

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 51269
KENNARD'S THOMAS CORNER, LLC dba Thomas Corner Fine Fina
RN101817419
Docket No. 2015-1405-PST-E

Order Type:

Default Order

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

212 State Highway 7 East, Kennard, Houston County

Type of Operation:

convenience store with inactive underground storage tanks ("USTs")

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: April 8, 2016

Comments Received: None

Penalty Information

Total Penalty Assessed: \$5,000

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$5,000

Compliance History Classifications:

Person/CN –Unclassified
Site/RN – Unclassified

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): January 20, 2015
Complaint Information: Complainant concerned that the out-of-service gas station may be causing health issues at a school adjacent to the station.

Date(s) of Investigation: February 6, 2015; August 26, 2015

Date(s) of NOV(s): N/A

Date(s) of NOE(s): September 10, 2015

Violation Information

1. Failed to provide an amended registration for 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)(1) and (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)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Within 180 days, permanently remove the UST system from service which includes the following actions:
 - a. Providing a Construction Notification to the TCEQ at least 30 days prior to any removal activities; and
 - b. Employing a Licensed Underground Storage Tank Contractor to perform all removal activities, including:
 - i. Removing the USTs from the ground, abandoning the USTs in-place, or conducting a permanent change-in-service;
 - ii. Emptying the USTs of all regulated substances and accumulated sludges or residues and purging the USTs of all residual vapors;
 - iii. Handling, transporting, and properly disposing of the empty USTs, of the regulated substances removed from the UST system, and of any contaminated soils, backfill material, groundwater, wash water, or other similar materials removed from the UST system or Facility; and
 - iv. Determining whether there has been a release of regulated substances from the UST system, performance of a comprehensive site assessment, report of confirmed or suspected releases to the TCEQ, preparation of a detailed written record of the release determination.
2. Within 195 days, submit an amended registration to reflect the operational status of the UST system and the owner's correct contact information.
3. Within 210 days, submit written certification to demonstrate compliance.

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 51269
KENNARD'S THOMAS CORNER, LLC dba Thomas Corner Fine Fina
RN101817419
Docket No. 2015-1405-PST-E

Litigation Information

Date Petition(s) Filed: January 5, 2016
Date Green Card(s) Signed: January 8, 2016
Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Clayton Smith, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Rudy Calderon, Public Interest Counsel, (512) 239-6363
TCEQ Enforcement Coordinator: Tiffany Maurer, Enforcement Division, (512) 239-2696
TCEQ Regional Contact: Marilyn Gates, Beaumont Regional Office, (409) 899-8731
Respondent Contact: William Smith, Governing Person, KENNARD'S THOMAS CORNER, LLC,
P.O. Box 1142, Crockett, Texas 75835
Respondent's Attorney: N/A

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Compliance History Report

PENDING Compliance History Report for CN604770487, RN101817419, Rating Year 2015 which includes Compliance History (CH) components from September 1, 2010, through August 31, 2015.

Customer, Respondent, or Owner/Operator: CN604770487, KENNARD'S THOMAS CORNER, LLC **Classification:** UNCLASSIFIED **Rating:** -----

Regulated Entity: RN101817419, THOMAS CORNER FINE FINA **Classification:** UNCLASSIFIED **Rating:** -----

Complexity Points: 4 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 212 STATE HIGHWAY 7 EAST KENNARD, TX 75847-5623, HOUSTON COUNTY

TCEQ Region: REGION 10 - BEAUMONT

ID Number(s): **PETROLEUM STORAGE TANK REGISTRATION** REGISTRATION NUMBER 69009

Compliance History Period: September 01, 2010 to August 31, 2015 **Rating Year:** 2015 **Rating Date:** 09/01/2015

Date Compliance History Report Prepared: September 16, 2015

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: September 16, 2010 to September 16, 2015

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

Name: Tiffany Maurer

Phone: (512) 239-2696

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? NO
- 3) If **YES** for #2, who is the current owner/operator? N/A
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If **YES**, when did the change(s) in owner or operator occur? N/A

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.):

N/A

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.

N/A

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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Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	14-Sep-2015		
	PCW	22-Dec-2015	Screening	15-Sep-2015
			EPA Due	

RESPONDENT/FACILITY INFORMATION	
Respondent	KENNARD'S THOMAS CORNER, LLC dba Thomas Corner Fine Fina
Reg. Ent. Ref. No.	RN101817419
Facility/Site Region	10-Beaumont
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	51269	No. of Violations	2
Docket No.	2015-1405-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Tiffany Maurer
		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	\$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.

Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No adjustment for compliance history.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$1,829
Estimated Cost of Compliance	\$40,100

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$5,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$5,000
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$5,000
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$5,000
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Screening Date 15-Sep-2015

Docket No. 2015-1405-PST-E

PCW

Respondent KENNARD'S THOMAS CORNER, LLC dba Thomas Corner Fine Fina

Policy Revision 4 (April 2014)

Case ID No. 51269

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101817419

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Tiffany Maurer

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>)	0	0%
	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 judgments 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) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Unclassified

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 0%

Screening Date 15-Sep-2015
Respondent KENNARD'S THOMAS CORNER, LLC dba Thomas Corner Fine Fina
Case ID No. 51269
Reg. Ent. Reference No. RN101817419
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Tiffany Maurer

Docket No. 2015-1405-PST-E

PCW

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.7(d)(1) and (d)(3)

Violation Description
 Failed to provide an amended registration for any change or additional information regarding the underground storage tank ("UST") system within 30 days of the occurrence of the change or addition. Specifically, the Respondent did not amend the registration to indicate the owner's contact information.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual			
Potential					

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
		x			

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 20 Number of violation days

<i>mark only one with an x</i>	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,250

One monthly event is recommended from the date of the August 26, 2015 investigation to the September 15, 2015 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

Before NOE/NOV NOE/NOV to EDRP/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 \$4

Violation Final Penalty Total \$1,250

This violation Final Assessed Penalty (adjusted for limits) \$1,250

Economic Benefit Worksheet

Respondent KENNARD'S THOMAS CORNER, LLC dba Thomas Corner Fine Fina
Case ID No. 51269
Reg. Ent. Reference No. RN101817419
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				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	26-Aug-2015	15-May-2016	0.72	\$4	n/a	\$4

Notes for DELAYED costs Estimated cost to amend the UST Registration and Self-Certification Form with the Respondent's contact information. 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 \$100

TOTAL \$4

Screening Date 15-Sep-2015

Docket No. 2015-1405-PST-E

PCW

Respondent KENNARD'S THOMAS CORNER, LLC dba Thomas Corner Fine Fin

Policy Revision 4 (April 2014)

Case ID No. 51269

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101817419

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Tiffany Maurer

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 \$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 that 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

20 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
single event		

Violation Base Penalty \$3,750

One monthly event is recommended from the date of the August 26, 2015 investigation to the September 15, 2015 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark w th 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 \$1,826

Violation Final Penalty Total \$3,750

This violation Final Assessed Penalty (adjusted for limits) \$3,750

Economic Benefit Worksheet

Respondent KENNARD'S THOMAS CORNER, LLC dba Thomas Corner Fine Fina
Case ID No. 51269
Reg. Ent. Reference No. RN101817419
Media Violation No. Petroleum Storage Tank
 2

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	\$40,000	26-Aug-2015	20-Apr-2016	0.65	\$87	\$1,739	\$1,826
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 Estimated cost to permanently remove four USTs from service with a combined capacity of 40,000 gallons at \$1 per gallon. 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 \$40,000 **TOTAL** \$1,826

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
KENNARD'S THOMAS CORNER, LLC
DBA THOMAS CORNER FINE FINA;
RN101817419**

§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2015-1405-PST-E

On _____, 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 KENNARD'S THOMAS CORNER, LLC dba Thomas Corner Fine Fina ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns, as defined in 30 TEX. ADMIN. CODE § 334.2(73), an underground storage tank ("UST") system and a convenience store located at 212 State Highway 7 East in Kennard, Houston County, Texas (Facility ID No. 69009) (the "Facility"). The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contain or contained a regulated petroleum substance as defined in the rules of the TCEQ.
2. During an investigation conducted on February 6, 2015, and a record review conducted on August 26, 2015, an investigator documented that Respondent:
 - a. Failed to provide an amended registration for any change or additional information regarding the UST system within 30 days of the occurrence of the change or addition. Specifically, Respondent did not amend the registration to indicate the owner's contact information; 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.
3. 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 KENNARD'S THOMAS CORNER, LLC dba Thomas Corner Fine Fina" (the "EDPRP") in the TCEQ Chief Clerk's office on January 5, 2016.
4. By letter dated January 5, 2016, 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 January 8, 2016, as evidenced by the signature on the card.

5. 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 provide an amended registration for any change or additional information regarding the UST system within 30 days of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(1) and (d)(3).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, in violation of 30 TEX. ADMIN. CODE § 334.47(a)(2).
4. As evidenced by Findings of Fact Nos. 3 and 4, 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. 5, 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 TCEQ'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 five thousand dollars (\$5,000.00) 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.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of five thousand dollars (\$5,000.00) for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondent's compliance with all the requirements set forth in this Order resolve only 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 violations which are not raised here.
2. The 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 TCEQ and shall be sent with the notation "Re: KENNARD'S THOMAS CORNER, LLC dba Thomas Corner Fine Fina; Docket No. 2015-1405-PST-E" to:

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

3. Respondent shall undertake the following technical requirements:
- a. Within 180 days after the effective date of this Order, permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55, which includes 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:
 - 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 Facility; and
 - D. Determining whether there has been a release of regulated substances from the UST system, performance of a comprehensive site assessment, report of confirmed or suspected releases to the TCEQ, preparation of a detailed written record of the release determination, and compliance with all applicable corrective action requirements.
 - b. Within 195 days after the effective date of this Order, submit an amended registration to reflect the operational status of the UST system and the owner's correct contact information, 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
 - c. Within 210 days after the effective date of this Order, 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 signed by Respondent, 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.”

The written certification and supporting documentation necessary to demonstrate compliance with these Ordering Provisions shall be sent to:

Order Compliance Team
Texas Commission on Environmental Quality
Enforcement Division, MC 149A
P.O. Box 13087
Austin, Texas 78711-3087

and:

Waste Section Manager
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Fwy.
Beaumont, Texas 77703-1830

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. 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 sent to the Order Compliance Team at the address listed above.
7. 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.
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 fully executed Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

AFFIDAVIT OF CLAYTON SMITH

STATE OF TEXAS

§

COUNTY OF TRAVIS

§

§

"My name is Clayton Smith. 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 KENNARD'S THOMAS CORNER, LLC dba Thomas Corner Fine Fina" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on January 5, 2016.

The EDPRP was mailed to Respondent's last known address on January 5, 2016, via certified mail, return receipt requested, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on January 8, 2016, 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."



Clayton Smith, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Clayton Smith, 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.

Subscribed and sworn to before me on this 23rd day of March, A.D. 2016.



Notary Public, State of Texas



Notary Without Bond