

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE No. 44571  
GALVESTON SPEEDY STOP, L.L.C. d/b/a Seawall Exxon  
RN102653425  
Docket No. 2012-1429-PST-E

**Order Type:**

Default Order

**Media:**

PST

**Small Business:**

Yes

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

6026 Seawall Boulevard, Galveston, Galveston County

**Type of Operation:**

convenience store with retail sales of gasoline

**Other Significant Matters:**

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

**Texas Register Publication Date:** January 18, 2013

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$6,780

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

**Total Due to General Revenue:** \$6,780

**Compliance History Classifications:**

Person/CN – Not yet rated  
Site/RN – Average

**Major Source:** No

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** September 2011

**Investigation Information**

**Complaint Date(s):** N/A

**Date(s) of Investigation:** April 20, 2012

**Date(s) of NOV(s):** July 5, 2007

**Date(s) of NOE(s):** June 15, 2012

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE No. 44571  
GALVESTON SPEEDY STOP, L.L.C. d/b/a Seawall Exxon  
RN102653425  
Docket No. 2012-1429-PST-E

**Violation Information**

1. Failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel [TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.246(7)(A)].
2. Failed to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first [TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.245(2)].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**

Conducted the Stage II annual system compliance testing on April 20, 2012.

**Technical Requirements:**

1. The Station's UST fuel delivery certificate is revoked immediately. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements contained in the Order.
2. Immediately:
  - a. Cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ; and
  - b. Begin maintaining all Stage II records at the Station.
3. Within 10 days, surrender the Station's UST fuel delivery certificate to the TCEQ.
4. Within 15 days, submit a detailed written report documenting the steps taken to comply with Technical Requirements Nos. 2.a. and 3.
5. Within 45 days, submit written certification to demonstrate compliance with Technical Requirement No. 2.b.
6. Upon obtaining a new fuel delivery certificate, post the fuel delivery certificate in a location at the Station where the delivery certificate is clearly visible at all times.

**Litigation Information**

**Date Petition(s) Filed:** November 9, 2012  
**Date Green Card(s) Signed:** November 13, 2012  
**Date Answer(s) Filed:** N/A

**Contact Information**

**TCEQ Attorneys:** David Terry, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
Amy Swanholm, Public Interest Counsel, (512) 239-6363

**TCEQ Enforcement Coordinator:** Margarita Dennis, Enforcement Division, (512) 239-2578

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

**Respondent:** Omair Bashir, President, GALVESTON SPEEDY STOP, L.L.C., 16030 Fleet Haven, Houston, Texas 77084;

Omair Bashir, President, GALVESTON SPEEDY STOP, L.L.C., 6026 Seawall Boulevard, Galveston, Texas 77551

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



# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

<b>DATES</b>	<b>Assigned</b>	18-Jun-2012	<b>Screening</b>	19-Jun-2012	<b>EPA Due</b>	
	<b>PCW</b>	7-Nov-2012				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	GALVESTON SPEEDY STOP, L.L.C. dba Seawall Exxon
<b>Reg. Ent. Ref. No.</b>	RN102653425
<b>Facility/Site Region</b>	12-Houston
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	44571	<b>No. of Violations</b>	2
<b>Docket No.</b>	2012-1429-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>	Margarita Dennis
		<b>EC's Team</b>	Enforcement Team 7
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$5,000
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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.

<b>Compliance History</b>	25.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$1,250
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Notes: Enhancement for one NOV with same/similar violations and one order with denial of liability.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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Notes: The Respondent does not meet the culpability criteria.

<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: \$551  
 Approx. Cost of Compliance: \$1,000  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$6,250
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	8.5%	<b>Adjustment</b>	\$530
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to capture the avoided cost of compliance associated with violation no. 2.

<b>Final Penalty Amount</b>	\$6,780
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$6,780
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<b>DEFERRAL</b>	0.0%	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.)

Notes:

<b>PAYABLE PENALTY</b>	\$6,780
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**Screening Date** 19-Jun-2012

**Docket No.** 2012-1429-PST-E

**PCW**

**Respondent** GALVESTON SPEEDY STOP, L.L.C. dba Seawall Exxon

*Policy Revision 3 (September 2011)*

**Case ID No.** 44571

*PCW Revision August 3, 2011*

**Reg. Ent. Reference No.** RN102653425

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** Margarita Dennis

### 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> )	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	1	20%
	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)** 25%

>> **Repeat Violator (Subtotal 3)**

No

**Adjustment Percentage (Subtotal 3)** 0%

>> **Compliance History Person Classification (Subtotal 7)**

N/A

**Adjustment Percentage (Subtotal 7)** 0%

>> **Compliance History Summary**

**Compliance History Notes**

Enhancement for one NOV with same/similar violations and one order with denial of liability.

**Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)** 25%

>> **Final Compliance History Adjustment**

**Final Adjustment Percentage \*capped at 100%** 25%

**Screening Date** 19-Jun-2012 **Docket No.** 2012-1429-PST-E **PCW**  
**Respondent** GALVESTON SPEEDY STOP, L.L.C. dba Seawall Exxon *Policy Revision 3 (September 2011)*  
**Case ID No.** 44571 *PCW Revision August 3, 2011*  
**Reg. Ent. Reference No.** RN102653425  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Margarita Dennis

**Violation Number** 1

**Rule Cite(s)**

30 Tex. Admin. Code § 115.246(7)(A) and Tex. Health & Safety Code § 382.085(b)

**Violation Description**

Failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel.

**Base Penalty** \$25,000

>> **Environmental, Property and Human Health Matrix**

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

**Percent** 0.0%

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor
	x		

**Percent** 5.0%

Matrix Notes

100% of the rule requirement was not met.

**Adjustment** \$23,750

\$1,250

**Violation Events**

Number of Violation Events 1 60 Number of violation days

*mark only one with an x*

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

**Violation Base Penalty** \$1,250

One single event is recommended.

**Good Faith Efforts to Comply**

0.0% Reduction

\$0

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

Notes

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

**Violation Subtotal** \$1,250

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount** \$21

**Violation Final Penalty Total** \$1,695

**This violation Final Assessed Penalty (adjusted for limits)** \$1,695

# Economic Benefit Worksheet

**Respondent** GALVESTON SPEEDY STOP, L.L.C. dba Seawall Exxon  
**Case ID No.** 44571  
**Reg. Ent. Reference No.** RN102653425  
**Media Violation No.** Petroleum Storage Tank  
 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	\$500	20-Apr-2012	19-Feb-2013	0.84	\$21	n/a	\$21
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to maintain Stage II records. The date required is the investigation date, and the final date is the estimated date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance \$500

**TOTAL** \$21

Screening Date 19-Jun-2012

Docket No. 2012-1429-PST-E

PCW

Respondent GALVESTON SPEEDY STOP, L.L.C. dba Seawall Exxon

Policy Revision 3 (September 2011)

Case ID No. 44571

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102653425

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Margarita Dennis

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 115.245(2) and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first. Specifically, the Stage II annual system compliance testing had not been conducted.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

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 \$21,250

\$3,750

Violation Events

Number of Violation Events 1

110 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	x
single event	

Violation Base Penalty \$3,750

One annual event is recommended for the period preceding the April 20, 2012 investigation.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

No Good Faith reduction offered for Default Orders.

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$530

Violation Final Penalty Total \$5,085

This violation Final Assessed Penalty (adjusted for limits) \$5,085

# Economic Benefit Worksheet

**Respondent** GALVESTON SPEEDY STOP, L.L.C. dba Seawall Exxon  
**Case ID No.** 44571  
**Reg. Ent. Reference No.** RN102653425  
**Media Violation No.** Petroleum Storage Tank  
 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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$500	1-Jan-2012	20-Apr-2012	1.22	\$30	\$500	\$530
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost for annual testing to verify proper operation of the Stage II equipment. The date required is the date the ownership changed, and the final date is the date of compliance.

Approx. Cost of Compliance \$500

**TOTAL** \$530

# Compliance History Report

Customer/Respondent/Owner-Operator: CN604039180 GALVESTON SPEEDY STOP, L.L.C. Classification: Rating:  
Regulated Entity: RN102653425 SEAWALL EXXON Classification: AVERAGE Site Rating: 19.50  
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 26177  
Location: 6026 SEAWALL BLVD, GALVESTON, TX, 77551  
TCEQ Region: REGION 12 - HOUSTON  
Date Compliance History Prepared: June 19, 2012  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: June 19, 2007 to June 19, 2012  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Margarita Dennis Phone: 512-239-2578

## 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? GALVESTON SPEEDY STOP, L.L.C., OWNER OPERATOR since 01/01/2012
4. If **YES**, who was/were the prior owner(s)/operator(s)? Shams Enterprises, L.P., OWNER OPERATOR, 8/1/2005 to 1/1/2012
5. If **YES**, when did the change(s) in owner or operator occur? 1/1/2012
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.

**Effective Date: 06/04/2010**

**ADMINORDER 2009-1761-PST-E**

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)  
5C THSC Chapter 382 382.085(b)

Description: Failure to verify proper operation of the Stage II equipment at least once every 12 months, as documented during an investigation conducted on September 8, 2009.

Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.245(3)

Description: Failure to submit a pre-test notification at least 10 working day in advance of Stage II system tests.

- 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	06/15/2012	(1006461)
2	07/05/2007	(566171)
3	10/09/2007	(593864)
4	10/15/2009	(775484)

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

**Date: 07/05/2007 (566171)**

**CN604039180**

Self Report? NO

Citation: 30 TAC Chapter 115, SubChapter C 115.246(3)

Classification: Minor

Description: Failure to maintain a record of any maintenance conducted on any part of the Stage II equipment.

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(5)

Description: Failure to maintain a record of the results of testing conducted at the facility according to 115.245 (Testing Requirements).

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(4)

Description: Failure to maintain proof of attendance and completion of the training specified in §115.248 (state approved Stage II training course) and documentation of all Stage II training for each employee.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(C)(iii)

Description: Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s) or third-party certification, and free of defects that would impair the effectiveness of the system, including, but not limited to a nozzle boot that is torn.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(A)

Description: Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order.

- 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  
GALVESTON SPEEDY STOP, L.L.C.  
D/B/A SEAWALL EXXON;  
RN102653425**

§  
§  
§  
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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2012-1429-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, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty, corrective action of the respondent, and revocation of the station's fuel delivery certificate. The respondent made the subject of this Order is GALVESTON SPEEDY STOP, L.L.C. d/b/a Seawall Exxon ("Respondent").

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

### **FINDINGS OF FACT**

1. Respondent owns and operates, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), an underground storage tank ("UST") system and a convenience store with retail sales of gasoline located at 6026 Seawall Boulevard in Galveston, Galveston County, Texas (Facility ID No. 26177) (the "Station"). The USTs at the Station 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. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
2. During an investigation conducted on April 20, 2012, a Galveston County Health District Air and Water Services investigator documented that Respondent:
  - a. Failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel; and
  - b. Failed to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever comes first. Specifically, the Stage II annual system compliance testing had not been conducted.
3. Respondent received notice of the violations on or about June 20, 2012.
4. The Executive Director recognizes Respondent conducted the Stage II annual system compliance testing on April 20, 2012.
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 GALVESTON SPEEDY STOP, L.L.C. d/b/a Seawall Exxon" (the "EDPRP") in the TCEQ Chief Clerk's office on November 9, 2012.

6. By letter dated November 9, 2012, sent to Respondent's last known address via certified mail, return receipt requested, 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 November 13, 2012, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

#### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.246(7)(A).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.245(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(b)(1).
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 six thousand seven hundred eighty dollars (\$6,780.00) 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 the Station's UST fuel delivery certificate if the Commission finds that good cause exists.

10. Good cause for revocation of the Station'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 six thousand seven hundred eighty dollars (\$6,780.00) 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: GALVESTON SPEEDY STOP, L.L.C. d/b/a Seawall Exxon; Docket No. 2012-1429-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. The Station'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. Immediately upon the effective date of this Order, Respondent shall cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ in accordance with 30 TEX. ADMIN. CODE §§ 334.7 and 334.8.
5. Within 10 days after the effective date of this Order, Respondent shall send the Station's 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
6. Within 15 days after the effective date of this Order, Respondent shall submit written certification, in accordance with Ordering Provision No. 7.c., below, to demonstrate compliance with Ordering Provisions Nos. 4 and 5.
7. Respondent shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Order, Respondent shall begin maintaining all Stage II records at the Station, in accordance with 30 TEX. ADMIN. CODE § 115.246.

- b. Within 45 days after the effective date of this Order, Respondent shall submit written certification in accordance with Ordering Provision No. 7.c., below, to demonstrate compliance with Ordering Provision No. 7.a.
- c. The certifications required by these Ordering Provisions 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 certifications 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 St., Ste. H  
Houston, TX 77023-1452

- 8. Upon obtaining a new fuel delivery certificate, Respondent shall post the fuel delivery certificate in a location at the Station where the delivery certificate is clearly visible at all times, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii).
- 9. All relief not expressly granted in this Order is denied.
- 10. 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 Station operations referenced in this Order.
- 11. 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.

12. 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.
13. 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.
14. 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.
15. 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. 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

**AFFIDAVIT OF DAVID A. TERRY**

**STATE OF TEXAS**

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**COUNTY OF TRAVIS**

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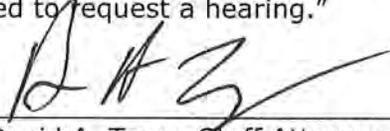
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"My name is David A. Terry. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

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 GALVESTON SPEEDY STOP, L.L.C. d/b/a Seawall Exxon" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on November 9, 2012.

The EDPRP was mailed to Respondent's last known address on November 9, 2012, via certified mail, return receipt requested, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on November 13, 2012, 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 and failed to request a hearing."



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David A. Terry, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared David A. Terry, 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 16<sup>th</sup> day of January, A.D. 2013.



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Notary Signature

