

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

March 21, 2006

CHIEF CLERKS OFFICE

MAR 21 PM 2:54

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Derek Seal
General Counsel
Texas Commission on Environmental Quality
PO Box 13087
Austin Texas 78711-3087

Re: SOAH Docket No. 582-05-8335; TCEQ Docket No. 2004-1315-PST-E; In Re: Manuel Manriquez, dba M&A Oil Co.

Dear Mr. Seal:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the original documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than April 10, 2006. Any replies to exceptions or briefs must be filed in the same manner no later than April 20, 2006.

This matter has been designated **TCEQ Docket No. 2004-1315-PST-E; SOAH Docket No. 582-05-8335**. All documents to be filed must clearly reference these assigned docket numbers. Copies of all exceptions, briefs and replies must be served promptly on the State Office of Administrative Hearings and all parties. Certification of service to the above parties and an **original and eleven copies** shall be furnished to the Chief Clerk of the Commission. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

A handwritten signature in black ink, appearing to read "SHANNON KILGORE".

SHANNON KILGORE
Administrative Law Judge

SK/ds

Enclosures
cc: Mailing List

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SERVICE LIST

AGENCY: TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ)

STYLE/CASE: MANUEL MANNQUEZ DBA M&A OIL CO.

SOAH DOCKET NUMBER: 582-05-8335

REFERRING AGENCY CASE: 2004-1315-PST-E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2005 MAR 21 PM 2:54
CHIEF CLERKS OFFICE

STATE OFFICE OF ADMINISTRATIVE HEARINGS

ADMINISTRATIVE LAW JUDGE
ALJ SHANNON KILGORE

REPRESENTATIVE / ADDRESS

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M&A OIL COMPANY

xc: Docket Clerk, State Office of Administrative Hearings

SOAH DOCKET NO. 582-05-8335
(TCEQ DOCKET NO. 2004-1315-PST-E)

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2006 MAR 21 PM 2:54

CHIEF CLERK'S OFFICE

EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY,
Petitioner

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§

BEFORE THE STATE OFFICE

OF

V.

MANUEL MANRIQUEZ,
DBA M&A OIL CO. (PST NO. 15928),
Respondent

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) brought this enforcement action against Manuel Manriquez dba M&A Oil Co. (Respondent).¹ Respondent's convenience store has underground storage tanks (USTs) that are no longer in use. The ED alleges that Respondent has violated the Commission's rules by: failing to timely remove or upgrade the USTs, failing to ensure that any residue in the tanks from stored regulated substances met the Commission's maximum depth and weight parameters, failing to update the tanks' registration to reflect their unused status, and failing to pay the annual facility fees for USTs. The ED requests imposition of an administrative penalty of \$3,600 and a requirement that Respondent implement corrective measures.

The parties have stipulated to the violations and the need for the requested corrective action. The only issue in dispute is the appropriateness of the penalty amount sought by the ED.

The Administrative Law Judge (ALJ) recommends that the Commission order Respondent to perform the corrective action but that no administrative penalty be imposed.

¹ Respondent's business is also know as "Big A Mart."

II. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

There were no contested issues of notice or jurisdiction in this case. Therefore those matters are set out in the proposed findings of fact and conclusions of law without further discussion here.

The preliminary hearing was convened on October 20, 2005, by ALJ Suzanne Marshall at the offices of the State Office of Administrative Hearings, William P. Clements Building, 300 West Fifteenth Street, Austin, Texas. The ED was represented by TCEQ Litigation Division Attorney Justin Lannen. Respondent was represented on a *pro bono* basis by legal counsel Rex White.² ALJ Shannon Kilgore convened the hearing on the merits on January 5, 2006. The ALJ left the record open following the hearing to allow for the ED's submission of further evidence, and argument concerning the admissibility of the new evidence. The record finally closed on January 30, 2006.

III. DISCUSSION

A. The Parties' Stipulations and the Remaining Disputed Issue

The parties stipulated to a number of facts, including the following:

- ◆ Respondent is subject to the enforcement authority of the TCEQ.
- ◆ At the time of the alleged violations, Respondent owned and operated a convenience store in Presidio, Texas, with retail sales of gasoline.
- ◆ Three USTs at Respondent's store have not been used since 1992.
- ◆ The USTs are not exempt or excluded from regulation under the Texas Water Code or the Commission's rules.

² Respondent did not appear personally because of his ill health. Respondent's Exhibit 4.

- ◆ As documented in a TCEQ investigation on July 8, 2004, Respondent had not permanently removed from service, within 60 days of the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system was not brought into timely compliance with the minimum technical upgrade requirements in 30 TEX. ADMIN. CODE § 334.47(b), in violation of 30 TEX. ADMIN. CODE § 334.47(a)(2). Specifically, the UST system had not been upgraded with proper corrosion protection, spill and overflow prevention, or release detection, and the system had not been permanently removed from service.
- ◆ As documented in a TCEQ investigation on July 8, 2004, Respondent had not ensured that any residue from stored regulated substances, which remained in the temporarily out of service UST system, did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity, in violation of 30 TEX. ADMIN. CODE § 334.54(d)(2).
- ◆ As documented in a TCEQ investigation on July 8, 2004, Respondent had not provided written notice to the TCEQ within 30 days of any changes or additional information concerning the UST system, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3) and TEX. WATER CODE § 26.346. Specifically, Respondent did not update the UST's registration to reflect the current out-of-service status of the UST system.³
- ◆ As documented during a record review investigation by a central TCEQ investigator on August 20, 2004, Respondent had not paid outstanding annual UST fees, including late penalties and interest, in violation of 30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702.
- ◆ The corrective action recommended by the ED in the Executive Director's Preliminary Report and Petition – including Respondent's submitting an amended registration for the UST system, paying all outstanding fees and associated late penalties and interest, permanently removing the UST system in accordance with the applicable rules, and submitting written certification of compliance – is justified except that the UST system need not be emptied of all regulated substances because this was already done on January 21, 2005.

³ The rules clarify that changes in the operational status of any tank system, such as removing tanks from service, are subject to the reporting requirement. 30 TEX. ADMIN. CODE § 334.7(d)(1)(b).

- ◆ The assessed administrative penalty has been correctly calculated in the amount of \$6,000.00.
- ◆ The violations alleged in the current enforcement action were documented after the conclusion of Respondent's Chapter 13 bankruptcy proceeding in March 2002, and thus the TCEQ is not barred from pursuing administrative penalties and corrective action in this current enforcement action.
- ◆ IRS tax forms report a loss of \$6,953 on the convenience store business at the facility for 2003.
- ◆ IRS tax forms report a loss of \$6,630 on the convenience store business at the facility for 2004.
- ◆ Respondent reported on the TCEQ Financial Data Request Form that he receives \$580 per month from social security.
- ◆ Mrs. Manriquez reported on the TCEQ Financial Data Request Form that she receives \$274 per month from social security.
- ◆ Mr. and Mrs. Manriquez reported on the TCEQ Financial Data Request Form that they paid themselves a salary of \$200 per person per month from the convenience store at the facility.

The ED, after examining the financial information submitted by Respondent, reduced the recommended penalty to \$3,600, to be paid over 36 months in monthly installments of \$100 each. The ED stressed, however, that the payment reduction and installment payment method are contingent on Respondent's timely payment of the installments and performance of the corrective action.

Due to the parties' stipulations, there is only one contested issue in this case: whether Respondent has the ability to pay a penalty of \$3,600 and, if so, over what amount of time he will be required to pay.

B. The ED's Policy

The Commission's rules provide that a respondent in an enforcement case who asserts an inability to pay a recommended penalty has the burden of establishing that a lesser penalty is justified under the person's financial circumstances.⁴ The ED, in assessing a respondent's ability to pay a proposed penalty, is currently guided by the *Texas Commission on Environmental Quality Office of Administrative Services Financial Review Policy for Administrative Penalty Inability to Pay Claims* (Policy).⁵ The Policy was approved in August 2005 by the heads of the Financial Administration Division and the Office of Administrative Services, as well as the TCEQ's ED.⁶ By its own terms, the Policy "applies when the Financial Administration Division is asked to conduct a financial analysis for a business to determine its ability to pay an administrative penalty." It further states that an operating business is "eligible for a financial review for the ability to pay the portion of a penalty which exceeds the greater of \$3,600 or 1% of annual gross revenue for an operating business." Non-operating businesses are eligible for analysis of their ability to pay more than \$1,200. The Policy provides that for both operating and non-operating businesses the minimum monthly payment is \$100.

⁴ 30 TEX. ADMIN. CODE § 70.8(a).

⁵ Ms. Chaffin testified about the Policy during the hearing but the ED did not have a copy available at the time. The ALJ left the record open for the post-hearing submission of the Policy. Counsel for the ED did offer the document after the hearing, and its admissibility was challenged by Respondent in post-hearing written submissions. Counsel for the ED responded in writing to the objections. The ALJ overrules Respondent's objections and admits the document as ED Exhibit 6.

⁶ Respondent objected that the Policy was signed in August 2005, after most of the agency's review of Respondent's financial circumstances had been completed. However, counsel for the ED responded that prior to August 2005, a similar policy had been in effect, but it had not been adopted by the ED. Rather, it had been adopted in March 2005 by the Enforcement Division Director. In support of this assertion, the ED submitted earlier versions in effect in 2004 and 2005. The ALJ admits these policies in the record as ED Exhibit 7.

C. Is an administrative penalty of \$3,600 appropriate in this case?

TCEQ staff calculated a \$6,000 administrative penalty for Respondent based on the statutory factors set out in the Texas Water Code and on the agency's penalty policies. After being informed by agency staff that he was in violation of the Commission's regulations and needed to perform corrective action and pay a penalty of \$6,000, Respondent sought staff review of his ability to pay the recommended penalty. On May 31, 2005, and further on August 1, 2005, Respondent provided financial records and other information for review by the ED's staff.⁷ Respondent supplemented his information on October 3, 2005, by sending the TCEQ some materials about his indebtedness.⁸

According to Donna Chaffin, a financial analyst with the TCEQ, in June 2005 she evaluated Respondent's ability to pay the \$6,000 penalty calculated by the ED. Ms. Chaffin testified that she looked at the materials submitted by Respondent and other information obtained from places such as banks and taxation authorities. Her analysis led her to the conclusion that Respondent could not afford a \$6,000 penalty. She further testified that she looked to agency policy that establishes a minimum penalty for an operating business of \$3,600 or one percent of the business's gross revenue, whichever is greater. Ms. Chaffin stated that in this case, \$3,600 is greater. Therefore, when she determined that Respondent could not pay more than \$3,600, she stopped her analysis.

Ed Moderow is an enforcement coordinator with the TCEQ. He testified that as part of the corrective action to which Respondent has agreed, Respondent must pay about \$800 in outstanding fees. Mr. Moderow, although not an engineer and not the best person to estimate the cost of removing Respondent's tanks, testified that he would guess the removal would cost about \$5,000 for each of Respondent's three tanks.

⁷ Respondent's Exhibits 1 (May 31, 2005 submission) and 2 (August 1, 2005 submission).

⁸ Respondent's Exhibit 3.

Respondent offered in evidence the documents he had already submitted to the ED for review.⁹ The documents reveal the Respondent and his wife are both approximately 70 years old. Respondent suffers from multiple serious health problems; he has had a heart attack, a stroke, and in June 2005 underwent emergency back surgery for spinal cord compression. He and his wife receive Medicaid benefits. According to the information they supplied to the TCEQ, they jointly receive about \$800 in social security each month and they pay themselves \$400 per month in salaries for running their store. These are their only sources of income. Their expenses, consisting mostly of utilities, food, gas, insurance, car payments, and payments on credit card debt, amount to about \$1,700 per month. They also appear to have indebtedness related to their business. Their assets are very limited. Respondent and his wife filed for bankruptcy in 1998. Their business has reported losses in recent years – a \$6,953 loss in 2003 and a \$6,630 loss in 2004.

The record in this case strongly suggests that Respondent's financial condition is quite strained. His living expenses well exceed his income. His business is failing, as is his health. He is elderly. He must perform costly corrective action, and he has little apparent prospect of financial betterment. He and his wife receive public assistance, including Medicaid benefits. Even a penalty as low as \$3,600 would likely be an unmanageable burden and nearly impossible to pay; TCEQ staff determined that Respondent could not pay more than \$3,600 and did not analyze whether he could pay less. In these highly particular circumstances – where a respondent's business is producing no revenues and the respondent is scarcely able to meet basic living expenses – assessment of a penalty makes little sense. The ALJ recommends that Respondent be ordered to carry out the required corrective action but not be assessed an administrative penalty.¹⁰

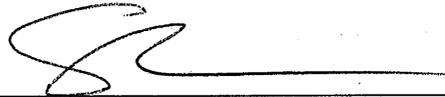
⁹ Respondent's Exhibits 1-5.

¹⁰ The Commission is not bound by a policy adopted by the Enforcement Division Director or the ED, and the Water Code mandates that the Commission, in assessing a penalty, consider any factor "that justice may require." TEX. WATER CODE § 7.053(4). Respondent's dire economic situation is a matter of which justice requires consideration.

If a penalty is to be imposed, a very low penalty is justified. Treating Respondent's foundering business as "non-operating" would be appropriate in this case, as the reason for distinguishing between operating and non-operating businesses presumably has to do, at least in part, with the availability of business income. The ALJ suggests that, if Respondent must pay a penalty, he be assessed no more than \$1,200, payable in \$100 installments over 12 months. Deferring the remaining \$4,800 (out of the original \$6,000) and assessing it in the event Respondent fails to comply with the payment and corrective action schedules seems pointless.

For the foregoing reasons, the ALJ recommends that the Commission adopt the attached proposed order, including the Findings of Fact and Conclusions of Law, requiring corrective action but imposing no penalty.

SIGNED March 21, 2006.



**SHANNON KILGORE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER Requiring Certain Actions of
Manuel Manriquez dba M&A Oil Co.
SOAH DOCKET NO. 582-05-8335
TCEQ DOCKET NO. 2004-1315-PST-E

CHIEF CLERKS OFFICE

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TEXAS
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QUALITY

On _____, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's Report and Petition (EDPRP) recommending that the Commission enter an enforcement order assessing administrative penalties against and requiring certain corrective actions of Manuel Manriquez dba M&A Oil Co.(Respondent). Shannon Kilgore, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted a public hearing on this matter on January 5, 2006, in Austin, Texas, and presented the Proposal for Decision.

The following are parties to the proceeding: Respondent, represented by Rex H. White, Jr., and the Commission's Executive Director (ED), represented by Justin Lannen, an attorney in TCEQ's Litigation Division.

After considering the ALJ's Proposal for Decision, the Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. At the time of the alleged violations, Respondent owned and operated a convenience store located at East Highway 170, Presidio, Presidio County, Texas, with retail sales of gasoline.
2. Respondent continues to operate the convenience store but no longer sells gasoline.
3. Three underground storage tanks (USTs) at Respondent's store have not been used since 1992.
4. The USTs are not exempt of excluded from regulation under the Texas Water Code or the Commission's rules.
5. As documented in a TCEQ investigation on July 8, 2004, Respondent had not permanently removed from service, within 60 days of the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system was not brought into timely compliance with the minimum technical upgrade requirements in 30 TEX. ADMIN. CODE § 334.47(b). Specifically, the UST system had not been upgraded with proper corrosion protection, spill and overfill prevention, or release detection, and the system had not been permanently removed from service.
6. As documented in a TCEQ investigation on July 8, 2004, Respondent had not ensured that any residue from stored regulated substances, which remained in the temporarily out of service UST system, did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity.
7. As documented in a TCEQ investigation on July 8, 2004, Respondent had not provided written notice to the TCEQ within 30 days of any changes or additional information

concerning the UST system. Specifically, Respondent did not update the UST's registration to reflect the current out-of-service status of the UST system.

8. As documented during a record review investigation by a central TCEQ investigator on August 20, 2004, Respondent had not paid outstanding annual UST fees, including late penalties and interest. The fees total approximately \$800.
9. The corrective action recommended by the ED in the Executive Director's Preliminary Report and Petition – including Respondent's submitting an amended registration for the UST system, paying all outstanding fees and associated late penalties and interest, permanently removing the UST system in accordance with the applicable rules, and submitting written certification of compliance – is justified except that the UST system need not be emptied of all regulated substances because this was already done on January 21, 2005.
10. The violations involved in the current enforcement action were documented after the conclusion of Respondent's Chapter 13 bankruptcy proceeding in March 2002.
11. On December 20, 2004, the ED issued the Executive Director's Preliminary Report and Petition, setting out Respondent's alleged violations and seeking an order assessing an administrative penalty of \$6,000 and requiring corrective action.
12. On January 21, 2005, Respondent requested a contested case hearing regarding this enforcement action.
13. Respondent also sought staff review of his ability to pay the recommended penalty.

14. On May 31, 2005, and further on August 1, 2005, Respondent provided financial records and other information for review by the ED's staff. Respondent supplemented his information on October 3, 2005, by sending the TCEQ some materials about his indebtedness.
15. Donna Chaffin, a financial analyst with the TCEQ, evaluated Respondent's ability to pay the \$6,000 penalty calculated by the ED. Ms. Chaffin determined that Respondent could not pay more than \$3,600. She did not assess whether Respondent could pay a lesser amount.
16. On September 19, 2005, the Commission's Chief Clerk issued notice of the hearing to all parties, which included the date, time, and place of the hearing, the legal authority under which the hearing was being held, and the violations asserted.
17. The preliminary hearing in this case was convened on October 20, 2005, by ALJ Suzanne Marshall at the offices of the State Office of Administrative Hearings, William P. Clements Building, 300 West Fifteenth Street, Austin, Texas. The ED was represented by TCEQ Litigation Division Attorney Justin Lannen. Respondent was represented by attorney Rex White.
18. The hearing on the merits was convened on January 5, 2006, by ALJ Shannon Kilgore. The record closed on January 30, 2006.
19. Internal Revenue Service (IRS) tax forms report a loss of \$6,953 on Respondent's convenience store business at the facility for 2003.
20. IRS tax forms report a loss of \$6,630 on the convenience store business at the facility for 2004.
21. Respondent reported on the TCEQ Financial Data Request Form that he receives \$580 per month from social security.

22. Mrs. Manriquez reported on the TCEQ Financial Data Request Form that she receives \$274 per month from social security.
23. Mr. and Mrs. Manriquez reported on the TCEQ Financial Data Request Form that they paid themselves a salary of \$200 per person per month from the convenience store at the facility.
24. Social security benefits and salaries related to the convenience store are the Manriquez's only sources of income.
25. Respondent and his wife are both approximately 70 years old.
26. Respondent suffers from multiple serious health problems: he has had a heart attack and a stroke, and in June 2005 underwent emergency back surgery for spinal cord compression.
27. Respondent and his wife receive public assistance, including Medicaid benefits.

II. CONCLUSIONS OF LAW

1. Respondent is subject to the Commission's enforcement authority. TEX. WATER CODE ANN. §§ 5.013 and 7.002.
2. Respondent was properly notified of his alleged violations, the proposed penalties, and of the opportunity to request a hearing on the alleged violations or the penalties. TEX. WATER CODE ANN. § 7.055 and 30 TEX. ADMIN. CODE §§ 1.11 and 70.104.
3. Respondent was properly notified of the hearing on the alleged violations and the proposed penalties. TEX. GOV'T CODE ANN. § 2001.052, TEX. WATER CODE ANN. § 7.058, 1 TEX. ADMIN. CODE § 155.27, and 30 TEX. ADMIN. CODE §§ 39.25 and 80.6.

4. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a proposal for decision with Findings of Fact and Conclusions of Law. TEX. GOV'T CODE ANN. ch. 2003.
5. Respondent violated 30 TEX. ADMIN. CODE § 334.47(a)(2) by not permanently removing from service, within 60 days of the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system was not brought into timely compliance with the minimum technical upgrade requirements in 30 TEX. ADMIN. CODE § 334.47(b). Specifically, the UST system has not been upgraded with proper corrosion protection, spill and overflow prevention, or release detection, and the system has not been permanently removed from service.
6. Respondent violated 30 TEX. ADMIN. CODE § 334.54(d)(2) by not ensuring that any residue from stored regulated substances, which remained in the temporarily out of service UST system, did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity.
7. Respondent violated 30 TEX. ADMIN. CODE § 334.7(d)(3) and TEX. WATER CODE § 26.346 by not providing written notice to the TCEQ within 30 days of any changes or additional information concerning the UST system. Specifically, Respondent did not update the UST's registration to reflect the current out-of-service status of the UST system.
8. Respondent violated 30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702 by not paying outstanding annual UST fees, including late penalties and interest.
9. Based on the above Findings of Fact and Conclusions of Law, and taking into account Respondent's inability to pay as a matter required by justice to be considered, no

administrative penalty should be assessed against Respondent. TEX. WATER CODE § 7.053;
30 TEX. ADMIN. CODE § 70.8(a).

10. Based on the above Findings of Facts and Conclusions of Law, ordering Respondent to carry out the corrective actions specified below is a reasonable exercise of the Commission's authority. TEX. WATER CODE § 7.073.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW THAT:

1. Within 30 days after the effective date of the Commission Order, Mr. Manriquez shall submit amended registration to indicate the current operational status of the UST system in accordance with 30 TEX. ADMIN. CODE § 334.7 (relating to registration) to:

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

2. Within 45 days after the effective date of the Commission Order, Mr. Manriquez shall pay all outstanding fees, including any associated penalties and interest and with the notation "Manuel Manriquez dba M&A Oil Co., Account No. 0007752U" to:

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

3. Within 60 days after the effective date of the Commission Order, Mr. Manriquez shall permanently remove the UST system from service in accordance with the applicable provisions of 30 TEX. ADMIN. CODE § 334.55 (relating to Permanent Removal from Service); and
4. Within 75 days after the effective date of the Commission Order, Mr. Manriquez shall submit written certification of compliance with the above ordering provisions (paragraphs 1 through 3) to:

Work Leader
Team I, Section V
Enforcement Division, MC 224
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

and

Mr. Terry McMillan, Waste and Water Section Manager
Texas Commission on Environmental Quality
El Paso Regional Office
401 East Franklin Avenue, Suite 560
El Paso, Texas 79901-1206.

5. Respondent's compliance with all the terms and conditions set forth in this Order resolve only the violations that are the subject of the Order. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations that are not raised here.
6. The ED may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Respondent if the ED determines Respondent has not complied with one or more of the terms or conditions of this Order.

7. The Chief Clerk shall provide a copy of this Order to all of the parties.
8. The effective date of this Order is the date the order is final, as provided by TEX. GOV'T. CODE ANN § 2001.144 and 30 TEX. ADMIN. CODE § 80.273.
9. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.
10. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are denied for want of merit.

Issued:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**Kathleen Hartnett White, Chairman
For the Commission**