

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 42598
Robert Maxey d/b/a J & H Auto Repair
RN105062467
Docket No. 2011-1737-PST-E

Order Type:

Default Order (SOAH preliminary hearing)

Findings Order Justification:

N/A

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

4308 Farm-to-Market Road 1765, Texas City, Galveston County

Type of Operation:

inactive underground storage tank system

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 7, 2012

Comments Received: None

Penalty Information

Total Penalty Assessed: \$6,900.00

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$6,900.00

Compliance History Classifications:

Person/CN – Average
Site/RN – Average

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2002

Robert Maxey d/b/a J & H Auto Repair**RN105062467****Docket No. 2011-1737-PST-E****Investigation Information**

Complaint Date(s): July 24, 2006
Complaint Information: Complainant alleged strong odors and possible leaks at former gas station/body shop (not confirmed).

Date(s) of Investigation: August, 18, 2006; April 6, 2011; July 21, 2011

Date(s) of NOV(s): October 17, 2006; January 28, 2010; April 11, 2011

Date(s) of NOE(s): August 25, 2011

Violation Information

1. Failed to register USTs in existence on or after September 1, 1987 [30 TEX. ADMIN. CODE § 334.7(a)(1)].
2. Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements [30 TEX. ADMIN. CODE § 334.47(a)(2)].

Corrective Actions/Technical Requirements**Corrective Action(s) Completed:**

None

Technical Requirements:

1. Within 180 days, permanently remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.55, which includes but is not limited to the following actions:
 - a. Providing a Construction Notification to the TCEQ at least 30-days prior to any removal activities and;
 - b. Employing a Licensed Underground Storage Tank Contractor to perform all removal activities, including but not limited to:
 - i. Removing the USTs from the ground, abandoning the USTs in-place, or conducting a permanent change-in-service;
 - ii. Emptying the USTs of all regulated substances and accumulated sludges or residues and purging the USTs of all residual vapors;
 - iii. Handling, transporting, and properly disposing of the empty USTs, of the regulated substances removed from the UST system, and of any contaminated soils, backfill material, groundwater, wash water or other similar materials removed from the UST system or Facility; and
 - iv. Determining whether or not there has been a release of regulated substance from the UST system, performance of a comprehensive site assessment, reporting confirmed or suspected releases to the TCEQ, preparing a detailed written record of the release determination, and compliance with all applicable corrective action requirements
2. Within 195 days, submit a complete UST registration and self-certification form to reflect the current ownership and operational status of the UST system.
3. Within 210 days, submit written certification to demonstrate compliance with Technical Requirements Nos. 1 and 2.

Robert Maxey d/b/a J & H Auto Repair

RN105062467

Docket No. 2011-1737-PST-E

Litigation Information

Date Petition(s) Filed: April 2, 2012
Date Green Card(s) Signed: April 4, 2012
Date Answer(s) Filed: July 18, 2012
SOAH Referral Date: August 21, 2012
Hearing Date(s):
Preliminary hearing: October 25, 2012 (Defaulted)

Contact Information

TCEQ Attorneys: Elizabeth Lieberknecht, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Garrett Arthur, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Audra Benoit, Enforcement Division, (409) 899-8799

TCEQ Regional Contact: Nicole Bealle, Houston Regional Office, (713) 767-3500

Respondent: Robert Maxey, J & H Auto Repair, 5305 Royal Oak Drive, Texas City, Texas 77591

Respondent's Attorney: N/A

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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	25-Aug-2011	Screening	25-Aug-2011	EPA Due	
	PCW	7-Mar-2012				

RESPONDENT/FACILITY INFORMATION	
Respondent	Robert Maxey dba J & H Auto Repair
Reg. Ent. Ref. No.	RN105062467
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	42598	No. of Violations	2
Docket No.	2011-1737-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Audra Benoit
		EC's Team	Enforcement Team 5
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$6,000
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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	15.0% Enhancement	Subtotals 2, 3, & 7	\$900
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Notes	Enhancement for three NOVs 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	\$3,315	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$5,100	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$6,900
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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	\$6,900
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$6,900
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$6,900
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Screening Date 25-Aug-2011

Docket No. 2011-1737-PST-E

PCW

Respondent Robert Maxey dba J & H Auto Repair

Policy Revision 2 (September 2002)

Case ID No. 42598

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105062467

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Audra Benoit

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>)	3	15%
	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) 15%

>> 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 three NOVs with same/similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 15%

Screening Date 25-Aug-2011

Docket No. 2011-1737-PST-E

PCW

Respondent Robert Maxey dba J & H Auto Repair

Policy Revision 2 (September 2002)

Case ID No. 42598

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105062467

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Audra Benoit

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.7(a)(1)

Violation Description Failed to register all underground storage tanks ("USTs") in existence on or after September 1, 1987, with the agency on authorized agency forms. Specifically, the Respondent has not registered the USTs with the TCEQ.

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 1833 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.

Good Faith Efforts to Comply

	0.0% Reduction	
	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

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

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$28 Violation Final Penalty Total \$1,150

This violation Final Assessed Penalty (adjusted for limits) \$1,150

Economic Benefit Worksheet

Respondent Robert Maxey dba J & H Auto Repair
Case ID No. 42598
Reg. Ent. Reference No. RN105062467
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
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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	18-Aug-2006	18-Feb-2012	5.51	\$28	n/a	\$28

Notes for DELAYED costs

Estimated costs to submit a completed UST registration form. The date required is the original investigation date. The final date is the estimated date compliance will be achieved.

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

\$28

Screening Date 25-Aug-2011

Docket No. 2011-1737-PST-E

PCW

Respondent Robert Maxey dba J & H Auto Repair

Policy Revision 2 (September 2002)

Case ID No. 42598

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105062467

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Audra Benoit

Violation Number 2

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 upgrade implementation date, a 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 2 35 Number of violation days

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

Violation Base Penalty \$5,000

Two monthly events are recommended based on documentation of the violation during the July 21, 2011 record review, to the screening date of August 25, 2011.

Good Faith Efforts to Comply

0.0% Reduction \$0

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

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

Violation Subtotal \$5,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3,288

Violation Final Penalty Total \$5,750

This violation Final Assessed Penalty (adjusted for limits) \$5,750

Economic Benefit Worksheet

Respondent Robert Maxey dba J & H Auto Repair
Case ID No. 42598
Reg. Ent. Reference No. RN105062467
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)	\$5,000	22-Dec-1998	12-Feb-2012	13.15	\$3,288	n/a	\$3,288

Notes for DELAYED costs

Estimated costs to permanently remove the UST system from service. The date required is the date when the Respondent was required to upgrade the UST system. The final date is based on the expected compliance date

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

TOTAL

\$3,288

Compliance History

Customer/Respondent/Owner-Operator: CN603095340 MAXEY, ROBERT Classification: AVERAGE Rating: 3.75
Regulated Entity: RN105062467 J & H AUTO REPAIR Classification: AVERAGE Site Rating: 3.75
ID Number(s): PETROLEUM STORAGE TANK NON REGISTERED ID NUMBER T002681
Location: 4308 FM 1765, TEXAS CITY, TX, 77591
TCEQ Region: REGION 12 - HOUSTON
Date Compliance History Prepared: September 14, 2011
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: September 14, 2006 to September 14, 2011
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:
Name: Audra Benoit Phone: (409) 899-8799

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: 9/1/2011 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 | 01/28/2010 | (784662) |
| 2 | 04/11/2011 | (908944) |
| 3 | 08/25/2011 | (942342) |

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

Date: 10/17/2006 (509633) CN603095340
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter A 334.7(a)(1)
Description: At the time of the investigation, the facility was not listed in the TCEQ database.

Date: 01/28/2010 (784662) CN603095340
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter A 334.7(a)(1)
Description: At the time of the investigation, the facility was not listed in the TCEQ data base.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)
Description: Failure to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.

Date: 04/11/2011 (908944) CN603095340
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter A 334.7(a)(1)
Description: At the time of the investigation, the facility was not listed in the TCEQ database.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)
Description: Failure to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.

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
ROBERT MAXEY D/B/A
J & H AUTO REPAIR;
RN105062467**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2011-1737-PST-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Robert Maxey d/b/a J & H Auto Repair ("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 property located at 4308 Farm-to-Market Road 1765 in Texas City, Galveston County, Texas (the "Facility"). The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contain a regulated petroleum substance as defined in the rules of the TCEQ.
2. During an investigation conducted on August 18, 2006, a TCEQ Houston Regional Office investigator documented that Respondent failed to register USTs in existence on or after September 1, 1987, with the agency on authorized agency forms.
3. During record reviews conducted on April 6, 2011, and July 21, 2011, a TCEQ Houston Regional Office investigator documented that:
 - a. Failed to register USTs in existence on or after September 1, 1987, with the agency on authorized agency forms; and
 - b. Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with upgrade requirements.
4. Respondent received notice of the violations on or about August 30, 2011.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Robert Maxey d/b/a J & H Auto Repair" (the "EDPRP") in the TCEQ Chief Clerk's office on April 2, 2012.

6. By letter dated April 2, 2012, 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 April 4, 2012, as evidenced by the signature on the card.
7. Respondent submitted a response to the EDPRP which was filed as an answer on July 18, 2012, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on August 21, 2012.
8. On September 20, 2012, the TCEQ Chief Clerk mailed notice of the October 25, 2012, preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Respondent.
9. On October 25, 2012, the Administrative Law Judge ("ALJ") convened the preliminary hearing. Respondent failed to appear, and the Executive Director requested that the matter be dismissed from the SOAH Docket and remanded to the Executive Director so that a Default Order may be entered by the Commission.
10. On October 25, 2012, the ALJ entered a finding that Respondent was served with proper notice of the hearing and remanded the matter to the Executive Director by SOAH Order No. 1, Granting Motion to Dismiss and Remand so that TCEQ may dispose of this case on a default basis.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the Commission.
2. As evidenced by Finding of Fact Nos. 2 and 3.a., Respondent failed to register USTs in existence on or before September 1, 1987, in violation of 30 TEX. ADMIN. CODE § 334.7(a)(1).
3. As evidenced by Finding of Fact No. 3.b., Respondent failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with upgrade requirements, in violation of 30 TEX. ADMIN. CODE § 334.47(a)(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 submitted a response to the EDPRP which was filed as an answer requesting a hearing pursuant to TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105, and the matter was referred to SOAH pursuant to 1 TEX. ADMIN. CODE §§ 155.53(b) and 155.101(b) and 30 TEX. ADMIN. CODE § 70.109.
6. As evidenced by Finding of Fact No. 8, Respondent was provided proper notice of the preliminary hearing in accordance with TEX. GOV'T CODE §§ 2001.051(1) and 2001.052, TEX. WATER CODE § 7.058, 1 TEX. ADMIN. CODE §§ 155.103(a) and (c)(3), 155.401 and 155.501, and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.23, 39.25, 39.405, 39.413, 39.423, 39.425 and 80.6.

7. As evidenced by Findings of Fact Nos. 9 and 10, Respondent failed to appear for the preliminary hearing, and pursuant to TEX. GOV'T CODE § 2001.056(4), TEX. WATER CODE § 7.057, and 1 TEX. ADMIN. CODE § 155.501(d), the ALJ dismissed the case from the SOAH docket so that the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director pursuant to 30 TEX. ADMIN. CODE § 70.106(b).
8. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
9. An administrative penalty in the amount of six thousand nine hundred dollars (\$6,900.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
10. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of six thousand nine hundred dollars (\$6,900.00) 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: Robert Maxey d/b/a J & H Auto Repair; Docket No. 2011-1737-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 180 days after the effective date of this Order, Respondent shall permanently remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.55, which includes but is not limited to the following actions:

- i. Providing a Construction Notification to the TCEQ at least 30-days prior to any removal activities and;
- ii. Employing a Licensed Underground Storage Tank Contractor to perform all removal activities, including but not limited to:
 1. Removing the USTs from the ground, abandoning the USTs in-place, or conducting a permanent change-in-service;
 2. Emptying the USTs of all regulated substances and accumulated sludges or residues and purging the USTs of all residual vapors;
 3. Handling, transporting, and properly disposing of the empty USTs, of the regulated substances removed from the UST system, and of any contaminated soils, backfill material, groundwater, wash water or other similar materials removed from the UST system or Facility; and
 4. Determining whether or not there has been a release of regulated substance from the UST system, performance of a comprehensive site assessment, reporting confirmed or suspected releases to the TCEQ, preparing a detailed written record of the release determination, and compliance with all applicable corrective action requirements.
- b. Within 195 days after the effective date of this Order, Respondent shall submit a complete UST registration and self-certification form to reflect the current ownership and operational status of the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

Registration & Reporting Section
Permitting & Registration Support Division, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- c. Within 210 days after the effective date of this Order, Respondent shall submit written certification to demonstrate compliance with Ordering Provisions Nos. 3.a. and 3.b. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, 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 supporting 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:

Nicole Bealle, Waste Section Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Street, Suite H
Houston, Texas 77023-1452

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
6. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
9. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
10. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF ELIZABETH LIEBERKNECHT

STATE OF TEXAS

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§
§

COUNTY OF TRAVIS

"My name is Elizabeth Lieberknecht. 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 Robert Maxey d/b/a J & H Auto Repair" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on April 2, 2012.

Respondent submitted a response to the EDPRP which was filed as an answer on July 18, 2012, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on August 21, 2012. On September 20, 2012, the TCEQ Chief Clerk mailed notice of the October 25, 2012, preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Respondent.

Respondent failed to appear at the hearing on October 25, 2012. At that hearing, I requested that the ALJ enter a finding that Respondent was served with proper notice of the hearing and the matter be remanded to the Executive Director pursuant to 1 TEX. ADMIN. CODE § 155.501(d), which gives an ALJ the authority to remand the case back to the agency for informal disposition on a default basis in accordance with TEX. GOV'T CODE § 2001.056.

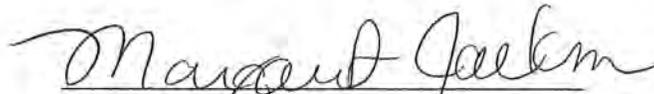
The ALJ remanded the matter to the Executive Director by SOAH Order No. 1, Granting Motion to Dismiss and Remand, issued on October 25, 2012, so that TCEQ may dispose of this case on a default basis."



Elizabeth Lieberknecht, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 8th day of November, D. 2012.


Notary Signature