

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

September 30, 2009

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

2009 SEP 30 PM 4:30
CHIEF CLERKS OFFICE
TEXAS COMMISSION
ON ENVIRONMENTAL
QUALITY

Re: SOAH Docket No. 582-09-1363; TCEQ Docket No. 2008-0873-PST-E; In Re: Executive Director of the Texas Commission on Environmental Quality v. Agile Investments, LLC dba Stars & Stripes USA 1, RN101660082

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 October 20, 2009. Any replies to exceptions or briefs must be filed in the same manner no later than October 30, 2009.

This matter has been designated **TCEQ Docket No. 2008-0873-PST-E; SOAH Docket No. 582-09-1363**. 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 "Rebecca S. Smith".

Rebecca S. Smith
Administrative Law Judge

RSS/Ls
Enclosures
cc: Mailing List

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: AGILE INVESTMENTS LLC / STARS & STRIPES USA 1
SOAH DOCKET NUMBER: 582-09-1363
REFERRING AGENCY CASE: 2008-0873-PST-E

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ REBECCA SMITH**

REPRESENTATIVE / ADDRESS

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EXECUTIVE DIRECTOR

xc: Docket Clerk, State Office of Administrative Hearings

SOAH DOCKET NO. 582-09-1363
TCEQ DOCKET NO. 2008-0873-PST-E

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

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EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

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BEFORE THE STATE OFFICE

CHIEF CLERKS OFFICE

OF

V.

AGILE INVESTMENTS, LLC
DBA STARS & STRIPES USA 1,
Respondent
RN101660082

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Executive Director (ED) of the Texas Commission on Environmental Quality (Commission) brings this enforcement action against Agile Investments, LLC d/b/a Stars & Stripes USA 1 (Respondent). The ED alleges that Respondent violated certain statutes and the Commission's rules relating to petroleum underground storage tanks (USTs). Respondent stipulated to all but one of the violations. The Administrative Law Judge (ALJ) finds that the ED proved the remaining violation and recommends that the Commission approve the requested administrative penalty and corrective action.

I. JURISDICTION AND NOTICE

Respondent does not dispute the Commission's jurisdiction or notice, so no further discussion regarding notice or jurisdiction is included here. The attached Proposed Order contains the required Findings of Fact and Conclusions of Law concerning jurisdiction and notice.

II. BACKGROUND AND PROCEDURAL HISTORY

Respondent owns and operates a convenience store that sells gasoline at 1500 East Main St., Itasca, Hill County, Texas (Facility). The Facility contains four USTs.

On May 7, 2008, the ED issued a Notice of Enforcement (NOE) to Respondent, alleging that Respondent had violated certain statutes and rules relating to USTs.¹ Specifically, the ED alleged that Respondent violated TEX. WATER CODE ANN. § 26.3475(a), (c)(1), (c)(2), and (d) and 30 TEX. ADMIN. CODE §§ 334.39(c)(4); 334.49(a)(4) and (c)(2)(C); 334.50(b), (b)(1)(A), and (b)(2)(A)(i)(III); 334.51(b)(2)(C), and 334.45(c)(3)(A) and (e)(2)(D). On September 18, 2008, the ED issued a preliminary report and petition (Petition) alleging four violations² and mailed a copy of it to Respondent.³ On October 7, 2008, Respondent filed a request for a contested case hearing.⁴

On November 18, 2008, the ED requested the Commission's Chief Clerk to refer this dispute to the State Office of Administrative Hearings (SOAH) for hearing,⁵ which the Chief Clerk did on November 25, 2008. On December 10, 2008, the Chief Clerk mailed notice of a February 12, 2009 preliminary hearing to the Respondent, the ED, and the Public Interest Counsel (PIC).⁶ The preliminary hearing was held, and the parties agreed to a schedule.

The hearing on the merits convened on September 10, 2009, before ALJ Rebecca S. Smith. Staff Attorney Tammy Mitchell represented the ED. Respondent was represented by its director and managing member, Rashid Dara, who appeared by telephone. The record closed that day.

III. ALLEGED VIOLATIONS

A. Stipulation

¹ ED. Ex. 4.

² Three of the violations consisted of multiple violations, as alleged in the NOE.

³ ED Ex. A.

⁴ ED Ex. B.

⁵ ED Ex. C.

⁶ ED Ex. D.

Before the hearing, Respondent stipulated that it owned and operated the Facility, that the Facility had four USTs, and that the USTs contained regulated substances. Respondent also stipulated to the following allegations:

- Respondent failed to perform an operability test on a cathodic protection system once every three years, thereby violating 30 TEX. ADMIN. CODE § 334.39(c)(4);
- Respondent was not conducting an inspection of the impressed current cathodic protection system every 60 days, thereby violating 30 TEX. ADMIN. CODE § 334.49(c)(2)(C);
- Respondent failed to test a line leak detector at least once per year for performance and operational reliability, thereby violating 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III);
- Respondent failed to provide proper release detection for the product piping associated with UST systems, thereby violating 30 TEX. ADMIN. CODE § 334.50(b);
- Respondent failed to equip each tank with a valve or other device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reached no higher than 95% capacity, thereby violating 30 TEX. ADMIN. CODE § 334.45(b)(2)(C);
- Respondent failed to install an emergency shut-off valve (aka shear or impact valve) on each pressurized delivery or product line and ensure that it was securely anchored at the base of the dispenser, thereby violating 30 TEX. ADMIN. CODE § 334.45(c)(3)(A);
- Respondent failed to provide corrosion protection to all underground metal components of an UST system which was used to convey or contain regulated substances, thereby violating 30 TEX. ADMIN. CODE § 334.49(a)(4); and
- Respondent failed to ensure that all fill pipes (including any connected fittings) were equipped with a removable or permanent factory-constructed drop tube that extended to within 12 inches of the tank bottom, thereby violating 30 TEX. ADMIN. CODE § 334.45(e)(2)(D).

With these stipulations, only one alleged violation remained to be proven: that Respondent failed to ensure that all tanks were monitored for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A).

The ED also stipulated that Respondent has already taken some of the actions requested in the Petition. Specifically, Respondent completed the line leak detector and piping tightness test and anchored the shear valves.

B. Evidence

The ED presented the testimony of Commission investigator Michaelle Sherlock. Ms. Sherlock testified that she conducted an investigation of Respondent's facility on April 15, 2008, and prepared a report based on her investigation.

Ms. Sherlock's testimony addressed the one contested violation, which involved monitoring for releases. She testified that under 30 TEX. ADMIN. CODE § 334.50(b)(1)(a), all tanks must be monitored at least once a month, but that at the time of the inspection, Respondent's Facility had no method of detection in place.

According to its registration with the Commission, Respondent used statistical inventory reconciliation and inventory control,⁷ an approved method of release detection.⁸ But Ms. Sherlock testified that this method was not being followed. Statistical inventory reconciliation and inventory control requires an owner or operator to take the physical measurements of the volume of fuel each day, compare it to the sale and delivery records, and then have a third party reconcile them each month. Ms. Sherlock testified that she found no evidence of those things happening at the time of the inspection. Moreover, the fuel reading log Mr. Dara submitted after the inspection showed that

⁷ ED Ex. 13.

⁸ 30 TEX. ADMIN. CODE § 334.50(d)(9).

the fuel level was not being gauged every day.⁹ Ms. Sherlock did not see evidence of any other method of tank release detection.

Respondent did not present any evidence at the hearing, and Mr. Dara chose not to testify.

C. Analysis

Respondent stipulated to all of the violations, with one exception: the failure to monitor the tanks monthly. The ED presented evidence that Respondent did not monitor the tanks and had no method of monitoring in place at the time of the inspection. Respondent did not present any evidence to counter the ED's evidence. The ALJ finds that the ED established this violation.

IV. ADMINISTRATIVE PENALTY

Texas Water Code § 7.053 requires the Commission to consider the following factors when determining the amount of an administrative penalty:

- The violation's 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.

Additionally, the Commission has adopted a Penalty Policy to guide the computation and assessment of administrative penalties.¹⁰

⁹ ED Ex. 4.

¹⁰ ED Ex. 5.

The ED supported its requested penalty by presenting the testimony of Wallace Myers, an enforcement coordinator with the Commission. Mr. Myers described how he used the Penalty Policy to perform the calculations in the penalty calculation worksheet and reach the penalty amount. He also testified that because Respondent's facility had a throughput of less than 50,000 gallons per month, the Penalty Policy classified it as a minor source. Mr. Myers made the following determinations for each violation:

	Release / Harm	No. of Violation Events	Violation Base Penalty
Violation No. 1 ¹¹	Potential Release / Major Harm	1 Monthly Event	\$2,500
Violation No. 2 ¹²	Potential Release / Major Harm	1 Monthly Event	\$2,500
Violation No. 3 ¹³	Potential Release / Moderate Harm	1 Quarterly Event	\$1,000
Violation No. 4 ¹⁴	Potential Release / Moderate Harm	1 Quarterly Event	\$1,000

Mr. Myers concluded that only one adjustment to the \$7,000 total base penalty should be made. This adjustment is an enhancement of \$2,819 to capture the avoided cost of compliance

¹¹ Violation No. 1 combines several individual violations of 30 TEX. ADMIN. CODE § 334.49(a)(4), (c)(2)(C), (c)(4)(C) and TEX. WATER CODE § 26.3475(d). Specifically, these violations are that Respondent: failed to provide proper corrosion protection for the UST system, failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly, and failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years.

¹² Violation No. 2 combines several individual violations of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A), (b)(2), (b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a) and (c)(1). Specifically, these violations are that Respondent: failed to monitor 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.

¹³ Violation No. 3 consists of one violation of 30 TEX. ADMIN. CODE § 334.51(b)(2)(C) and TEX. WATER CODE § 26.3475(c)(2). This violation is that Respondent failed to equip the tank with a valve or other appropriate device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level no higher than 95% capacity for the tank.

¹⁴ Violation No. 4 combines two individual violations of 30 TEX. ADMIN. CODE § 334.45(c)(3)(A) and (e)(2)(D). Specifically, these violations are that Respondent: failed to install an emergency shutoff valve (also known as a shear or impact valve) on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser; and failed to ensure that each UST is equipped with a submerged fill pipe that extends from the top of the tank to have a maximum clearance of twelve inches from the bottom of the UST.

associated with the first two violations.¹⁵ He testified that this enhancement falls under the Penalty Policy category of “other factors as justice may require.” With this enhancement, he calculated the total penalty as \$9,819.

The ED also presented the testimony of Donna Chaffin, a Commission financial analyst who reviewed Respondent’s 2008 profit and loss statement and determined that Respondent was ineligible for a financial review to reduce the penalty because the proposed penalty amount was less than 1% of Respondent’s annual gross revenue.

For his part, Mr. Dara argued that he has tried to cooperate and be responsible and that he has honestly tried to repair the problems. He contends that nothing about the violations was intentional; he did not know which regulations he needed to follow. He points out, too, that the environment was not actually harmed by his actions. While the ALJ has no reason to doubt Mr. Dara’s sincerity, and the ED agrees that Mr. Dara has already taken some of the corrective actions requested in the Petition, Mr. Dara’s lack of knowledge does not affect the penalty in this matter.

Mr. Meyer’s calculation appears accurate and the requested penalty appropriate. The ALJ recommends that the Commission assess Respondent a \$9,819 penalty.

V. CORRECTIVE ACTION

In addition to the administrative penalty, the ED’s Petition seeks to require Respondent to take certain corrective measures.¹⁶ The ED stipulated that Respondent has already done two of the things the ED requested — testing the line leak detector and piping tightness, as well as anchoring the shear valves.

This leaves the following requests:

¹⁵ Because the economic benefit of \$3,091 is less than \$15,000, no adjustment is made under the Penalty Policy.

¹⁶ TEX. WATER CODE ANN. § 7.073(2) provides the authority to require corrective action.

- implement a corrosion protection method for the UST system including the metal fittings around the submersible turbine pump and conduct bimonthly inspection and triennial testing of the corrosion protection system, in accordance with 30 TEX. ADMIN. CODE § 334.49;
- install and implement a release detection method for all USTs and the piping associated with the USTs, in accordance with 30 TEX. ADMIN. CODE § 334.50;
- install an overfill prevention device on the westernmost diesel tank, in accordance with 30 TEX. ADMIN. CODE § 334.51; and
- install fuel drop tubes extending to within twelve inches of the tank bottom to the westernmost diesel tank and the regular unleaded tank, in accordance with 30 TEX. ADMIN. CODE § 334.45.

The ED's requests are justified. The ALJ recommends that the Commission include the ED's recommended corrective action requirements.

VI. CONCLUSION

Based on the evidence presented, the ALJ recommends that the Commission adopt the Findings of Fact and Conclusions of Law in the attached Order, assess an administrative penalty of \$9,819 against Respondent, and order Respondent to take the corrective actions requested by the ED.

SIGNED September 30, 2009.



**REBECCA S. SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER

**ASSESSING ADMINISTRATIVE PENALTIES AGAINST
AGILE INVESTMENTS, LLC, DBA STARS AND STRIPES USA 1
SOAH DOCKET NO. 582-09-1363
TCEQ DOCKET NO. 2008-0873-PST-E**

On _____, 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 Agile Investments, LLC, d/b/a Stars and Stripes USA 1 (Respondent). A Proposal for Decision (PFD) was presented by Rebecca S. Smith, 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 owns a convenience store that sells gasoline, located at 1500 East Main St., Itasca, Hill County, Texas (Facility).
2. Respondent owns four underground storage tanks (USTs) at the Facility that are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.

3. On April 15, 2008, Michaelle Sherlock, a TCEQ investigator, conducted an inspection of Respondent's Facility and observed several violations of the TCEQ rules relating to underground storage tanks.
4. On May 7, 2008, the ED issued a Notice of Enforcement (NOE) to Respondent.
5. On September 18, 2008, the ED filed the EDPRP with the Commission's Chief Clerk and mailed a copy of it by U.S. first class mail and certified mail, return receipt requested, to Respondent through its registered agent at the last address of record with the Commission, 13221 Harkness Drive, Dallas, Texas 75243. The EDRP alleged that Respondent violated TEX. WATER CODE ANN. § 26.3475(a), (c)(1), (c)(2), and (d) and 30 TEX. ADMIN. CODE §§ 334.39(c)(4); 334.49(a)(4) and (c)(2)(C); 334.50(b), (b)(1)(A), and (b)(2)(A)(i)(III); 334.51(b)(2)(C), and 334.45(c)(3)(A) and (e)(2)(D).
6. On October 7, 2008, Respondent requested a contested case hearing on the allegations in the EDPRP, and on November 25, 2008, the Chief Clerk referred this dispute to SOAH for hearing.
7. A Notice of Hearing was issued on December 10, 2008.
8. A preliminary hearing was held on February 12, 2009, before ALJ William G. Newchurch at SOAH, William P. Clements Building, Fourth Floor, 300 West 15th Street, Austin, Texas.
9. The evidentiary hearing convened on September 10, 2009, before ALJ Rebecca S. Smith also at SOAH, William P. Clements Building, Fourth Floor, 300 West 15th Street, Austin, Texas. The ED was represented by Staff Attorney Tammy Mitchell. Respondent was represented by its director and managing member, Rashid Dara, who appeared by telephone. The record closed that day.

10. Respondent failed to perform an operability test on a cathodic protection system once every three years.
11. Respondent was not conducting an inspection of the impressed current cathodic protection system every 60 days.
12. Respondent failed to test a line leak detector at least once per year for performance and operational reliability.
13. Respondent failed to provide proper release detection for the product piping associated with UST systems.
14. Respondent failed to equip each tank with a valve or other device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reached no higher than 95% capacity.
15. Respondent failed to install an emergency shut-off valve (aka shear or impact valve) on each pressurized delivery or product line and ensure that it was securely anchored at the base of the dispenser.
16. Respondent failed to provide corrosion protection to all underground metal components of an UST system which was used to convey or contain regulated substances.
17. Respondent failed to ensure that all fill pipes (including any connected fittings) were equipped with a removable or permanent factory-constructed drop tube that extended to within 12 inches of the tank bottom.
18. Respondent failed to ensure that all tanks were monitored for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).
19. The ED recommended that the Commission enter an enforcement order assessing a total administrative penalty of \$9,819.

20. An administrative penalty of \$9,819 takes into account the factors contained in TEX. WATER CODE ANN. § 7.053 and the Commission's 2002 Penalty Policy.

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 above Findings of Fact and Conclusions of Law:
 - (a) Respondent violated 30 TEX. ADMIN. CODE § 334.39(c)(4) by failing to perform

- an operability test on a cathodic protection system once every three years;
- (b) Respondent violated 30 TEX. ADMIN. CODE § 334.49(c)(2)(C) by not conducting an inspection of the impressed current cathodic protection system every 60 days;
 - (c) Respondent violated 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) by failing to test a line leak detector at least once per year for performance and operational reliability;
 - (d) Respondent violated 30 TEX. ADMIN. CODE § 334.50(b) by failing to provide proper release detection for the product piping associated with UST systems;
 - (e) Respondent violated 30 TEX. ADMIN. CODE § 334.45(b)(2)(C) by failing to equip each tank with a valve or other device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reached no higher than 95% capacity;
 - (f) Respondent violated 30 TEX. ADMIN. CODE § 334.45(c)(3)(A) by failing to install an emergency shut-off valve (aka shear or impact valve) on each pressurized delivery or product line and ensure that it was securely anchored at the base of the dispenser;
 - (g) Respondent violated 30 TEX. ADMIN. CODE § 334.49(a)(4) by failing to provide corrosion protection to all underground metal components of an UST system which was used to convey or contain regulated substances;
 - (h) Respondent violated 30 TEX. ADMIN. CODE § 334.45(e)(2)(D) by failing to ensure that all fill pipes (including any connected fittings) were equipped with a removable or permanent factory-constructed drop tube that extended to within 12 inches of the tank bottom; and

- (i) Respondent violated 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) by failing to ensure that all tanks were monitored for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).
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 out 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 \$9,819 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.

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 Order, Agile Investments, LLC, d/b/a Stars and Stripes USA 1 shall pay an administrative penalty in the amount of \$9,819 for the violations of 30 TEX. ADMIN. CODE §§ 334.39(c)(4), 334.49(c)(2)(C), 334.50(b), 334.50(b)(2)(A)(i)(III), 334.45(b)(2)(C), 334.45(c)(3)(A), 334.49(a)(4), 334.45(e)(2)(D), and 334.50(b)(1)(A). The payment of this administrative penalty and compliance with all the terms and conditions set forth in this Order will completely resolve the violation set forth by this Order. However, the Commission shall not be constrained in any manner from requiring corrective actions or assessing 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: Agile Investments, LLC, d/b/a Stars and Stripes USA 1, TCEQ DOCKET NO. 2008-0873-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, Agile Investments, LLC shall do the following:
 - a. implement a corrosion protection method for the UST system including the metal fittings around the submersible turbine pump and conduct bimonthly inspection and triennial testing of the corrosion protection system, in accordance with 30 TEX. ADMIN. CODE § 334.49;

- b. install and implement a release detection method for all USTs and the piping associated with the USTs, in accordance with 30 TEX. ADMIN. CODE § 334.50;
 - c. install an overfill prevention device on the westernmost diesel tank, in accordance with 30 TEX. ADMIN. CODE § 334.51; and
 - d. install fuel drop tubes extending to within twelve inches of the tank bottom to the westernmost diesel tank and the regular unleaded tank, in accordance with 30 TEX. ADMIN. CODE § 334.45.
3. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Agile Investments, LLC if the Executive Director determines that Agile Investments, LLC has not complied with one or more of the terms or conditions in this Order.
 4. 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.
 5. 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.
 6. As required by TEX. WATER CODE ANN. § 7.059, the Commission's Chief Clerk shall forward a copy of this Order to Agile Investments, LLC.
 7. 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**

EXHIBIT LIST AND CERTIFICATION

DOCKET NUMBER: 582-09-1363

STYLE OF CASE: Texas Commission on Environmental Quality v. Agile Investments d/b/a Stars and Stripes USA 1

DATE OF HEARING: September 10, 2009

EXH NO.	DESCRIPTION	OBJ Y/N	ADM Y/N	REMARKS
Petitioner's Exhibits				
A	Executive Director's Preliminary Report and Petition	N	Y	
B	Respondent's Request for Hearing	N	Y	
C	SOAH Referral	N	Y	
D	Notice of Public Hearing	N	Y	
1	Respondent's Answers to Discovery Requests	N	Y	
2	2008 UST Registration and Self-Certification Form	N	Y	
3	2009 UST Registration and Self-Certification Form	N	Y	
4	TCEQ Investigation Report No. 653270, dated April 15, 2008	N	Y	
5	Penalty Policy	N	Y	
6	Compliance History	N	Y	
7	Memorandum from TCEQ Revenue & Financial Assurance Section	N	Y	
13	PST Registration Database Printout	N	Y	
Respondent's Exhibits				

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
 CHIEF CLERKS OFFICE
 100 SEP 30 PM 4:30

I hereby affirm that the exhibits included on this exhibit list identify all the exhibits admitted in this proceeding. Any exhibits not admitted but included in an offer of proof are also listed and identified as such. The referenced exhibits are being placed under seal and returned to the referring agency in the condition in which they were received into evidence.


 ADMINISTRATIVE LAW JUDGE

Date Signed: September 25, 2009