EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 42855
Addie Marlin d/b/a Marlin Marina Water System
RN101196079
Docket No. 2011-2069-PST-E

Order Type:
Agreed Order

Media:
PST

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
612 Griffin Drive (UST Facility) and 622 Griffin Drive (PWS Facility), Freeport, Brazoria County

Type of Operation:
underground storage tank ("UST") system and a public water 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: February 1, 2013

Comments Received: None

Penalty Information

Total Penalty Assessed:	$3,815
Amount Deferred for Financial Inability to Pay:	$3,815
Total Paid to General Revenue:	$0
Total Due to General Revenue:	$0
SEP Conditional Offset:	N/A

Compliance History Classifications:
Person/CN –Average
Site/RN – Average

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

Investigation Information

Complaint Date(s):	N/A
Date(s) of Investigation:	October 6, 2011; October 25, 2011
Date(s) of NOV(s):	July 12, 2010
Date(s) of NOE(s):	October 14, 2011

Violation Information

1. Failed to notify the agency of any change or additional information regarding the UST system within 30 days of the occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)].
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)].
3. Failed to pay Public Health Service ("PHS") fees and associated late fees for TCEQ Financial Administration ("FA") account no. 90200461 for Fiscal Years 2007 through 2011 [TEX. WATER CODE § 5.702 and 30 TEX. ADMIN. CODE § 290.51(a)(3).

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:
None

Technical Requirements:
1. Within 30 days, submit payment for all outstanding PHS fees for the PWS Facility, including any associated penalties and interest.
2. Within 180 days, permanently remove the UST system from service.
3. Within 195 days, submit an amended registration to reflect the current operational status of the UST system.
4. Within 210 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: April 10, 2012; October 2, 2012

Date Answer(s) Filed: June 28, 2012

SOAH Referral Date: August 6, 2012

Hearing Date(s):
Preliminary hearing: October 4, 2012
Evidentiary hearing: January 17, 2013 (scheduled)

Settlement Date: January 7, 2013

Contact Information

TCEQ Attorneys: Steven M. Fishburn, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Amy Swanholm, Public Interest Counsel, (512) 239-6363

TCEQ SEP Coordinator: N/A

TCEQ Enforcement Coordinator: Jeremy Escobar, Enforcement Division, (361) 825-3422

TCEQ Regional Contact: Jason Ybarra, Houston Regional Office, (713) 767-3500

Respondent: Addie Marlin, 614 Griffin Drive, Freeport, Texas 77541

Respondent's Attorney: Michael M. Phillips, Michael M. Phillips Law Firm, P.C., P. O. Box 1030, Angleton, Texas 77516-1030

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) *PCW Revision October 30, 2008*

DATES					
Assigned	17-Oct-2011				
PCW	25-Oct-2011	**Screening**	25-Oct-2011	**EPA Due**	

RESPONDENT/FACILITY INFORMATION			
Respondent	Addie Marlin dba Marlin Marina Water System		
Reg. Ent. Ref. No.	RN101196079		
Facility/Site Region	12-Houston	**Major/Minor Source**	Minor

CASE INFORMATION			
Enf./Case ID No.	42855	**No. of Violations**	3
Docket No.	2011-2069-PST-E	**Order Type**	1660
Media Program(s)	Petroleum Storage Tank	**Government/Non-Profit**	No
Multi-Media		**Enf. Coordinator**	Jeremy Escobar
		EC's Team	Enforcement Team 3
Admin. Penalty $ Limit Minimum	$0	**Maximum**	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) ***Subtotal 1*** **$3,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History **9.0%** Enhancement ***Subtotals 2, 3, & 7*** **$315**

Notes: Enhancement due to two NOVs with dissimilar violations, one NOV with same/similar violations.

Culpability No **0.0%** Enhancement ***Subtotal 4*** **$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments ***Subtotal 5*** **$0**

Economic Benefit **0.0%** Enhancement* ***Subtotal 6*** **$0**

Total EB Amounts $4,863
Approx. Cost of Compliance $7,140

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 ***Final Subtotal*** **$3,815**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0.0%** ***Adjustment***

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **$3,815**

STATUTORY LIMIT ADJUSTMENT ***Final Assessed Penalty*** **$3,815**

DEFERRAL Reduction ***Adjustment*** **$0**

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.

PAYABLE PENALTY **$3,815**

Screening Date	25-Oct-2011	**Docket No.**	2011-2069-PST-E	**PCW**
Respondent	Addie Marlin dba Marlin Marina Water System			*Policy Revision 2 (September 2002)*
Case ID No.	42855			*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN101196079			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Jeremy Escobar			

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 (*number of NOVs meeting criteria*)	1	5%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	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 (*number of judgements or consent decrees meeting criteria*)	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 (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	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 *(number of audits for which notices were submitted)*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%
		Please Enter Yes or No	
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) 9%

>> 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 due to two NOVs with dissimilar violations, one NOV with same/similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 9%

Screening Date	25-Oct-2011	**Docket No.**	2011-2069-PST-E	**PCW**
Respondent	Addie Marlin dba Marlin Marina Water System			*Policy Revision 2 (September 2002)*
Case ID No.	42855			*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN101196079			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Jeremy Escobar			

Violation Number 1

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

Violation Description Failed to notify the agency of any change or additional information regarding the underground storage tanks ("USTs") within 30 days of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current operational status of the UST system.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

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

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events: 1 — 19 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $1,000

One single event is recommended based on documentation of the violation during the October 6, 2011 record review.

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 $1,000

Economic Benefit (EB) for this violation

Estimated EB Amount $10

Statutory Limit Test

Violation Final Penalty Total $1,090

This violation Final Assessed Penalty (adjusted for limits) $1,090

Economic Benefit Worksheet

Respondent Addie Marlin dba Marlin Marina Water System
Case ID No. 42855
Reg. Ent. Reference No. RN101196079
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
	No commas or $						
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)	$100	27-May-2010	1-Jul-2012	2.10	$10	n/a	$10

Notes for DELAYED costs: Estimated cost to accurately prepare and submit an updated UST registration. The date required is the date of the investigation and the final date is the estimated date of compliance.

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

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

Notes for AVOIDED costs:

Approx. Cost of Compliance $100

TOTAL $10

Screening Date	25-Oct-2011	**Docket No.**	2011-2069-PST-E	**PCW**
Respondent	Addie Marlin dba Marlin Marina Water System			*Policy Revision 2 (September 2002)*
Case ID No.	42855			*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN101196079			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Jeremy Escobar			

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

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

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

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events: 1 — 19 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $2,500

One monthly event is recommended from the October 6, 2011 record review date to the October 25, 2011 screening date.

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 $2,500

Economic Benefit (EB) for this violation

Estimated EB Amount $4,853

Statutory Limit Test

Violation Final Penalty Total $2,725

This violation Final Assessed Penalty (adjusted for limits) $2,725

Economic Benefit Worksheet

Respondent Addie Marlin dba Marlin Marina Water System
Case ID No. 42855
Reg. Ent. Reference No. RN101196079
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	$7,040	22-Dec-1998	1-Oct-2012	###	$4,853	n/a	$4,853

Notes for DELAYED costs: Estimated cost to permanently remove from service four USTs with a combined capacity of 7,040 gallons at $1.00 per gallon. The Date Required is the date when the Respondent was required to upgrade the UST system and the Final Date is the estimated date of compliance

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0

Notes for AVOIDED costs:

Approx. Cost of Compliance $7,040

TOTAL $4,853

Screening Date	25-Oct-2011	**Docket No.**	2011-2069-PST-E	**PCW**
Respondent	Addie Marlin dba Marlin Marina Water System			*Policy Revision 2 (September 2002)*
Case ID No.	42855			*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN101196079			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Jeremy Escobar			

Violation Number 3

Rule Cite(s) Tex. Water Code § 5.702 and 30 Tex. Admin. Code § 290.51(a)(3)

Violation Description Failed to pay public health service fees and associated late fees for TCEQ Financial Account No. 90200461 for Fiscal Years 2007 through 2011.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Adjustment $10,000

$0

Violation Events

Number of Violation Events ____ ____ Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $0

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

Good Faith Efforts to Comply

0.0% Reduction $0

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

Notes

Violation Subtotal $0

Economic Benefit (EB) for this violation

Estimated EB Amount $0

Statutory Limit Test

Violation Final Penalty Total $0

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

Economic Benefit Worksheet

Respondent Addie Marlin dba Marlin Marina Water System
Case ID No. 42855
Reg. Ent. Reference No. RN101196079
Media Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)				0.00	$0	n/a	$0
Notes for DELAYED costs	N/A						
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Notes for AVOIDED costs							

Approx. Cost of Compliance $0

TOTAL $0

Compliance History

Customer/Respondent/Owner-Operator:	CN600641609	MARLIN, ADDIE	Classification: AVERAGE	Rating: 2.00
Regulated Entity:	RN101196079	MARLIN MARINA WATER SYSTEM	Classification: AVERAGE	Site Rating: 2.00
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY		REGISTRATION	0200461
	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	30477
	WATER LICENSING		LICENSE	0200461

Location: 612 GRIFFIN DR (PST) AND 622 GRIFFIN DR (PWS), FREEPORT, TX, 77541
TCEQ Region: REGION 12 - HOUSTON
Date Compliance History Prepared: November 09, 2011
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: October 25, 2006 to October 25, 2011
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Jeremy Escobar Phone: 825-3422

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	04/09/2009	(736506)
2	07/09/2010	(828314)
3	10/14/2011	(958933)

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

Date: 02/26/2009 (736506) CN600641609

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.46(e)
Description: Failure by the regulated entity to be under the direct supervision of a licensed water works operator at all times.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.110(b)(5)
30 TAC Chapter 290, SubChapter F 290.110(e)(4)
30 TAC Chapter 290, SubChapter F 290.110(e)(5)
Description: Failure by water system to submit a Disinfectant Level Quarterly Operating Report.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.121(b)
Description: Failure by the regulated entity to develop and maintain an up-to-date system monitoring plan.

Date: 04/13/2009 (736506) CN600641609

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)(1)(B)
Description: Failure to inspect the interior of the pressure tank.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.105
Description: Failure to provide drinking water within the maximum permissible level of 0.3 mg/L for the constituent iron.

Date: 07/12/2010 (828314) CN600641609

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)
Description: Failure to perform the permanent removal of a UST that has not met upgrade requirements.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.7(d)(3)
Description: Failure to notify the agency of any change or additional information regarding the underground storage tanks within 30 days of the occurrence of the change or addition.

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 ADDIE MARLIN DBA MARLIN MARINA WATER SYSTEM; RN101196079	**§ § § § § §**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2011-2069-PST-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Addie Marlin d/b/a Marlin Marina Water System ("Respondent") under the authority of TEX. WATER CODE chs. 5, 7, and 26 and TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, represented by Michael M. Phillips of The Michael M. Phillips Law Firm, P.C., together stipulate that:

1. Respondent owns and operates, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), an underground storage tank ("UST") system located at 612 Griffin Drive in Freeport, Brazoria County, Texas (Facility ID No. 30477) (the "UST Facility"), and owns and operates a public water system ("PWS") (PWS ID No. 0200461) located at 622 Griffin Drive in Freeport, Brazoria County, Texas (the "PWS Facility"). The USTs at the UST 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. The PWS Facility provides water for human consumption, has 37 service connections, and serves at least 25 people per day for at least 60 days per year. As such, the PWS Facility is a public water system as defined in 30 TEX. ADMIN. CODE § 290.38(66).

2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070 and TEX. HEALTH & SAFETY CODE § 341.049. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 and TEX. HEALTH & SAFETY CODE § 341.031 because it alleges violations of TEX. WATER CODE chs. 5 and 26, TEX. HEALTH & SAFETY CODE ch. 341, and TCEQ rules.

3. The Executive Director and Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondent is subject to the Commission's jurisdiction.

4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

5. An administrative penalty in the amount of three thousand eight hundred fifteen dollars ($3,815.00) is assessed by the Commission in settlement of the violations alleged in Section II. Three thousand eight hundred fifteen dollars ($3,815.00) of

the administrative penalty is deferred contingent upon Respondent's timely and satisfactory compliance with all the terms of this Agreed Order and shall be waived only upon full compliance with all the terms and conditions contained in this Agreed Order. If Respondent fails to timely and satisfactorily comply with any requirement contained in this Agreed Order, the deferred amount of the administrative penalty shall become immediately due and payable without demand or notice, and the Executive Director may require Respondent to pay all or part of the deferred administrative penalty.

6. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.

7. The Executive Director and Respondent agree on a settlement of the matters addressed in this Agreed Order, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).

8. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions contained in this Agreed Order.

9. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

10. The provisions of this Agreed Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

1. During a record review conducted on October 6, 2011, a TCEQ Corpus Christi Regional Office investigator documented that Respondent:

   a. Failed to notify the agency of any change or additional information regarding the UST system within 30 days of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current operational status of the UST system, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3); 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 the upgrade requirements, in violation of 30 TEX. ADMIN. CODE § 334.47(a)(2).

2. During an overdue fees investigation conducted on October 25, 2011, a TCEQ Enforcement Coordinator documented that Respondent failed to pay Public Health Service ("PHS") fees and associated late fees for TCEQ Financial Account No. 90200461 for Fiscal Years 2007 through 2011, in violation of TEX. WATER CODE § 5.702 and 30 TEX. ADMIN. CODE § 290.51(a)(3).

3. Respondent received notice of the violations in Allegation No. 1 on or about October 19, 2011.

III. DENIALS

Respondent generally denies each Allegation in Section II.

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Respondent is assessed an administrative penalty as set forth in Section I, Paragraph 5, above. The assessment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the Allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective actions or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Addie Marlin d/b/a Marlin Marina Water System, Docket No. 2011-2069-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

2. Respondent shall undertake the following technical requirements:

   a. Within 30 days after the effective date of this Agreed Order, Respondent shall submit payment for all outstanding PHS fees for the PWS Facility, including any associated penalties and interest and with the notation, "Addie Marlin d/b/a Marlin Marina Water System, Account No. 90200461" to:

      Financial Administration Division, Revenues Section
      Attention: Cashier's Office, MC 214
      Texas Commission on Environmental Quality
      P.O. Box 13088
      Austin, Texas 78711-3088

   b. Within 180 days after the effective date of this Agreed 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:

         A. Removing the USTs from the ground, abandoning the USTs in-place, or conducting a permanent change-in-service;

         B. Emptying the USTs of all regulated substances and accumulated sludges or residues and purging the USTs of all residual vapors;

         C. 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 UST Facility; and

D. 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.

c. Within 195 days after the effective date of this Agreed Order, Respondent shall submit an amended registration to reflect the current operational status of the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

Registration and Reporting Section
Permitting & Registration Support Division, MC 129
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

d. Within 210 days after the effective date of this Agreed Order, Respondent shall submit written certification, to demonstrate compliance with Ordering Provisions Nos. 2.a. through 2.c. 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 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

and:

Waste Section Manager
Texas Commission on Environmental Quality
Houston Regional Office
5425 Avenue K, Suite H
Houston, Texas 77023-1486

3. All relief not expressly granted in this Agreed Order is denied.

4. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the UST Facility and PWS Facility operations referenced in this Agreed Order.

5. If Respondent fails to comply with any of the Ordering Provisions in this Agreed 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 Agreed 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.

6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed 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.

7. This Agreed Order, issued by the Commission, shall not be admissible against Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission" "owner" "person" "writing" and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

9. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails a copy of the fully executed Agreed Order to Respondent, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

_____ _____
For the Executive Director Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of Addie Marlin d/b/a Marlin Marina Water System, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions in this order and/or failure to timely pay the penalty amount may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution.

Addie Marlin 1-7-13
Signature - Addie Marlin Date