

Leldon B. Higgs
RN101841609
Docket No. 2013-1043-PST-E

Order Type:

Default Order

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

40385 Highway 290 Business, Waller, Waller County

Type of Operation:

inactive underground storage tank ("UST") 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: August 15, 2014**Comments Received:** None**Penalty Information****Total Penalty Assessed:** \$14,153**Total Paid to General Revenue:** \$0**Total Due to General Revenue:** \$14,153**Compliance History Classifications:**

Person/CN – High
Site/RN – High

Major Source: No**Statutory Limit Adjustment:** None**Applicable Penalty Policy:** September 2011**Investigation Information****Complaint Date(s):** N/A**Date(s) of Investigation:** April 11, 2013**Date(s) of NOV(s):** October 17, 2012**Date(s) of NOE(s):** January 15, 2014

Leldon B. Higgs
RN101841609
Docket No. 2013-1043-PST-E

Violation Information

1. Failed to ensure that a corrosion protection system is operating and maintained in a manner that will ensure continuous corrosion protection to all underground components of the UST system [30 TEX. ADMIN. CODE § 334.49(a)(1)].
2. Failed to provide notice of any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first became aware of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)].
3. Failed to monitor all tanks in the UST system in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring) [TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A)].
4. Failed to monitor the UST system in a manner which will detect a release from any portion of the piping system [TEX. WATER CODE § 26.3475(a) and 30 TEX. ADMIN. CODE § 334.50(b)(2)].
5. Failed to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Within 30 days, either:
 - a. Permanently remove the UST system from service; or
 - b. Install a corrosion protection system and test the system; and
 - c. Implement a release detection method for all USTs at the Facility and conduct the annual piping tightness test; and
 - d. Submit documentation that demonstrates acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs.
2. Within 45 days, submit a properly completed UST registration form to the TCEQ reflecting the current status of the USTs and the current ownership information for the UST system.
3. Within 60 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: November 1, 2013; January 15, 2014
Date Green Card(s) Signed: Unclaimed; Unclaimed
Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: J. Amber Ahmed, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Eli Martinez, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Troy Warden, Enforcement Division, (512) 239-1050

TCEQ Regional Contact: Jason Ybarra, Houston Regional Office, (713) 767-3615

Respondent Contact: Leldon B. Higgs, 12930 Hunterfield Drive, Cypress, Texas 77429

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	22-Apr-2013			
	PCW	24-Oct-2013	Screening	8-May-2013	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	Leldon B. Higgs
Reg. Ent. Ref. No.	RN101841609
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION		No. of Violations	4
Enf./Case ID No.	46818	Order Type	1660
Docket No.	2013-1043-PST-E	Government/Non-Profit	No
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Troy Warden
Multi-Media		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$12,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1	
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.	
Compliance History	Subtotals 2, 3, & 7

-5.0% Reduction **Subtotals 2, 3, & 7** -\$625

Notes: Enhancement for one NOV containing same/similar violations, and reduction for high performer classification.

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 \$2,485
Approx. Cost of Compliance \$9,698
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$11,875
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OTHER FACTORS AS JUSTICE MAY REQUIRE	19.2%	Adjustment	\$2,278
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: The Executive Director recommends an upward adjustment to offset the reduction for high performer classification (\$500). Recommended enhancement to capture the avoided cost of compliance associated with violation nos. 3 and 4 (\$2,208).

Final Penalty Amount \$14,153

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$14,153
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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.

PAYABLE PENALTY	\$14,153
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Screening Date 8-May-2013

Docket No. 2013-1043-PST-E

PCW

Respondent Leldon B. Higgs

Policy Revision 3 (September 2011)

Case ID No. 46818

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101841609

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Troy Warden

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>)	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) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV containing same/similar violations, and reduction for high performer classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) -5%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% -5%

Screening Date 8-May-2013

Docket No. 2013-1043-PST-E

PCW

Respondent Leldon B. Higgs

Policy Revision 3 (September 2011)

Case ID No. 46818

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101841609

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Troy Warden

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 334.49(a)(1)

Violation Description

Failed to ensure that a corrosion protection system is operating and maintained in a manner that will ensure continuous corrosion protection to all underground components of the underground storage tank ("UST") system.

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 27 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$3,750

One monthly event is recommended based on documentation of the violation during the April 11, 2013 record review to the May 8, 2013 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 \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$224

Violation Final Penalty Total \$4,246

This violation Final Assessed Penalty (adjusted for limits) \$4,246

Economic Benefit Worksheet

Respondent Leldon B. Higgs
Case ID No. 46818
Reg. Ent. Reference No. RN101841609
Media Violation No. 1
Media Petroleum Storage Tank

Percent Interest	Years of Depreciation
5.0	15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description 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	\$6,000	11-Apr-2013	8-Jan-2014	0.75	\$224	n/a	\$224
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs Estimated cost to install a corrosion protection system and test the system. The date required is the record review 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 \$6,000

TOTAL \$224

Screening Date 8-May-2013

Docket No. 2013-1043-PST-E

PCW

Respondent Leldon B. Higgs

Policy Revision 3 (September 2011)

Case ID No. 46818

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101841609

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Troy Warden

Violation Number 2

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

Violation Description Failed to provide amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first became aware of the change or addition. Specifically, the registration was not amended to reflect the current status and ownership of the UST system.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0.0%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
		x			5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 27 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 \$3

Violation Final Penalty Total \$1,415

This violation Final Assessed Penalty (adjusted for limits) \$1,415

Economic Benefit Worksheet

Respondent Leldon B. Higgs
Case ID No. 46818
Reg. Ent. Reference No. RN101841609
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)	\$100	11-Apr-2013	8-Dec-2013	0.66	\$3	n/a	\$3

Notes for DELAYED costs

Estimated cost to submit an amended UST registration form to the TCEQ. The date required is the record review 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 \$100

TOTAL \$3

Screening Date 8-May-2013

Docket No. 2013-1043-PST-E

PCW

Respondent Leldon B. Higgs

Policy Revision 3 (September 2011)

Case ID No. 46818

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101841609

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Troy Warden

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A) and (b)(2) and Tex. Water Code § 26.3475(a) and (c)(1)

Violation Description Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Also, failed to provide release detection for the pressurized piping associated with the UST system. Specifically, the Respondent did not conduct the annual piping tightness test.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (15.0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and 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 Number of violation days 27

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

Violation Base Penalty \$3,750

One monthly event is recommended based on the documentation of the violation during the April 11, 2013 investigation to the May 8, 2013 screening date.

Good Faith Efforts to Comply

0.0% Reduction \$0

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

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

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$179 Violation Final Penalty Total \$4,246

This violation Final Assessed Penalty (adjusted for limits) \$4,246

Economic Benefit Worksheet

Respondent Leldon B. Higgs
Case ID No. 46818
Reg. Ent. Reference No. RN101841609
Media Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description 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)	\$1,500	11-Apr-2013	8-Dec-2013	0.66	\$50	n/a	\$50

Notes for DELAYED costs

Estimated cost of monitoring the USTs for releases. 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]	\$118	11-Apr-2012	11-Apr-2013	1.92	\$11	\$118	\$129
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost for conducting the annual piping tightness test. The date required is one year prior to the investigation date, and the final date is the investigation date.

Approx. Cost of Compliance \$1,618

TOTAL \$179

Screening Date 8-May-2013

Docket No. 2013-1043-PST-E

PCW

Respondent Leldon B. Higgs

Policy Revision 3 (September 2011)

Case ID No. 46818

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101841609

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Troy Warden

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 37.815(a) and (b)

Violation Description Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the USTs.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (0.0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (5.0%).

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 3 Number of violation days 27

Table for frequency: daily, weekly, monthly, quarterly, semiannual, annual, single event. Single event is marked with an 'x'.

Violation Base Penalty \$3,750

Three single events (one event per UST) are recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A. N/A is marked with an 'x'.

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

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2,079

Violation Final Penalty Total \$4,246

This violation Final Assessed Penalty (adjusted for limits) \$4,246

Economic Benefit Worksheet

Respondent Leldon B. Higgs
Case ID No. 46818
Reg. Ent. Reference No. RN101841609
Media Petroleum Storage Tank
Violation No. 4

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]	\$1,980	11-Apr-2012	11-Apr-2013	1.00	\$99	\$1,980	\$2,079
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to provide financial assurance for three petroleum USTs (\$660 per tank). The date required is one year prior to the investigation date, and the final date is the investigation date.

Approx. Cost of Compliance \$1,980

TOTAL \$2,079



Compliance History Report

PUBLISHED Compliance History Report for CN604181982, RN101841609, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator:	CN604181982, HIGGS, LELDON B	Classification: HIGH	Rating: 0.00
Regulated Entity:	RN101841609, API FOOD MART	Classification: HIGH	Rating: 0.00
Complexity Points:	4	Repeat Violator:	NO
CH Group:	14 - Other		
Location:	40385 HWY 290 Business, Waller, Texas 77484, WALLER COUNTY		
TCEQ Region:	REGION 12 - HOUSTON		
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 10952		

Compliance History Period:	September 01, 2007 to August 31, 2012	Rating Year:	2012	Rating Date:	09/01/2012
Date Compliance History Report Prepared:	May 13, 2013				
Agency Decision Requiring Compliance History:	Enforcement				
Component Period Selected:	May 13, 2008 to May 13, 2013				

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Troy Warden **Phone:** (512) 239-1050

Site and Owner/Operator History:

- 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** for #2, who is the current owner/operator?
API Food Mart
HIGGS, LELDON B
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)?
AZIZ, MOHAMMAD
- 5) If **YES**, when did the change(s) in owner or operator occur?
12/1/2008

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

Item 1 November 29, 2011 (951100)

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

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

1 Date: 10/17/2012 (1002830) CN604181982
Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.54(d)(2)
Description: Failure to ensure that any residue from stored regulated substances which remains in the system.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)
Description: Failure to amend the Underground Storage Tank Registration & Self-Certification.

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
LELDON B. HIGGS;
RN101841609**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2013-1043-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 Leldon B. Higgs ("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 inactive underground storage tank ("UST") system located at 40385 Highway 290 Business in Waller, Waller County, Texas (Facility ID No. 10952). The USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the TCEQ, and contain a regulated petroleum substance as defined in the rules of the TCEQ.
2. During a record review conducted on April 11, 2013, a TCEQ Houston Regional Office investigator documented that Respondent:
 - a. Failed to ensure that a corrosion protection system is operating and maintained in a manner that will ensure continuous corrosion protection to all underground components of the UST system;
 - b. Failed to provide notice of any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first became aware of the change or addition. Specifically, the registration was not amended to reflect the current status and ownership of the UST system;
 - c. Failed to monitor all tanks in the UST system in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring);
 - d. Failed to monitor the UST system in a manner which will detect a release from any portion of the piping system. Specifically, Respondent failed to conduct the annual piping tightness test; and
 - e. Failed to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.
3. Respondent received notice of the violations on or about January 20, 2014.

4. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Leldon B. Higgs" (the "EDPRP") in the TCEQ Chief Clerk's office on November 1, 2013.
5. The EDPRP was mailed to Respondent's last known address on November 1, 2013, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed."
6. The Executive Director re-filed the EDPRP in the TCEQ Chief Clerk's office on January 15, 2014.
7. By letter dated January 15, 2014, 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. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.
8. 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 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to ensure that a corrosion protection system is operating and maintained in a manner that will ensure continuous corrosion protection to all underground components of the UST system, in violation of 30 TEX. ADMIN. CODE § 334.49(a)(1).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to provide notice of any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first became aware of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to monitor all tanks in the UST system in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A).
5. As evidenced by Finding of Fact No. 2.d., Respondent failed to monitor the UST system in a manner which will detect a release from any portion of the piping system, in violation of TEX. WATER CODE § 26.3475(a) and 30 TEX. ADMIN. CODE § 334.50(b)(2).
6. As evidenced by Finding of Fact No. 2.e., Respondent failed to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b).
7. As evidenced by Findings of Fact Nos. 4 through 7, 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 (c)(2).

8. As evidenced by Finding of Fact No. 8, 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.
9. 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 TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
10. An administrative penalty in the amount of fourteen thousand one hundred fifty-three dollars (\$14,153.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
11. 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 fourteen thousand one hundred fifty-three dollars (\$14,153.00) 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: Leldon B. Higgs; Docket No. 2013-1043-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 30 days after the effective date of this Order, Respondent shall either:
 - i. Permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55; or
 - ii. Install a corrosion protection system and test the system, in accordance with 30 TEX. ADMIN. CODE § 334.49(a)(1); and
 - iii. Implement a release detection method for all USTs at the Facility and conduct the annual piping tightness test, in accordance with 30 TEX. ADMIN. CODE § 334.50; and
 - iv. Submit documentation that demonstrates acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs, in accordance with 30 TEX. ADMIN. CODE § 37.815.

- b. Within 45 days after the effective date of this Order, Respondent shall submit a properly completed UST registration form to the TCEQ reflecting the current status of the USTs and the current ownership information for the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

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

- c. Within 60 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 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:

Jason Ybarra, 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.
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. Extension requests shall be submitted to the Order Compliance Team at the address listed in Ordering Provision No. 3.c.
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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF J. AMBER AHMED

STATE OF TEXAS

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COUNTY OF TRAVIS

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"My name is J. Amber Ahmed. 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 Leldon B. Higgs" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on November 1, 2013.

The EDPRP was mailed to Respondent's last known address on November 1, 2013, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed."

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the EDPRP was re-filed in the TCEQ Chief Clerk's office on January 15, 2014.

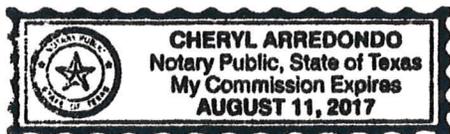
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More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."

J. Amber Ahmed, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared J. Amber Ahmed, 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 21st day of July, A.D. 2014.



Notary without Bond

Cheryl Arredondo

Notary Signature