

**Diane Espinoza**  
**RN102465804**  
**Docket No. 2018-0745-PST-E**

**Order Type:**

Default Order

**Media:**

PST

**Small Business:**

Yes

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

intersection of Highway 80 and Highway 81, Helena, Karnes County

**Type of Operation:**

temporarily out-of-service 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:** June 14, 2019**Comments Received:** None**Penalty Information****Total Penalty Assessed:** \$16,875**Total Paid to General Revenue:** \$0**Total Due to General Revenue:** \$16,875**Compliance History Classifications:**

Person/CN – Unsatisfactory  
Site/RN – Unsatisfactory

**Major Source:** No**Statutory Limit Adjustment:** None**Applicable Penalty Policy:** April 1, 2014

**Diane Espinoza  
RN102465804  
Docket No. 2018-0745-PST-E**

**Investigation Information**

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** February 26, 2018; January 19, 2016  
**Date(s) of NOV(s):** N/A  
**Date(s) of NOE(s):** May 11, 2018

**Violation Information**

1. 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)].
2. Failed to identify and designate for the UST Facility at least one named individual for each class of operator, Class A and Class B [30 TEX. ADMIN. CODE § 334.602(a)].

**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 UST 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, the regulated substances removed from the UST system, and any contaminated soils, backfill material, groundwater, wash water or other similar materials removed from the UST system or Facility; and
    - iv. Determining whether or not there has been a release of regulated substance from the UST system, performance of a comprehensive site assessment, reporting confirmed or suspected releases to the TCEQ, preparing a detailed written record of the release determination, and compliance with all applicable corrective action requirements.
2. Within 195 days, submit an amended registration to reflect the operational status of the UST system as permanently removed from service.
3. Within 210 days, submit written certification to demonstrate compliance for Technical Requirements Nos. 1 and 2.

**Diane Espinoza**  
**RN102465804**  
**Docket No. 2018-0745-PST-E**

**Litigation Information**

**Date Petition(s) Filed:** January 18, 2019; February 25, 2019  
**Date Green Card(s) Signed:** Unclaimed; Unclaimed  
**Date Answer(s) Filed:** N/A

**Contact Information**

**TCEQ Attorneys:** Adam Taylor, Litigation Division, (512) 239-3400  
Garrett Arthur, Public Interest Counsel, (512) 239-6363  
**TCEQ Litigation Division Agenda Coordinator:** Janice Hernandez, (512) 239-2575  
**TCEQ Enforcement Coordinator:** Carlos Molina, Enforcement Division, (512) 239-2557  
**TCEQ Regional Contact:** Cameron Lopez, San Antonio Regional Office, (210) 490-3096  
**Respondent Contact:** Diane Espinoza, P. O. Box 283, Karnes City, Texas 78118  
**Respondent's Attorney:** N/A

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# Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	14-May-2018	<b>Screening</b>	21-May-2018	<b>EPA Due</b>	
	<b>PCW</b>	4-Sep-2018				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Diane Espinoza				
<b>Reg. Ent. Ref. No.</b>	RN102465804				
<b>Facility/Site Region</b>	13-San Antonio	<b>Major/Minor Source</b>	Minor		

## CASE INFORMATION

<b>Enf./Case ID No.</b>	56200	<b>No. of Violations</b>	2
<b>Docket No.</b>	2018-0745-PST-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Carlos Molina
		<b>EC's Team</b>	Enforcement Team 7
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

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

<b>Compliance History</b>	35.0%	Adjustment	<b>Subtotals 2, 3, &amp; 7</b>	\$4,375
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<b>Notes</b>	Enhancement for Unsatisfactory Performer classification and Repeat Violator.
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<b>Culpability</b>	No	0.0%	Enhancement	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0%	Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$168	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$1,100	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$16,875
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	
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<b>Final Penalty Amount</b>	\$16,875
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$16,875
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<b>DEFERRAL</b>	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage.

<b>Notes</b>	Deferral not offered for non-expedited settlement.
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<b>PAYABLE PENALTY</b>	\$16,875
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**Screening Date** 21-May-2018

**Docket No.** 2018-0745-PST-E

**PCW**

**Respondent** Diane Espinoza

*Policy Revision 4 (April 2014)*

**Case ID No.** 56200

*PCW Revision March 26, 2014*

**Reg. Ent. Reference No.** RN102465804

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** Carlos Molina

### Compliance History Worksheet

#### >> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	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%
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)

Yes

**Adjustment Percentage (Subtotal 3)** 25%

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

Unsatisfactory Performer

**Adjustment Percentage (Subtotal 7)** 10%

#### >> Compliance History Summary

**Compliance History Notes**

Enhancement for Unsatisfactory Performer classification and Repeat Violator.

**Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)** 35%

#### >> Final Compliance History Adjustment

**Final Adjustment Percentage \*capped at 100%** 35%

**Screening Date** 21-May-2018  
**Respondent** Diane Espinoza  
**Case ID No.** 56200  
**Reg. Ent. Reference No.** RN102465804  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Carlos Molina

**Docket No.** 2018-0745-PST-E

**PCW**

*Policy Revision 4 (April 2014)*  
*PCW Revision March 26, 2014*

**Violation Number**

**Rule Cite(s)**

**Violation Description**

**Base Penalty**

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="15.0%"/>
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0.0%"/>

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text" value="x"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

**Violation Base Penalty**

**Good Faith Efforts to Comply**

Reduction

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	<input type="text"/>

**Notes**

**Violation Subtotal**

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

**Statutory Limit Test**

**Estimated EB Amount**

**Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** Diane Espinoza  
**Case ID No.** 56200  
**Reg. Ent. Reference No.** RN102465804  
**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	Costs Saved	EB Amount
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### 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)	\$1,100	19-Jan-2016	8-Feb-2019	3.06	\$168	n/a	\$168

**Notes for DELAYED costs**

Estimated cost to permanently remove from service two USTs with a combined capacity of 1,100 gallons at a cost of \$1.00 per gallon of tank capacity. The date required is the initial investigation date and the final date is the estimated date of compliance.

### Avoided Costs

**ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

Approx. Cost of Compliance

\$1,100

**TOTAL**

\$168



Screening Date 21-May-2018

Docket No. 2018-0745-PST-E

PCW

Respondent Diane Espinoza

Policy Revision 4 (April 2014)

Case ID No. 56200

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102465804

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Carlos Molina

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 334.602(a)

Violation Description Failed to identify and designate for the UST Facility at least one named individual for each class of operator - Class A and Class B.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				5.0%
Potential		x		

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
				0.0%

Matrix Notes Human health or the environment will or could be exposed to significant amounts pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 84 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$1,250

One quarterly event is recommended from the February 26, 2018 investigation date to the May 21, 2018 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
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 \$0

Violation Final Penalty Total \$1,688

This violation Final Assessed Penalty (adjusted for limits) \$1,688

## Economic Benefit Worksheet

**Respondent** Diane Espinoza  
**Case ID No.** 56200  
**Reg. Ent. Reference No.** RN102465804  
**Media** Petroleum Storage Tank  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	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

Economic Benefit included in Violation No. 1.

### Avoided Costs

**ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

**TOTAL**

\$0

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To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



# TCEQ Compliance History Report

Compliance History Report for CN605480961, RN102465804, Rating Year 2017 which includes Compliance History (CH) components from September 1, 2012, through August 31, 2017.

**Customer, Respondent, or Owner/Operator:** CN605480961, Diane Espinoza      **Classification:** UNSATISFACTORY      **Rating:** 255.00

**Regulated Entity:** RN102465804, Quick Serv Station      **Classification:** UNSATISFACTORY      **Rating:** 255.00

**Complexity Points:** 2      **Repeat Violator:** YES

**CH Group:** 14 - Other

**Location:** The Intersection of Highway 80 and Highway 81 in Helena, Karnes County, Texas

**TCEQ Region:** REGION 13 - SAN ANTONIO

**ID Number(s):**

**PETROLEUM STORAGE TANK REGISTRATION**  
REGISTRATION 1625

**Compliance History Period:** September 01, 2012 to August 31, 2017      **Rating Year:** 2017      **Rating Date:** 09/01/2017

**Date Compliance History Report Prepared:** May 29, 2018

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** May 29, 2013 to May 29, 2018

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

**Name:** Carlos Molina

**Phone:** (512) 239-2557

**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

**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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
DIANE ESPINOZA;  
RN102465804**

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

**DEFAULT ORDER**

**DOCKET NO. 2018-0745-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, corrective action of the respondent, and revocation of the facility's fuel delivery certificate. The respondent made the subject of this Order is Diane Espinoza ("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(78), a temporarily out-of-service underground storage tank ("UST") system located at intersection of Highway 80 and Highway 81 in Helena, Karnes County, Texas (Facility ID No. 1625) (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 26, 2018, and a record review conducted on January 19, 2016, an investigator documented that Respondent:
  - a. 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; and
  - b. Failed to identify and designate for the UST Facility at least one named individual for each class of operator, Class A and Class B.
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 Diane Espinoza" (the "EDPRP") in the TCEQ Chief Clerk's office on January 18, 2019.
4. The EDPRP was mailed to Respondent's last known address on January 18, 2019, via certified mail, return receipt requested, postage prepaid.

The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed."

5. The Executive Director re-filed the EDPRP in the TCEQ Chief Clerk's office on February 25, 2019.
6. By letter dated February 25, 2019, 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.
7. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

#### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2.a., 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).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to identify and designate for the UST Facility at least one named individual for each class of operator, Class A and Class B, in violation of 30 TEX. ADMIN. CODE § 334.602(a).
4. As evidenced by Findings of Fact Nos. 3 through 6, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
5. As evidenced by Finding of Fact No. 7, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within 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 sixteen thousand eight hundred seventy-five dollars (\$16,875.00) 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 sixteen thousand eight hundred seventy-five dollars (\$16,875.00) 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: Diane Espinoza; Docket No. 2018-0745-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:
      1. Removing the USTs from the ground, abandoning the USTs in-place, or conducting a permanent change-in-service;
      2. Emptying the USTs of all regulated substances and accumulated sludges or residues and purging the USTs of all residual vapors;
      3. Handling, transporting, and properly disposing of the empty USTs, the regulated substances removed from the UST system, and any contaminated soils, backfill material, groundwater, wash water or other similar materials removed from the UST system or Facility; and

4. Determining whether or not there has been a release of regulated substance from the UST system, performance of a comprehensive site assessment, reporting confirmed or suspected releases to the TCEQ, preparing a detailed written record of the release determination, and compliance with all applicable corrective action requirements.
- b. Within 195 days after the effective date of this Order, submit an amended registration to reflect the operational status of the UST system as permanently removed from service, in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

Registration and Reporting Section  
Permitting and 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  
San Antonio Regional Office  
Texas Commission on Environmental Quality  
14250 Judson Road  
San Antonio, Texas 78233-4480

4. All relief not expressly granted in this Order is denied.



5. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
6. 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. The provisions of this Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
10. 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.
11. 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**

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For the Commission

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Date

**AFFIDAVIT OF ADAM TAYLOR**

**STATE OF TEXAS**                    §  
   §  
**COUNTY OF TRAVIS**           §

"My name is Adam Taylor. 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 Diane Espinoza" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on January 18, 2019.

The EDPRP was mailed to Respondent's last known address on January 18, 2019, 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 February 25, 2019.

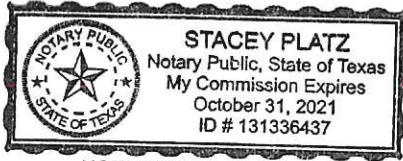
The EDPRP was mailed to Respondent's last known address on February 25, 2019, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first-class mail has not been returned, indicating that Respondent received notice of the EDPRP in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

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."

\_\_\_\_\_  
Adam Taylor, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Adam Taylor, 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 21<sup>st</sup> day of May, A.D. 2019.



NOTARY WITHOUT BOND

\_\_\_\_\_  
Notary Public, State of Texas