, sent to each Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondents with notice of the EDFARP. According to the return receipt "green card," Mr. Reyes received notice of the EDFARP on September 17, 2011, as evidenced by the signature on the card. The United States Postal Service returned the EDFARP sent to Mr. Wilson by certified mail as "undeliverable as addressed."
8. The Executive Director re-filed the "Executive Director's First Amended 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 Carlos Reyes d/b/a Chucos Tire Shop and James A. Wilson d/b/a Chucos Tire Shop" (the "EDFARP") in the TCEQ Chief Clerk's office on October 20, 2011.
9. By letter dated October 20, 2011, sent to Mr. Wilson's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Wilson with notice of the EDFARP. According to the return receipt "green card," Mr. Wilson received notice of the EDFARP on November 1, 2011, as evidenced by the signature on the card.
10. More than 20 days have elapsed since each Respondent received notice of the EDFARP. Respondents failed to file an answer and failed to request a hearing.

#### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, Respondents are 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, Respondents failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system from which any applicable component of the system is not brought into timely compliance with the upgrade requirements; failed to maintain all vent lines open and functioning; and 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 §§ 334.47(a)(2) and 334.54(b)(1) and (b)(2).

3. As evidenced by Findings of Fact Nos. 6 through 9, the Executive Director timely served each Respondent with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 10, Respondents 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 Respondents and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondents 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.
6. An administrative penalty in the amount of two thousand seven hundred fifty dollars (\$2,750.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. 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. Respondents are assessed an administrative penalty in the amount of two thousand seven hundred fifty dollars (\$2,750.00) 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: Carlos Reyes d/b/a Chucos Tire Shop and James A. Wilson; Docket No. 2011-0448-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. Respondents shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Order, Respondents shall permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55; and
- b. Within 45 days after the effective date of this Order, Respondents shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision No. 3.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

Respondents 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:

Sam Barrett, Waste Section Manager  
Texas Commission on Environmental Quality  
Dallas/Fort Worth Regional Office  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondents. Respondents are 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 Respondents fail 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, Respondents' failure to comply is not a violation of this Order. Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondents shall notify the Executive Director within seven days after Respondents become 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 Respondents shall be made in writing to the Executive Director. Extensions are not effective until Respondents receive 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 Respondents if the Executive Director determines that Respondents have not complied with one or more of the terms or conditions in this Order.
9. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
10. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

**S I G N A T U R E   P A G E**

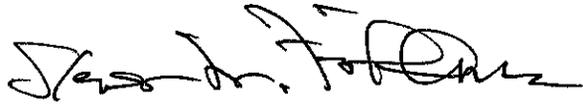
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission



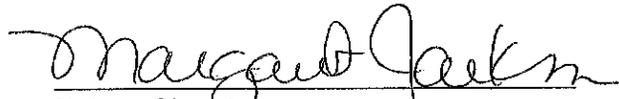
More than 20 days have elapsed since Respondents received notice of the EDFARP. Respondents failed to file an answer and failed to request a hearing."



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 12<sup>th</sup> day of December A.D. 2011.

  
Notary Signature