

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

January 9, 2009

Les Trobman, General Counsel
Texas Commission on Environmental Quality
PO Box 13087
Austin Texas 78711-3087

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2009 JAN -9 PM 4: 08
CHIEF CLERKS OFFICE

Re: SOAH Docket No. 582-07-3621; TCEQ Docket No. 2005-1953-PST-E; Texas
Commission on Environmental Quality v. Tanvir A. Malik d/b/a Malik Exxon

Dear Mr. Trobman:

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 January 29, 2009. Any replies to exceptions or briefs must be filed in the same manner no later than February 9 2009.

This matter has been designated **TCEQ Docket No. 2005-1953-PST-E; SOAH Docket No. 582-07-3621**. 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 "Penny A. Wilkov".

Penny A. Wilkov
Administrative Law Judge

PAW/ap
Enclosures
cc: Mailing List

STATE OFFICE OF ADMINISTRATIVE HEARINGS

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AGENCY: Environmental Quality, Texas Commission on (TCEQ)

STYLE/CASE: TANVIR A. MALIK / MALIK EXXON

SOAH DOCKET NUMBER: 582-07-3621

REFERRING AGENCY CASE: 2005-1953-PST-E

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

ADMINISTRATIVE LAW JUDGE

ALJ PENNY WILKOV

REPRESENTATIVE / ADDRESS

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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xc: Docket Clerk, State Office of Administrative Hearings

**SOAH DOCKET NO. 582-07-3621
TCEQ DOCKET NO. 2005-1953-PST-E**

**TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY,
Petitioner**

V.

**TANVIR A. MALIK
D/B/A MALIK EXXON
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) brought this enforcement action against Tanvir A. Malik (Respondent) d/b/a Malik Exxon, seeking administrative penalties based on four complaints: failure to maintain the vapor recovery system components on his underground storage tanks (USTs), failure to annually test Stage II equipment, failure to conduct UST inventory control procedures, and failure to regularly monitor the USTs for leaks and releases. The ED requested imposition of an administrative penalty of \$17,500.00 and a requirement that the Respondent undertake corrective action. The Administrative Law Judge (ALJ) agrees with the ED's recommendation.

II. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE

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 hearing was convened on July 28, 2008, by ALJ Penny A. Wilkov at the hearing facilities of the State Office of Administrative Hearings (SOAH), William P. Clements Building, 300 West Fifteenth Street, Austin, Texas. Dinniah M. Chahin, an attorney in TCEQ's Litigation Division, represented the ED. Respondent appeared *pro se*. The hearing adjourned and the record

closed the same day. Upon reviewing the evidence, the record was reopened on September 19, 2008, to allow the parties to provide information and closing arguments concerning the proposed penalties in light of Respondent's claimed inability to pay. Respondent did not file a closing argument despite requesting a deadline extension to November 14, 2008, for the filing of post-hearing written arguments.

III. DISCUSSION

A. Background

Respondent, who holds a registration for the USTs, is the owner and operator of an Exxon convenience store and gasoline pump island (Station) located at 203 West Camp Wisdom Road, Duncanville, Dallas County, Texas. The Station has two USTs that were installed in June 1999.

On February 2, 2007, the Executive Director filed the preliminary report and petition (EDPRP), in accordance with TEX. WATER CODE § 7.054, alleging that Respondent had violated the following provisions:

- ▶ 30 TEX. ADMIN. CODE § 115.242(3)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to maintain all components of the Stage II vapor recovery system in proper operating condition;
- ▶ 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months;
- ▶ 30 TEX. ADMIN. CODE § 334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system; and
- ▶ 30 TEX. ADMIN. CODE §§ 334.50(b)(1)(A), 334.50(b)(2), and 334.50 (b)(2)(A)(i)(III) and TEX. WATER CODE §§ 26.3475(a) and 26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), failing to provide proper release detection for the piping associated with the UST system, and failing to test the line leak detectors at least once per year for performance and operational reliability.

B. Summary of Evidence and Argument

The ED presented several exhibits and the testimony of Paddi Farmer, a TCEQ Environmental Investigator, and John Shelton, a TCEQ enforcement coordinator. Respondent presented brief testimony.

Paddi Farmer: Ms. Farmer conducted an investigation of the Station on October 19, 2005. She testified that in certain counties, including Dallas and Fort Worth counties, Stage II vapor recovery systems are mandatory at gas station pumps in order to curtail excessive ozone levels. According to Ms. Farmer, her inspection revealed that Respondent failed to have critical components of the required Stage II vapor recovery system—swivel adaptors and locking clamps—designed to prevent loosening or over-tightening of the delivery hose when the fueling truck is connected to the UST. Ms. Farmer testified that although she gave Respondent an opportunity to produce records verifying the components were installed, he never complied.

Ms. Farmer's investigation further established that Respondent did not conduct an annual Stage II vapor recovery test, a safeguard necessary to isolate and examine the line between the tanker and the UST for inert gas leakage. According to Ms. Farmer, the records reflected that the company, W Two Plus, conducted the last vapor recovery test on June 3, 2003, with annual mandatory testing due in June 2004 and June 2005, but not performed. Ms. Farmer noted that on March 5, 2006, Respondent submitted documentation that the test had been recently completed.

Ms. Farmer also testified that Respondent did not obtain the monthly inventory control record for each tank, as required. It was explained that an automatic tank gauge system installed on a UST collects the daily data, which is required to be analyzed monthly by the operator to determine if a leak exists in the UST. The Station had an automatic tank gauge system (ATG), but no records existed showing that the data had been collected. Respondent conceded to Ms. Farmer that he had not conducted the monthly inventory control procedures because the ATG was out of paper.

Lastly, Ms. Farmer testified that Respondent did not conduct other tests, including the annual line pressure test employed to detect leaks and the annual line leak detector test used to ensure the functionality of the leak detector. Ms. Farmer testified that it was particularly crucial to monitor and test the USTs, since the Station had a high fuel throughput of more than 50,000 gallons per month.¹ Ms. Farmer agreed, however, that by March 5, 2005, all tests were completed, although untimely.

John Shelton: TCEQ Enforcement Coordinator John Shelton testified that the violations warranted a \$17,500.00 penalty based on the factors outlined in TEX. WATER CODE § 7.053, including, in pertinent part, the nature, circumstances, extent, duration, and gravity of the act, the impact of the violation on water quality and wildlife, the history and extent of previous violations, the degree of culpability, good faith efforts to comply, any economic benefit gained through the violation, the amount necessary to deter future violations, and any other factors that justice may require.

Mr. Shelton prepared a Penalty Calculation Worksheet (PCW) for each violation analyzing the penalty factors found in the TCEQ Penalty Policy.² According to Mr. Shelton, since the TCEQ inspection showed that Respondent had a monthly throughput of more than 50,000 gallons, the Station was classified as a “major” source of potential harm to the environment or human health.³ Moreover, in accordance with the Penalty Policy, the Station’s four alleged violations were classified as “potential” rather than “actual” releases, which carried a possibility of a certain degree of harm on a three-tier scale of major, moderate, or minor harm.

The maximum authorized penalty may not exceed \$10,000.00 for each day of violation under TEX. WATER CODE § 7.052. However, with a moderate risk of harm for a potential release, a typical downward adjustment of 25 percent of the maximum authorized penalty is made, or \$2,500.00 per

¹ ED Exhibits 5, 14, and 20.

² TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, PENALTY POLICY SECOND REVISION, Effective September 1, 2002, (Penalty Policy).

³ *Id.* at page 9.

event. Likewise, with a major risk of harm for a potential release, a typical reduction to 50 percent of the maximum authorized penalty is made, or \$5,000.00 per event.

Based on the Penalty Policy and the PCW, the ED proposed the following penalties for the alleged violations:⁴

Violation	Release Harm	Penalty
Failure to maintain all components of Stage II vapor recovery system in proper operating condition.	Potential for moderate harm to the environment or human health.	\$2,500.00
Failure to verify proper operation of the Stage II equipment at least once every 12 months.	Potential for major harm to the environment or human health.	\$5,000.00
Failure to conduct effective manual or automatic inventory control procedures for the UST system.	Potential for major harm to the environment or human health.	\$5,000.00
Failure to monitor the USTs for releases at a frequency of at least once every month, to provide proper release detection for the piping associated with the UST system, and to test the line leak detectors at least once per year for performance and operational reliability	Potential for major harm to the environment or human health.	\$5,000.00
TOTAL		\$17,500.00

The ED did not propose any adjustment to the penalties based on any other permissible factors.

Respondent: Respondent did not controvert that the violations had occurred, instead he claimed the penalty should be reduced based on the following factors: the Station had a throughput volume of less than 50,000 gallons and was eligible for a reduced penalty; he had undertaken compliance actions to resolve the violations; and finally, he was financially unable to pay the \$17,500.00 administrative penalty.

Respondent testified at the hearing that he did not understand, and the letter he received did not make it clear, that an inability-to-pay review was available, *but only if* requested prior to the

⁴ ED Exhibit 16.

hearing. Respondent, instead, erroneously believed that because he had corrected the violations, the ED would abate or reduce the requested fine at the hearing.

Specifically, Respondent provided records that the annual Stage II Vapor Recovery Test was conducted on October 19, 2005, with the documentation provided to TCEQ on March 5, 2006. Respondent also testified that he did not complete the inventory control testing with the ATG because he was out of paper and he did not have sufficient resources to hire a specialist to program the system. Respondent further disputed that the Station had a high fuel throughput of more than 50,000 gallons of fuel per month; instead, he testified that the throughput was lower. Lastly, Respondent testified that business was bad and in September or October 2007, he stopped selling gasoline.

C. Analysis

The ED has established that the alleged violations occurred and the record does not substantiate any basis to adjust the proposed penalty.

First, the EDPRP filed on February 2, 2007, had a PCW attached which clearly showed the Station's throughput as 50,000 gallons or more monthly. The throughput categorization is relevant because 50,000 gallons or more monthly carries a potential for major environmental harm with a higher administrative penalty. TCEQ investigator Ms. Farmer testified that her investigation showed that the Station, an Exxon affiliate, had a monthly throughput of more than 50,000 gallons, posing a major harm risk if release occurred into the groundwater. Although Respondent disputed the throughput volume, no sales or delivery records were produced to refute the conclusion, although it was made clear in the EDPRP that this was an issue. Because insufficient evidence was presented by Respondent concerning throughput volume, no reduction in penalty is recommended.

Respondent's assertion that the violations were the result of unintentional oversight and later remedied does not create a basis for penalty reduction. According to the Penalty Policy, a penalty

adjustment analysis involves pertinent factors such as compliance history, culpability, good faith efforts to comply, economic benefit and other factors, as justice requires. Here, the records indicated that Respondent received an April 2000 warning letter advising Respondent that the automatic tank gauge was not operational and the monthly release detections were not being conducted, as observed at a March 2000 inspection.⁵ Although the PCW reflected no prior violation history, it is clear that the April 2000 warning letter made Respondent aware that monitoring and testing were required, obviating any misunderstanding.

Respondent's records show that on October 19, 2005, vapor recovery testing was completed at the Station. However, pursuant to the Penalty Policy, a penalty adjustment for good faith involves two factors: the timeliness of Respondent's action and the quality of that action. Ms. Farmer testified that Respondent did not produce records that the vapor recovery components had been installed or that the monthly inventory control was instituted. Because Respondent is not in complete compliance, a good-faith-effort-to-comply penalty adjustment is not warranted.

Lastly, Respondent failed to establish that he is qualified for a reduced penalty amount based on any other factor or as justice requires. The Commission's rule puts the burden of proof on a party to demonstrate that a lesser penalty than the one proposed is warranted and sets deadlines for production of the required records.⁶ Respondent was given the opportunity on many occasions to produce records or information that would establish his financial circumstances, but he never provided them. Accordingly, the ED has proven that the proposed penalty was properly calculated under the Commission's Penalty Policy.

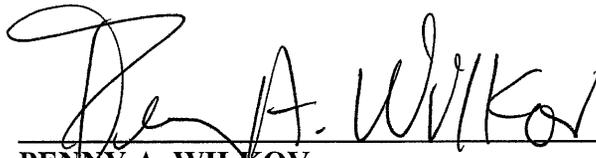
After a review of the record and for the reasons given, it is recommended that the Commission find Respondent liable for the violations asserted by the ED and assess a penalty of \$17,500.00 for the violations. It is also recommended that the corrective action sought by the ED be

⁵ ED Exhibit 20.

⁶ 30 TEX. ADMIN. CODE § 70.8 (eff. July 7, 1999) (Rule 70.8).

implemented. There was no dispute concerning the corrective actions. A draft order incorporating these recommendations is attached to this Proposal for Decision.

SIGNED January 9, 2009.

A handwritten signature in black ink, appearing to read "Penny A. Wilkov", written over a horizontal line.

**PENNY A. WILKOV
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



ORDER
Assessing Administrative Penalties Against
TANVIR A. MALIK,
D/B/A MALIK EXXON
SOAH DOCKET NO. 582-07-3621
TCEQ DOCKET NO. 2005-1953-PST-E

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 Tanvir A. Malik (Respondent), d/b/a Malik Exxon. Penny A. Wilkov, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted a public hearing on this matter on July 28, 2008, in Austin, Texas, and presented the Proposal for Decision.

The Executive Director (ED) was represented by Staff Attorney Dinniah M. Chahin and Respondent appeared *pro se* at the hearing.

After considering the ALJ's PFD, the Commission adopts 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 an Exxon convenience store and gasoline pump island (Station) located at 203 West Camp Wisdom Road, Duncanville, Dallas County, Texas.
2. The Station has two underground storage tanks (USTs) that were installed in June 1999.
3. The USTs are not exempt or excluded from regulation under the Texas Water Code or the Commission's rules.
4. On October 19, 2005, Paddi Farmer, a TCEQ Environmental Investigator, conducted an investigation of the Station to determine whether Respondent was complying with statutes within the Commission's jurisdiction and rules adopted thereunder.
5. As documented in the TCEQ investigation on October 19, 2005, Respondent failed to maintain all components of the Stage II vapor recovery system in proper operating condition as required by 30 TEX. ADMIN. CODE § 115.242(3)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b).
6. As documented in the TCEQ investigation on October 19, 2005, Respondent failed to verify proper operation of the Stage II equipment at least once every 12 months as required by 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b).
7. As documented in the TCEQ investigation on October 19, 2005, Respondent failed to conduct effective manual or automatic inventory control procedures for the UST system in violation of 30 TEX. ADMIN. CODE § 334.48(c).
8. As documented in the TCEQ investigation on October 19, 2005, Respondent failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35

days between each monitoring), failed to provide proper release detection for the piping associated with the UST system, and failed to test the line leak detectors at least once per year for performance and operational reliability as required 30 TEX. ADMIN. CODE §§ 334.50(b)(1)(A), 334.50(b)(2), and 334.50 (b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a) and 26.3475(c)(1).

9. On February 2, 2007, the Executive Director filed the preliminary report and petition (EDPRP), in accordance with TEX. WATER CODE § 7.054, and mailed a copy of the EDPRP to Respondent.
10. In the EDPRP, the ED proposed that the Commission require corrective actions and levy a total penalty of \$17,500.00 for the violations as follows:

Violation	Release Harm	Penalty
Failure to maintain all components of Stage II vapor recovery system in proper operating condition.	Potential for moderate harm to the environment or human health.	\$2,500.00
Failure to verify proper operation of the Stage II equipment at least once every 12 months.	Potential for major harm to the environment or human health.	\$5,000.00
Failure to conduct effective manual or automatic inventory control procedures for the UST system.	Potential for major harm to the environment or human health.	\$5,000.00
Failure to monitor the USTs for releases at a frequency of at least once every month, to provide proper release detection for the piping associated with the UST system, and to test the line leak detectors at least once per year for performance and operational reliability.	Potential for major harm to environment or human health.	\$5,000.00
TOTAL		\$17,500.00

11. The ED proposed no penalty adjustments.

12. On February 20, 2007, Respondent requested a contested case hearing.
13. The ED referred the case to SOAH for hearing and on July 9, 2007, the Chief Clerk of the Commission mailed notice of the scheduled preliminary hearing to Respondent.
14. The hearing was convened on July 28, 2008, by ALJ Penny A. Wilkov at the hearing facilities of the State Office of Administrative Hearings (SOAH).
15. The Respondent appeared at the hearing and represented himself.
16. The ED appeared at the hearing through his attorney, Dinniah M. Chain.
17. The record closed after additional evidence and briefing was submitted on November 14, 2008.

II. CONCLUSIONS OF LAW

1. Under TEX. WATER CODE ANN. § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the TEX. WATER CODE ANN. or of the TEX. HEALTH & SAFETY CODE ANN. within the Commission's jurisdiction or of any rule, order, or permit adopted or issued thereunder.
2. Under TEX. WATER CODE ANN. § 7.052, a penalty may not exceed \$10,000.00 per violation, per day for each violation at issue in this case.
3. As required by TEX. WATER CODE ANN. § 7.055 and 30 TEX. ADMIN. CODE §§ 1.11 and 70.104, Respondent was notified of the EDPRP and of the opportunity to request a hearing on the alleged violations or the penalties or corrective actions proposed therein.
4. As required by TEX. GOV'T CODE ANN. §§ 2001.051(1) and 2001.052; TEX. WATER CODE ANN. § 7.058; 1 TEX. ADMIN. CODE § 155.27; and 30 TEX. ADMIN. CODE §§ 1.11, 1.12,

39.25, 70.104, and 80.6, Respondent was notified of the hearing on the alleged violations, the proposed penalties, and proposed corrective actions.

5. 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, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
6. Based on the above Findings of Fact, Respondent violated 30 TEX. ADMIN. CODE § 115.242(3)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b).
7. Based on the above Findings of Fact, Respondent violated 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b).
8. Based on the above Findings of Fact, Respondent violated 30 TEX. ADMIN. CODE § 334.48(c).
9. Based on the above Findings of Fact, Respondent violated 30 TEX. ADMIN. CODE §§ 334.50(b)(1)(A), 334.50(b)(2), and 334.50 (b)(2)(A)(i)(III) and TEX. WATER CODE §§ 26.3475(a) and 26.3475(c)(1).
10. In determining the amount of an administrative penalty, TEX. WATER CODE ANN. § 7.053 requires the Commission to consider several factors including:
 - a. The violation's impact or potential impact on public health and safety, natural resources and their uses, and other persons;
 - b. The nature, circumstances, extent, duration, and gravity of the prohibited act;
 - c. The history and extent of previous violations by the violator;
 - d. The violator's degree of culpability, good faith, and economic benefit gained through the violation;

- e. The amount necessary to deter future violations; and
 - f. Any other matters that justice may require.
11. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.
 12. Based on consideration of the above Findings of Fact and Conclusions of Law, the factors set out in TEX. WATER CODE ANN. § 7.053, and the Commission's Penalty Policy, the ED correctly calculated the penalties for each of the alleged violations, resulting in a total proposed administrative penalty in the amount of \$17,500.00.
 13. Respondent failed to show any reasonable basis to adjust the proposed penalty.
 14. Respondent did not meet the burden of proof to establish an inability to pay the proposed penalty, pursuant to 30 TEX. ADMIN. CODE § 70.8.
 15. Based on consideration of the above Findings of Fact and Conclusions of Law, an administrative penalty in the amount of \$17,500.00 is justified, a reasonable exercise of the Commission's authority, and should be assessed against Respondent.
 16. Based on consideration of the above Findings of Fact and Conclusions of Law, the Respondent should be required to take the corrective action measures recommended by the ED in the EDPRP.

III. ORDERING PROVISIONS

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 this Commission Order, Respondent shall pay an administrative penalty in the amount of \$17,500.00 for violations of 30 TEX. ADMIN. CODE § 115.242(3)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b), 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b), 30 TEX. ADMIN. CODE § 334.48(c), 30 TEX. ADMIN. CODE §§ 334.50(b)(1)(A), 334.50(b)(2), and 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a) and 26.3475(c)(1). The payment of the administrative penalty set out herein will completely resolves the violations set forth by this Order. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Checks rendered to pay penalties imposed by this Order shall be made out to "TCEQ." Administrative penalty payments shall be sent with the notation "Re: Tanvir A Malik dba Malik Exxon, RN 102264157, TCEQ Docket No. 2005-1953-PST-E."

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

2. Within 30 days after the effective date of the Commission Order, Respondent shall begin maintaining the Stage II vapor recovery system in proper operating condition and shall begin conducting proper inventory control procedures for all USTs.
3. Within 45 days after the effective date of the Commission Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and /or other records, to demonstrate compliance with this order. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

with a copy to:

Sam Barrett, Waste Section Manager
Texas Commission on Environmental Quality
Dallas/Fort Worth Regional Office
2309 Gravel Drive
Fort Worth, Texas 76118-6951

4. The payment of the administrative penalty and the performance of all corrective actions ordered herein will completely resolve the violations set forth by this Order. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here.
5. 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 that the Respondent has not complied with one or more of the terms or conditions in this Order.

6. 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 hereby denied.
7. The effective date of this Order is the date the Order is final, as provided by § 30 TEX. ADMIN. CODE § 80.273 and TEX. GOV'T CODE ANN. § 2001.144.
8. The Commission' s Chief Clerk shall forward a copy of this Order to Respondent.
9. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

**TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY**

**BUDDY GARCIA, CHAIRMAN
FOR THE COMMISSION**