

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

February 8, 2010

Les Trobman, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin Texas 78711-3087-PST

Re: SOAH Docket No. 582-09-2308; TCEQ Docket No. 2008-1885-PST; In Re:
Executive Director of the Texas Commission on Environmental Quality,
Petitioner v. Juluis L. Brooks, Respondent

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 documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than March 1, 2010. Any replies to exceptions or briefs must be filed in the same manner no later than March 11, 2010.

This matter has been designated **TCEQ Docket No. 2007-1885-PST-E; SOAH Docket No. 582-09-1308**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at <http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

A handwritten signature in black ink that reads "Steven D. Arnold".

Steven D. Arnold
Administrative Law Judge

SDA/sb
Enclosures
cc: Mailing List

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Post Office Box 13025 ♦ 300 West 15th Street, Suite 502 ♦ Austin Texas 78711-3025
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STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE

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Austin, Texas 78701

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SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)
STYLE/CASE: JULIUS L. BROOKS / SMOKE HOUSE TOBACCO &
ACCESSORIES
SOAH DOCKET NUMBER: 582-09-2308
REFERRING AGENCY CASE: 2007-1885-PST-E

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ STEVEN ARNOLD**

REPRESENTATIVE / ADDRESS

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ACCESSORIES

xc: Docket Clerk, State Office of Administrative Hearings

SOAH DOCKET NO. 582-09-2308
TCEQ DOCKET NO. 2007-1885-PST-E

EXECUTIVE DIRECTOR OF THE	§	BEFORE THE STATE OFFICE
TEXAS COMMISSION ON	§	
ENVIRONMENTAL QUALITY,	§	
Petitioner	§	
	§	OF
v.	§	
	§	
JULUIS L. BROOKS,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION ON SUMMARY DISPOSITION

I. INTRODUCTION

On October 22, 2008, the Executive Director (Executive Director) of the Texas Commission on Environmental Quality (Commission or TCEQ) filed the Executive Director's Preliminary Report and Petition (EDPRP), in which the Executive Director alleged violations for failing to permanently remove from service an out-of-compliance underground storage tank (UST) system and for failing to provide an updated UST registration form to the TCEQ.¹ The USTs are located at a former retail gasoline service station at 1301 East Front Street, Midland, Midland County, Texas (Facility).² In the EDPRP, the Executive Director sought an order directing Juluis L. Brooks (Respondent) to permanently remove the UST system from service, to submit an amended UST registration to the TCEQ, and to pay an administrative penalty.³ The matter was referred to the State Office of Administrative Hearings (SOAH) on January 16, 2009.

The Administrative Law Judge recommends that the Commission find that the violations occurred, assess a penalty of \$3,675 for them, and order the corrective actions recommended by the Executive Director.

¹ TCEQ Ex. J.

² TCEQ Ex. A.

³ TCEQ Ex. J.

II. PROCEDURAL HISTORY

The Preliminary Hearing was held on March 26, 2009, and the ALJ entered an order directing the parties to complete discovery by July 15, 2009. Respondent did not respond to discovery, and on July 23, 2009, the ALJ entered Order No. 2 Ruling on Motion to Compel and Motion for Sanctions. The ALJ granted the motion, stating that “the requests for admission included the Executive Director’s discovery request are deemed admitted and [Respondent] is prohibited from introducing any information at hearing that contradicts his deemed admissions....”

The evidentiary hearing in this case was scheduled for July 30, 2009. On that day, before the hearing commenced, the parties came to an agreement. Respondent stipulated to the violations and the penalty in the case, and the parties jointly requested a continuance for three months to allow for further settlement negotiations. Respondent agreed to submit to the Executive Director, within one month from the date of the hearing: (1) financial information sufficient to permit the Executive Director to evaluate Respondent’s claimed financial inability, and (2) a written plan for removing the USTs on his property. Although Respondent submitted additional financial information, he did not submit sufficient information to allow the Financial Administration Division (FAD) to make a determination as to Respondent’s ability to pay the recommended penalty. Specifically, in response to the Executive Director’s request that Respondent’s wife sign the disclosure documents required by the FAD, Respondent submitted a statement that his wife would not sign any of the required disclosures.⁴ Therefore, the FAD could not determine whether Respondent’s wife holds any community property assets in her name that could be used to pay the penalty.⁵ Further, Respondent did not submit a plan for removing his USTs. He merely stated that he was attempting to find another entity, such as the original owner of the tanks, who may at some point assist him in removing the USTs.⁶ He did not submit a contract with a certified UST removal company, a notice of

⁴ TCEQ Ex. E.

⁵ TCEQ Ex. G.

⁶ TCEQ Ex. F.

construction, or any other documentation to show that he was planning to remove the USTs. Therefore, the Executive Director has been unable to reach settlement with Respondent.

In Order No. 5 Continuing the Hearing on the Merits; Memorializing Deadlines, the ALJ ordered the Executive Director to file a status report on or before October 28, 2009, informing the ALJ of the status of the settlement plan and the need for further hearings in this matter. The Executive Director made the required filing on the deadline stated in Order No. 5, requesting that summary disposition issue as a result of the foregoing facts. Respondent did not file a reply.

III. BACKGROUND FACTS

The material facts in the case are not in dispute. Mr. Brooks owns the USTs located at 1301 East Front Street, Midland, Midland County, Texas.⁷ On September 12, 2006, a TCEQ Midland regional office investigator documented that Respondent's USTs were not in compliance with the upgrade requirements.⁸ Specifically, there was no evidence of corrosion or cathodic protection, which are required upgrades under 30 TEX. ADMIN. CODE §§334.47(a)(2) and 334.49.⁹ The investigator also documented that Respondent had not updated the UST registration to reflect the correct ownership information, as required by 30 TEX. ADMIN. CODE §334.7(d)(3).¹⁰ The administrative penalty of \$3,675.00 is reasonable and necessary and was calculated according to the TCEQ Penalty.¹¹ The corrective actions set forth in the EDPRP, permanently removing the USTs from service and submitting an amended UST registration, are necessary and

⁷ TCEQ Ex. A; TCEQ Ex. B; TCEQ Ex. C; TCEQ Ex. D at 8.

⁸ TCEQ Ex. A; TCEQ Ex. D at 8-9.

⁹ *Id.*

¹⁰ *Id.*

¹¹ TCEQ Ex. D at 9; TCEQ Ex. H; TCEQ Ex. I.

appropriate given the violations and the requirements of 30 TEX. ADMIN. CODE §§334.7(d)(3) and 334.55.¹²

IV. STANDARD OF REVIEW

A motion for summary disposition may be granted if the moving party shows that it is entitled to relief as a matter of law. The rule of the Commission found at 30 TEX. ADMIN. CODE §80.137 sets forth criteria for determining when summary disposition is appropriate. This rule provides, in pertinent part, that:

Summary disposition shall be rendered if the pleadings, admissions, affidavits, stipulations, deposition transcripts, interrogatory answers, other discovery responses, exhibits and authenticated or certified public records if any, on file in the case at the time of hearing, or filed thereafter and before disposition with the permission of the judge, show that there is no genuine issue as to any material fact and the moving party is entitled to summary disposition as a matter of law on all or some of the issues expressly set out in the motion or in an answer or any other response.¹³

Furthermore, although the TCEQ procedural rule controls the case, 1 TEX. ADMIN. CODE §§155.1(d) and 155.3(d), and the Texas Rules of Civil Procedure also allow that summary judgment may be rendered if there is no genuine issue as to any material fact and the moving party is entitled to disposition as a matter of law.¹⁴

In addition to the criteria explicitly stated in Rule 166a, Texas case law clarifies that summary judgment may be appropriately granted when there is no genuine issue as to any material fact.¹⁵ In *Wilkinson*, the court further elaborated that, in granting a

¹² TCEQ Ex. D at 9; TCEQ Ex. J.

¹³ 30 TEX. ADMIN. CODE § 80.137(c).

¹⁴ 1 TEX. ADMIN. CODE §§155.1(d) and 155.3(d); TEX. R. CIV. P. 166a.

¹⁵ *Harper v. Fikes*, 336 S.W.2d 631, 636 (Tex. Civ. App.--Austin 1960, writ ref'd n.r.e.); *Smith v. Ellis*, 319 S.W.2d 745, 749 (Tex. Civ. App.--Waco 1958, no writ); *Wilkinson v. Stafford*, 298 S.W.2d 867, 869, (Tex. Civ. App.--Waco), *rev'd on other grounds*, 304 S.W.2d 364 (Tex. 1957); *Toliver v. Bergmann*, 297 S.W.2d 208, 210 (Tex. Civ. App.--San Antonio 1956, no writ).

motion for summary judgment, “reasonable minds could not differ in arriving at the ultimate conclusion or conclusions to be drawn from the undisputed facts disclosed by the record. . . .”¹⁶ Further, the court must resolve “all doubts as to the existence of a genuine issue as to a material fact” against the party moving for summary judgment. In addition, the court gives the party opposing the motion “the benefit of every reasonable inference which properly may be drawn in favor of his position.”¹⁷

V. DISCUSSION

A. Failure to Timely Remove USTs.

The Texas Water Code and TCEQ rules require that all existing UST systems that are not brought into timely compliance with the minimum upgrade requirements be permanently removed from service.¹⁸

Respondent stipulated to this violation on the record before the ALJ. This stipulation was memorialized in the ALJ’s Order No. 5, which stated that Mr. Brooks “stipulated to both the violations and the penalty set forth in the [EDPRP].” Additionally, Executive Director’s Request for Admission No. 6 asked Respondent to “[a]dmit that as of October 23, 2007, Mr. Brooks had failed to permanently remove from service four (4) USTs that had not been brought into timely compliance with the upgrade requirements for cathodic and corrosion protection.”¹⁹ Executive Director’s Request for Admission No. 7 asked Respondent to “[a]dmit that as of October 23, 2007, Mr. Brooks had failed to permanently remove from service, no later than sixty (60) days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.”²⁰ According to Order No. 2, which held that “the requests for admissions

¹⁶ 298 S.W.2d at 869.

¹⁷ *Smith*, 319 S.W.2d at 749. *See also State v. Durham*, 860 S.W.2d 63 (Tex. 1993).

¹⁸ 30 TEX. ADMIN. CODE §334.47(a)(2); *see* TEX. WATER CODE §26.347.

¹⁹ Exhibit D at 8.

²⁰ Exhibit D at 8.

in the Executive Director's discovery request are deemed admitted and Mr. Brooks is prohibited from introducing any information at hearing that contradicts his deemed admissions," these admissions have been deemed admitted. Therefore, if a hearing were held in this case, Respondent would be prohibited from introducing any evidence contradicting his admissions.

Based on Respondent's stipulations and admissions, there is no genuine issue of material fact regarding Respondent's UST system. Therefore, the Executive Director is entitled to judgment as a matter of law that Respondent violated 30 TEX. ADMIN. CODE § 334.47(a)(2) by failing to permanently remove from service, no later than sixty days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.

B. Failure to Amend UST Registration.

The Texas Water Code and TCEQ rules require that the owner of an UST system must notify the TCEQ of any change or additional information regarding the UST system within thirty days from the date of the occurrence of the change or admission or within thirty days from the date on which the owner or operator first became aware of the change or addition.²¹

Respondent stipulated to this violation on the record before the ALJ. This stipulation was memorialized in the ALJ's Order No. 5, which stated that Mr. Brooks "stipulated to both the violations and the penalty set forth in the [EDPRP]." Additionally, Executive Director's Request for Admission No. 8 asked Mr. Brooks to "[a]dmit that as of October 23, 2007, Mr. Brooks had failed to provide an amended UST registration to the Commission indicating that the USTs were out of service and that he was the current owner of the USTs."²² Executive Director's Request for Admission No. 9 asked

²¹ 30 TEX. ADMIN. CODE §334.7(d)(3); *see* TEX. WATER CODE §26.346.

²² Exhibit D at 8.

Respondent to “[a]dmit that as of October 23, 2007, Mr. Brooks had failed to provide an amended UST registration to the Commission for any change or additional information regarding USTs within thirty (30) days from the date of the occurrence of the change or addition.”²³ According to Order No. 2, which held that “the requests for admissions in the Executive Director’s discovery request are deemed admitted and Mr. Brooks is prohibited from introducing any information at hearing that contradicts his deemed admissions,” these admissions have been deemed admitted. Therefore, if a hearing were held in this case, Mr. Brooks would be prohibited from introducing any evidence contradicting his admissions.

Based on Respondent’s stipulations and admissions, there is no genuine issue of material fact regarding Respondent’s UST registration. Therefore, the Executive Director is entitled to judgment as a matter of law that Respondent violated 30 TEX. ADMIN. CODE §334.7(d)(3) by failing to provide an amended UST registration to the Commission for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition.

C. Reasonableness of the penalty assessed.

The Texas Water Code §7.053 requires the TCEQ to consider certain factors when calculating an administrative penalty. In considering those factors and using an established Penalty Policy, the Executive Director recommended a penalty of \$3,675.00²⁴ for Respondent’s violations.²⁵

Respondent stipulated to the penalty set forth in the EDPRP on the record before the ALJ. This stipulation was memorialized in the ALJ’s Order No. 5, which stated that Respondent “stipulated to both the violations and the penalty set forth in the [EDPRP].”

²³ Exhibit D at 9.

²⁴ Although a penalty of \$11,550.00 was recommended in the EDPRP and stipulated to by Respondent, the Executive Director recommends a reduced penalty of \$3,675.00. Exhibit H. The penalty was reduced on July 8, 2009, in accordance with recent Litigation Division policy.

²⁵ Exhibit H.

Additionally, Executive Director's Request for Admission No. 14 asked Respondent to "[a]dmit that the penalty of three thousand six hundred seventy five dollars (\$3,675.00) recommended by the Executive Director is reasonable and justified given the alleged violations in this enforcement matter and considering the factors set forth in TEX. WATER CODE §7.053."²⁶ According to Order No. 2, which held that "the requests for admissions in the Executive Director's discovery request are deemed admitted and Mr. Brooks is prohibited from introducing any information at hearing that contradicts his deemed admissions," these admissions have been deemed admitted. Therefore, if a hearing were held in this case, Respondent would be prohibited from introducing any evidence contradicting this admission.

Based on Respondent's stipulations and admissions, there is no genuine issue of material fact regarding the calculation and assessment of the penalty. Therefore, the Executive Director is entitled to judgment as a matter of law that the penalty amount of \$3,675.00 is reasonable and justified.

D. Necessity of Corrective Action

The Texas Water Code and TCEQ rules require that all existing UST systems that are not brought into timely compliance with the minimum upgrading requirements be permanently removed from service and that the owner or operator of a UST system must notify the TCEQ of any change or additional information regarding the UST system within 30 days from the date of the occurrence of the change or admission or within thirty days from the date on which the owner or operator first became aware of the change or addition.²⁷

Executive Director's Request for Admission No. 13 asked Respondent to "[a]dmit that the corrective action ordering provisions recommended by the Executive Director in the EDPRP are necessary and appropriate given the alleged violations of October 23,

²⁶ Exhibit D at 9.

²⁷ 30 TEX. ADMIN. CODE §§334.7(d)(3) and 334.47(a)(2); see TEX. WATER CODE §26.351(b).

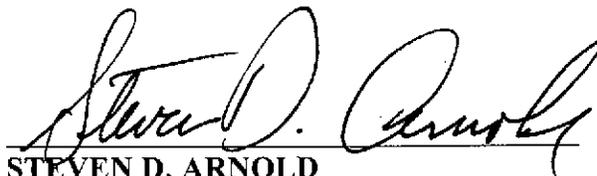
2007, in this enforcement matter.”²⁸ According to Order No. 2, this admission has been deemed admitted. Therefore, if a hearing were held in this case, Respondent would be prohibited from introducing any evidence contradicting this admission.

Based on Respondent’s admission, there is no genuine issue of material fact regarding the corrective action ordering provisions. Therefore, the Executive Director is entitled to judgment as a matter of law that the corrective action of permanently removing from service all USTs for which any component is not in compliance with upgrade requirements in accordance with 30 TEX. ADMIN. CODE § 334.55 and of submitting an amended registration to correctly reflect the operational status of all USTs and the correct current owner information in accordance with 30 TEX. ADMIN. CODE § 334.7(d)(3), as set forth in the EDPRP, are necessary and appropriate.

VI. RECOMMENDATION

Based on the record and for the reasons stated above, the ALJ recommends that the Commission approve the grant of summary disposition against the Respondent, find the Respondent has violated state laws and regulations as alleged by the Executive Director, and adopt the attached proposed Order, which assesses the Respondent \$3,675 in administrative penalties, and requires it to undertake specified actions necessary to bring its facility into compliance with state law.

ISSUED February 8, 2010.



STEVEN D. ARNOLD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

²⁸ Exhibit D at 9.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER Assessing Administrative Penalties Against
and Ordering Corrective Action by Juluis L.
Brooks; TCEQ Docket No. 2007-1885-PST-E;
SOAH Docket No. 582-09-2308

On _____, 2010, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's Preliminary Report and Petition (EDPRP) recommending that the Commission enter an order assessing administrative penalties against and requiring corrective action by Juluis L. Brooks (Respondent). A Proposal for Decision (PFD) on Motion for Summary Disposition was presented by Steven D. Arnold, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH).

After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. Respondent Juluis L. Brooks owns a former retail gasoline service station at 1301 East Front Street, Midland, Midland County, Texas (Facility).
2. Four underground storage tanks (UST) that are not exempt or excluded from regulation exist beneath the Facility.
3. On October 23, 2007, a TCEQ Midland Regional Office investigator documented that Respondent's USTs were not in compliance with the upgrade requirements.

4. There was no evidence of corrosion or cathodic protection on Respondent's USTs.
5. Respondent had not updated the UST registration with TCEQ to reflect the correct ownership information.
6. On September 12, 2006, and on February 16, 2007, Notice of Enforcement letters were issued to Respondent.
7. On October 22, 2008, the Executive Director filed a Preliminary Report and Petition (EDPRP), in accordance with TEX. WATER CODE ANN. §7.054. the EDPRP alleged that:
 - (a) Respondent violated 30 TAC §334.47(a)(2) by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and
 - (b) Respondent violated 30 TAC §334.7(d)(3) by failing to provide an amended UST registration to the Commission for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition.
8. The Executive Director recommended that the Commission enter an enforcement order assessing a total administrative penalty of \$11,550 against Respondent and that the Commission order Respondent to take certain corrective actions. The amount of the recommended administrative penalty was subsequently reduced to \$3,675 on July 8, 2009, in accordance with current Litigation Division policy.

9. The \$3,675 administrative penalty sought in the EDPRP is an accumulation of the different penalties assessed for each violation, which Respondent agreed was a reasonable amount.
10. The Executive Director mailed a copy of the original EDPRP and the EDPRP to Respondent at 501 East Texas Avenue, Midland, Texas 79701, on the same date that such was filed.
11. Respondent filed an answer to the EDPRP on November 21, 2008, and requested a hearing.
12. On January 16, 2009, the TCEQ referred this matter to SOAH for a contested case hearing.
13. On February 9, 2009, the TCEQ Chief Clerk mailed notice to Respondent of the preliminary hearing scheduled for March 26, 2009.
14. The notice of hearing:
 - Indicated the time, date, place, and nature of the hearing;
 - Stated the legal authority and jurisdiction for the hearing;
 - Indicated the statutes and rules the Executive Director alleged Respondent violated.
 - Advised Respondent, in at least twelve-point bold-faced type, that failure to appear at the preliminary hearing or the evidentiary hearing in person or by legal representative would result in the factual allegations contained in the notice and EDPRP being deemed as true and the relief sought in the notice possibly being granted by default; and
 - Included a copy of the Executive Director's penalty calculation worksheet, which shows how the penalty was calculated for the alleged violations.

15. On March 26, 2009, the Executive Director and Respondent appeared at a preliminary hearing and agreed to a procedural schedule leading to an evidentiary hearing on July 30, 2009.
16. Among the items in the agreed procedural schedule was a deadline directing the parties to complete discovery by July 15, 2009. Respondent did not respond to discovery, and on July 23, 2009, the ALJ entered Order No. 2 Ruling on Motion to Compel and Motion for Sanctions. The ALJ granted the motion, stating that “the requests for admission included the Executive Director’s discovery request are deemed admitted and [Respondent] is prohibited from introducing any information at hearing that contradicts his deemed admissions....”
17. On July 22, 2009, Respondent filed a Motion for Continuance, which was denied on July 29, 2009.
18. The evidentiary hearing in this case was scheduled for July 30, 2009. On that day, before the hearing commenced, the parties came to an agreement. Respondent stipulated to the violations and the penalty in the case, and the parties jointly requested a continuance for three months to allow for further settlement negotiations. Respondent agreed to submit to the Executive Director, within one month from the date of the hearing: (1) financial information sufficient to permit the Executive Director to evaluate Respondent’s claimed financial inability, and (2) a written plan for removing the USTs on his property.
19. Although Respondent submitted additional financial information, he did not submit sufficient information to allow the Financial Administration Division (FAD) to make a determination as to Respondent’s ability to pay the recommended penalty. Specifically, in response to the Executive Director’s request that Respondent’s wife sign the disclosure

documents required by the FAD, Respondent submitted a statement that his wife would not sign any of the required disclosures. Therefore, the FAD could not determine whether Respondent's wife holds any community property assets in her name that could be used to pay the penalty. Further, Respondent did not submit a plan for removing his USTs. He merely stated that he was attempting to find another entity, such as the original owner of the tanks, who may at some point assist him in removing the USTs. He did not submit a contract with a certified UST removal company, a notice of construction, or any other documentation to show that he was planning to remove the USTs. Therefore, the Executive Director has been unable to reach settlement with Respondent.

20. In Order No. 5 Continuing the Hearing on the Merits; Memorializing Deadlines, the ALJ ordered the Executive Director to file a status report on or before October 28, 2009, informing the ALJ of the status of the settlement plan and the need for further hearings in this matter. The Executive Director made the required filing on the deadline stated in Order No. 5, requesting that summary disposition issue as a result of the foregoing facts.
21. On November 23, 2009, the ALJ notified Respondent of his intent to issue a ruling on the Executive Director's Motion for Summary Disposition and notifying Respondent, pursuant to 30 TEX. ADMIN. CODE §80.137(b), that he would have until December 16, 2009, to file a response to the Motion for Summary Disposition. Respondent did not file a response to the Executive Director's Motion for Summary Disposition.

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 Texas Water Code or of the

Texas Health and Safety Code 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 the violations alleged in this proceeding.
3. In addition to imposing an administrative penalty, the Commission may order the violator to take corrective action, as provided by TEX. WATER CODE ANN. §7.073.
4. 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 and the proposed penalties and corrective actions.
5. 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 and the proposed penalties and corrective actions.
6. 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.
7. Based on the Findings of Fact and Conclusions of Law:
 - (a) Respondent violated 30 TAC §334.47(a)(2) by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and

- (c) Respondent violated 30 TAC §334.7(d)(3) by failing to provide an amended UST registration to the Commission for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition.
8. In determining the amount of an administrative penalty, TEX. WATER CODE ANN. § 7.053 requires the Commission to consider several factors including:
- Its impact or potential impact on public health and safety, natural resources and their uses, and other persons;
 - The nature, circumstances, extent, duration, and gravity of the prohibited act;
 - The history and extent of previous violations by the violator;
 - The violator's degree of culpability, good faith, and economic benefit gained through the violation;
 - The amount necessary to deter future violations; and
 - Any other matters that justice may require.
9. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.
10. Based on consideration of the above Findings of Fact, the factors set out in TEX. WATER CODE ANN. §7.053, and the Commission's Penalty Policy, the Executive Director correctly calculated the penalties for each of the alleged violations and a total administrative penalty of \$3,675 is justified and should be assessed against Respondent.
11. Based on the above Findings of Fact, Respondent should be required to take the corrective action that the Executive Director recommends.

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

1. Juluis L. Brooks is assessed an administrative penalty in the amount of \$3,675 for violations of 30 TAC §§334.7(a)(1), 334.47(a)(2) and 334.75(a)(1), and TEX. WATER CODE §26.346(a). The payment of this administrative penalty and Juluis L. Brooks' compliance with all the terms and conditions set forth in this Order will completely resolve the matters set forth by this Order in this section. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. All checks submitted to pay the penalty assessed by this Order shall be made out to "Texas Commission on Environmental Quality." Administrative penalty payments shall be sent with the notation "Re: Juluis L. Brooks; Docket No. 2007-1885-PST-E" 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

2. Within 30 days after the effective date of this Order, Juluis L. Brooks shall permanently remove the UST system from service, in accordance with 30 TAC §334.55.
3. Within 45 days after the effective date of this Order, Juluis L. Brooks shall submit a properly completed SUT registration form to the TCEQ indicating that the UST has been removed, in accordance with 30 TAC §334.7, to:

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

4. Within 75 days after the effective date of this Order, Juluis L. Brooks shall submit written certifications as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions Nos. 2 and 3. 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 fines and imprisonment for knowing violations.”

The certification shall be sent to:

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

with a copy to:

Michael Edmiston, Waste Section Manager
Midland Regional Office
Texas Commission on Environmental Quality
3300 North A Street, Building 4-107
Midland, TX 79705-5406

5. 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 Commission 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. As required by TEX. WATER CODE ANN. §7.059, 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

**Bryan W. Shaw, Chairman
For the Commission**