SOAH DOCKET NO. 582-10-0209; TCEQ DOCKET NO. 2008-1814-PST-E

EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY **Petitioner**	§	**BEFORE THE STATE OFFICE**
v.	§	**OF**
IRA BETTS; RN10404736, **Respondent**	§	**ADMINISTRATIVE HEARINGS**

RESPONDENT'S EXCEPTIONS AND BRIEF OFFERED IN OPPOSITION TO THE PROPOSAL FOR DECISION AND ORDER; AND REQUEST FOR ORAL ARGUMENT

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW IRA BETTS, RN10404736 and Respondent herein, and brings this his Exceptions and Brief Offered in Opposition to the Proposal for Decision and Order, and in support would show the Administrative Law Judge the following:

I.

PURPOSE OF PROPOSAL FOR DECISION AND ADMINISTRATIVE LAW JUDGE'S AUTHORITY TO AMEND PROPOSAL FOR DECISION IN RESPONSE TO FILED EXCEPTIONS OR BRIEFS

The purpose of service of the proposal for decision is to enable the party to bring his view of the facts and law before the officers who have the final decision. *See Consumer Waters, Inc. v. Public Utility Commission of Texas*, 651 S.W.2d 335, 337 (Tex. App.--Austin 1983, writ ref'd n.r.e.). This process affords the parties "...to point out any portions of testimony which may have been overlooked, misunderstood, or improperly appraised." *Id.* Further, the parties may argue to the officers who will make the final decision what findings of fact the record compels, but also all applicable principles of law. *Id.* The administrative law judge ***may amend*** the proposal for decision in response to exceptions or briefs submitted by a party. *See* 30 TEX. ADMIN. CODE ANN. § 80.259 (Vernon 2010).

II.

SUMMARY OF RESPONDENT'S OPPOSITION TO PROPOSAL FOR DECISION AND ORDER

Respondent excepts to the Proposal for Decision and Order and in response offers the foregoing brief in opposition. As stated above, the Administrative Law Judge has the authority to amend the Proposal for Decision in response to any exceptions or briefs filed in response thereto. Respondent asserts that the Administrative Law Judge should dismiss this action against Respondent that was instituted by the Executive Director of the TCEQ ("ED"), or in the alternative amend the Proposal for Decision and Order based on the following grounds:

(1) the TCEQ has not established jurisdiction nor is it not authorized to assess a penalty against Respondent because it has not established Respondent has violated a provision of the Texas Water Code or Texas Administrative Code within the TCEQ's jurisdiction;

(2) Substantial evidence offered by both ED and Respondent in this case clearly establishes that Respondent does *not* hold legal possession or an ownership interest in the underground storage tank ("UST") that is the subject of this action;

(3) The Proposal for Decision's assertion that Respondent owns the UST through adverse possession of State property is a major error in law and fact;

(4) Imposition of penalties upon Respondent by the TCEQ without the required proof of ownership as required by the Texas Administrative Code violates Respondent's due process rights under both the State and Federal Constitutions;

(5) Full consideration of the factors enumerated under Section 7.053 of the Texas Water Code warrants a decision imposing *no monetary fine or other sanctions*;

The Proposal for Decision and Order, particularly the findings of fact and conclusions of law in the proposed Order, must be amended based on the arguments asserted above. Respondent prays that the honorable Administrative Law Judge and/or Commission will dismiss the underlying action against Respondent; or in the alternative that the Administrative Law Judge will amend its Proposal for Decision and Order to reflect that Respondent's exceptions asserted

herein, including findings that ED's action is without merit; that the TCEQ is not authorized to impose a penalty against Respondent, or in the alternative that the TCEQ has not met its burden of proof and therefore order that no penalty or sanction may be assessed against Respondent.

III.

RELEVANT FACTS

Ira Betts owns property near the intersection of FM 39 and FM 244 in Iola, Grimes, County, Texas. Mr. Betts purchased the property Bobby L. Holiday on December 2, 1983. *See* attached Exhibit A. While Holiday owned the property he operated a retail gas station, and to facilitate the gas station's operation Holiday installed an underground storage tank at least 7 feet from his property's boundary line and on property (a right of way) owned by the Grimes County or the State of Texas Highway Department. *See generally* attached Exhibit B. The building which is located on Betts' property also was constructed prior to Betts' acquisition of the property. Upon acquisition of the lot from Holiday, the only actions Betts has taken relating to UST was to disable the above ground pump and drain the storage tank shortly after buying the adjacent property. Betts has never used the UST nor has he ever claimed ownership over the UST. Further, Betts has never intended to exercise ownership of the property where the UST is located.

When the TCEQ began its investigation of the subject UST in 2007, Betts advised the investigator Jason Neumann that he did not own the UST nor did he own the land where it was located. Although Betts had no obligation to take action to assist the TCEQ at the time, Betts complied with Neumann's request to fill the UST with concrete. Betts was told by Neumann that such should resolve the matter. At the time the TCEQ requested soil samples from Betts, the TCEQ indicated to Betts that it still had not established that he owned the land were the UST was

located.

The TCEQ's investigation was extended to include Grimes County deed record, Grimes County tax records, and State of Texas Highway Department right of way plats from 1953. *See* attached Exhibits C, D, E, F and G. Pursuant to the advice of the TCEQ and at his own expense, Betts hired Martin Riley, a licensed surveyor, to draft a plat and survey of his property that is adjacent to State property where the UST is located. Riley has been a registered land surveyor and professional engineer since 1982. According to Riley, the critical determination as to whether the UST is located inside of Betts' property line is the right of way width of Neches Street. *See* Exhibit B. It is Riley's opinion that if the right of way of Neches Street is 50 feet, the subject UST is on the Highway Department right of way. The records Riley relied upon, the tax maps and adjacent properties, established that the right of way is 50 feet. *See* Exhibit A, B, D-G. Riley expressed concern with that determination only to the extent that an Iola Townsite plat showed the same right of way as being 60 feet, however, Riley states that said plat is vague and unreadable. *See* Exhibit B. Riley states that he would lean toward a right of way width of 50 feet because the "widespread use of that width for many years." *Id.* Riley states that "County officials, property owners, and others have used a right of way of 50 feet numerous times in legal transactions." *Id.*; *see also* Exhibit A, D-F (all attached deeds demonstrate the right of way is 50 feet). As of November 8, 2010, Riley has determined that the Neches street right of way is 50 feet, and therefore the UST in question is *not* on Betts' property. *See* attached Exhibit K.

It is also important to review the State of Texas Highway Department right of way plats from 1953. *See* Exhibits C-C3. On Exhibit C, the Highway Department plat indicates a "depot" in the northeast corner of the plat. This "depot" is the same building that is located on Betts' property. Exhibit C shows that the "Existing County Road" centerline runs almost right through

the depot building, now Betts' building. On Exhibit C-2, the County Road is again depicted with a "house" which shows the State Highway Department right of way going through the center of the house, which is the same building that remains on Betts' property.

Lastly, on or about January 2010 the TCEQ contacted the Grimes County Commissioner and Grimes County Attorney's office to assist the TCEQ with its determination upon whose property the UST is located. On March 18, 2010, John Fultz, Grimes County Attorney, advised the TCEQ that without a survey it would be "...difficult to ascertain where the tank lies in relation to the boundaries of Mr. Betts' property and the abutting public road." *See* attached Exhibit H. As of April 5, 2010, the TCEQ still had not determined who was the owner of the property where the subject UST is located. *See* attached Exhibit I.[1]

According to page 2 of the ED's Preliminary Report and Petition for Enforcement, Betts is alleged to have violated Sections 334.7(a)(1) and 334.7(a)(2) of the Texas Administrative Code as of October 6, 2008. *See* attached Exhibit J-1. This Petition is the live pleading upon which ED relies for his requested remedy. Thus, it is clear that the date of the alleged violations relied upon by ED herein by the TCEQ is prior to any conclusion by TCEQ investigators that the UST is on Betts' property. *See id.; cf.* Exhibit I.

IV.

RESPONDENT'S EXCEPTIONS TO THE PROPOSAL FOR DECISION AND ORDER

A. <u>The TCEQ has not established jurisdiction nor is it not authorized to assess a penalty against Respondent because it has not established Respondent has violated a provision of the Texas Water Code or Texas Administrative Code within the TCEQ's jurisdiction.</u>

Applicable Law and Burden of Proof

[1] On page 4 of TCEQ Investigation Report of Jason Neumann, signed by Neumann on April 5, 2010, Neumann states that "[a] follow-up record review investigation will be conducted once a determination has been made to where the UST lies.

The Commission is authorized to assess an administrative penalty against a person who ***violates*** a provision of the Code within the Commission's jurisdiction, or a rule adopted or an order or permit issued thereunder; ***and*** a county, political subdivision, or municipality has not instituted a lawsuit and is not diligently prosecuting that lawsuit under Subchapter H against the same person for the same violation. *See* TEX. WATER CODE § 7.051(a)(1)-(2) (Vernon 2010). ED's petition in this action and the Proposal for Decision do not establish either of these required elements necessary to impose an administrative penalty upon Respondent under Texas law. *See id.* ED does not allege in its petition, that a county, political subdivision or municipality has not instituted a lawsuit and not diligently prosecuting that lawsuit. ED failed to add the Texas Department of Transportation, Grimes County, and the City of Iola as parties to this action. As the relevant facts described above show, these entities should have been joined in order to resolve the boundary dispute which is at the center of this litigation.

In an enforcement case, the executive director (ED in this case), has the burden of proving by a ***preponderance of the evidence*** of the evidence the occurrence of any violation, and the appropriateness of any proposed technical ordering provisions. 30 TEX. ADMIN. CODE ANN. § 80.17 (Vernon 2010). A "preponderance of the evidence" means the greater weight of credible evidence admitted in this case. *See* TEXAS PATTERN JURY CHARGES PJC 40.3 (2008). In order to prove a fact by the preponderance of the evidence, one must find that ***the fact is more likely true than not true***. *Id.*

ED has alleged that Respondent has violated Sections 334.7(a)(1) and 334.7(a)(2), which requires that ED prove that Respondent is an "owner" of the subject UST according to 30 TEX. ADMIN. CODE ANN. § 334.2(73) (Vernon 2010). An "owner" as follows:

> Any person who holds ***legal possession or ownership of an interest*** in an underground storage tank (UST) system or an above ground storage tank (AST). For

> purposes of this chapter, if the actual ownership of a UST system or an AST is uncertain, unknown, or in dispute, the fee simple owner of the surface estate of the tract on which the UST system or the AST is located is considered the UST system or AST owner unless that person can demonstrate by appropriate documentation, including a deed reservation, invoice, bill of sale, or by other legally acceptable means that the UST system or AST is owned by another person.

Id. Thus, ED is required to demonstrate by the preponderance of the evidence that Respondent holds legal possession or ownership interest in the subject UST. *See id; cf.* 30 TEX. ADMIN. CODE ANN. § 80.17. Further, since it is apparent that actual ownership of the subject UST is "uncertain, unknown, or in dispute", it is ED's sole burden to prove by the preponderance of the evidence that the UST system is located on Respondent's property. *Id.* There is no presumption under any applicable law that Respondent is presumed to own said US, and therefore must disprove that to avoid a penalty as has been asserted by ED in this case. To be clear, Respondent has absolutely no burden to prove the UST is not on his property. Rather, if Respondent chooses to do so he may provide documentation that the UST is owned by another person not a party to this action.

Application of Law to Facts

In this case, the Administrative Law Judge and TCEQ are governed by a preponderance of the evidence burden of proof. 30 TEX. ADMIN. CODE ANN. § 80.17. ED must demonstrate by the preponderance of the evidence that Respondent is the "owner" within 30 TEX. ADMIN. CODE ANN. § 334.2(73) and that a violation has occurred. *See id.* Where ownership is disputed as is the case here, the fee simple owner of the surface estate of the tract where the UST system is located is considered the "owner" unless "appropriate documentation" can show otherwise. *See* 30 TEX. ADMIN. CODE ANN. § 334.2(73). Thus, it is clear that ED must show by a preponderance evidence who the fee simple owner of the tract were the UST system is located. *See id.*; *cf.* 30 TEX. ADMIN. CODE ANN. § 80.17. Not only has ED failed to carry its burden of proof under the law to

show that Respondent owns the tract where the subject US is located, but there is more appropriate documentation conclusively proving that the underground storage tank is ***not on Respondent's property***. *Id.*; *cf.* Exhibits A-K. Even if the Administrative Law Judge were to be undecided as to the proof offered herein as to ownership, on that basis alone the Administrative Law Judge must either dismiss ED's action or amend the Proposal for Decision to reflect that Respondent is *not* subject to any penalty. Therefore, Respondent prays that the Administrative Law Judge will amend its Proposal for Decision on this basis.

B. Substantial evidence offered by both ED and Respondent in this case clearly establishes that Respondent does *not* hold legal possession or an ownership interest in the underground storage tank ("UST") that is the subject of this action.

Other than Exhibit B and F, all evidence offered in support of this pleading were apart of ED's file attempting to prove the alleged violations of Respondent. ED's own evidence conclusively shows that Respondent is not the owner of the tract where the subject UST is located. Even if the Administrative Law Judge were to find that Respondent was required to come forward with documentation "disproving" ownership of the UST, the attached exhibits all demonstrate that Respondent is not an "owner" within 30 TEX. ADMIN. CODE ANN. § 334.2(73). Further, a registered professional engineer and surveyor, Martin Riley, has concluded that the based on the tax records, deed records, interviews with County officials and through his own investigation that the subject UST is not on Respondent's property, but on property belonging to the State of Texas Highway Department. *See* Exhibit K.

C. The Proposal for Decision's assertion that Respondent owns the UST through adverse possession of State property is a major error in law and fact.

The Proposal for Decision contains reversible error in that it bases the decision in this case on the assumption that Respondent has acquired the tract where the UST is located through adverse possession. *See* Proposal for Decision, page 4. It is undisputed in this case that the land

immediately adjacent to the property owned by Ira Betts was owned by one of the following two state entities at the time alleged violations of Betts occurred: State of Texas Highway Department, or Grimes County. It is settled law in this State that state property cannot be acquired by adverse possession. *See Jackson v. Nacogdoches County*, 188 S.W.2d 237 (Tex. App.---Dallas 1945, no writ). ED has not come forward with sufficient facts to establish that Respondent intended an adverse possession of the land where the UST is located. Thus, Respondent cannot become an "owner" under the Texas Administrative Code by adverse possession. *See* 30 TEX. ADMIN. CODE ANN. § 334.2(73). Respondent prays that the Administrative Law Judge will amend its Proposal for Decision under this basis as well.

D. Imposition of penalties upon Respondent by the TCEQ without the required proof of ownership as required by the Texas Administrative Code violates Respondent's due process rights under both the State and Federal Constitutions

It is apparent that ED is attempting to alter its burden of proof by overriding the very definition of an "owner" that is required to prove in this case. ED has argued and the Proposal for Decision reflects said argument, the erroneous argument that Respondent has become an "owner" by adverse possession in order to impose the sanctions it is seeking in this case. Lastly, without the necessary proof of a violation to establish jurisdiction, the TCEQ cannot impose sanctions upon Respondent. To do any of the foregoing acts would be to violate Respondent's due process rights under the State and Federal Constitutions. Respondent prays that the Administrative Law Judge will amend its Proposal for Decision under this basis as well.

E. Full consideration of the factors enumerated under Section 7.053 of the Texas Water Code warrants a decision imposing *no monetary fine or other sanctions.*

As stated above, ED's Petition makes it quite clear that the date of the alleged violations relied upon by ED herein by the TCEQ came prior to any conclusion by TCEQ investigators that the UST is on Betts' property. *See id.; cf.* Exhibit I. Under the factors that may be considered in

deciding to impose a penalty upon Respondent, and the proof that TCEQ cannot establish a violation under its own rules, Respondent prays that Administrative Law Judge will amend its Proposal For Decision to order no penalty be assessed against Respondent.

V. REQUEST FOR ORAL ARGUMENT

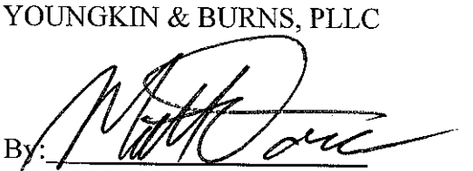
Responent hereby requests oral argument before the Administrative Law Judge and the Commission regarding Respondent's Exceptions and Brief Offered in Opposition to the Proposal for Decision and Order and to rebut any reply filed by ED in response to this pleading.

VI. PRAYER

WHEREFORE PREMISES CONSIDERED, IRA BETTS, Respondent herein, prays that the honorable Administrative Law Judge and/or Commission will dismiss the underlying action against Respondent; or in the alternative that the Administrative Law Judge will amend its Proposal for Decision and Order to reflect that Respondent's exceptions asserted herein, including findings that ED's action is without merit; that the TCEQ is not authorized to impose a penalty against Respondent, or in the alternative that the TCEQ has not met its burden of proof and therefore order that no penalty or sanction may be assessed against Respondent.

Respectfully Submitted,

YOUNGKIN & BURNS, PLLC



By: _____
BILL YOUNGKIN
State Bar No. 22226500
MATTHEW D. DOSS
State Bar No. 24069624
P. O. Box 4806
Bryan, Texas 77805
Tel: (979) 776-1325

Fax: (979) 776-1315

ATTORNEYS FOR RESPONDENT, IRA BETTS

CERTIFICATE OF SERVICE

I certify that on November 8, 2010, the foregoing document was ***electronically filed*** with the Chief Clerk of the Texas Commission on Environmental Quality, Austin, Texas.

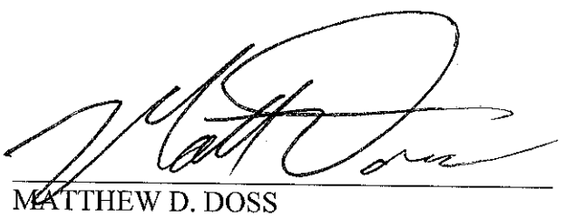
I also certify that on November 8, 2010, a true and correct copy of the foregoing document was served as indicated in bold to:

Mr. Blas J. Coy, Jr.
TCEQ Public Interest Counsel
P.O. Box 13087, MC-103
Austin, Texas 78711-3087
Via Fax No. (512) 239-6377

Mr. Steven M. Fishburn
TCEQ - Litigation Division for the Executive Director of TCEQ
P.O. Box 13087
Austin, Texas 78711-3087
Via Fax No. (512) 239-3434

Mr. Les Trobman
TCEQ - General Counsel
P.O. Box 13087
Austin, Texas 78711-3087
Via Fax No. (512) 239-5533

Honorable Richard R. Wilfong
State Office of Administrative Hearings
William P. Clements Bldg.
300 W. 15th Street, Ste. 502
Austin, Texas 78701
Via Fax No. (512) 475-4994



MATTHEW D. DOSS

HTTN: JASON

RECEIVED
JAN 26 2010
TCEQ
REGION 9—WACO

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VOL 498 PAGE 697
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WARRANTY DEED

THE STATE OF TEXAS :
COUNTY OF GRIMES :

KNOW ALL MEN BY THESE PRESENTS:

That BOBBY L. HOLLIDAY, owning, occupying and claiming other property as his homestead, and this property being his sole and separate property, of Brazos County, Texas, herein referred to as "Grantor", for and in consideration of TEN AND NO/100 DOLLARS ($10.00) and other valuable consideration to the undersigned paid by the Grantees herein named, the receipt of which is hereby acknowledged, have GRANTED, SOLD AND CONVEYED, and by these presents do GRANT, SELL AND CONVEY unto IRA BETTS, of Grimes County, Texas, herein referred to as "Grantee", all of the following described real property in Grimes County, Texas, to-wit:

All that certain tract or parcel of land containing 16/100 acres of land, more or less, in the J. BAIRD SURVEY, in Grimes County, Texas, more fully described on Exhibit "A" attached hereto and incorporated herein for all purposes.

THIS CONVEYANCE IS MADE SUBJECT TO THE FOLLOWING:

(1) All valid and subsisting easements, restrictions, rights of way, conditions, exceptions, reservations and covenants of whatsoever nature of record, if any, and also to the zoning laws and other restrictions, regulations, ordinances and statutes of municipal or other governmental authorities applicable to and enforceable against the above described premises.

(2) Oil, Gas and Mineral Lease from Bobby L. Holliday and wife, Palma L. Holliday to Eugene C. Cashman d/b/a Cashman Oil and Gas Company, dated July 26, 1982, for a term of two (2) years, recorded in Volume 461, Page 625, Real Property Records of Grimes County, Texas.

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said Grantee, his heirs and assigns forever; and Grantor does hereby bind himself, his heirs, executors and administrators to WARRANT AND FOREVER DEFEND all and singular the said premises unto the said Grantee, his heirs and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under me, but not otherwise.

When this Deed is executed by more than one person, or when the Grantee is more than one person, the instrument shall read as though

EXHIBIT
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All that certain lot, tract or parcel of land within the J. Baird Survey in Grimes County, Texas, same being conveyed as SECOND TRACT in deed from Mrs. Frances B. Slaughter, a widow to U. A. Bonny, Sr. dated September 15, 1953, of record in Volume 218, Page 517 of the Deed Records of Grimes County, Texas, and more particularly described as follows:

Being a portion of the tract of land known as the Houston and Texas Central Railway Company Station grounds and described as follows:

BEGINNING at a point on the East line of said Station grounds, said beginning point being 100 feet Easterly from a line which was formerly the center line of the main tract of said RR's Main Railway Tract, and in at the intersection of said line of said Station grounds with an Easterly prolongation of the North line of Main Street of said Town of Iola;

THENCE Northerly along said RR East property line, said line being also the East line of Nechas Street 140 ft.;

THENCE Easterly at right angles, to said property line 50 ft.;

THENCE Southerly parallel with and 50 feet Easterly from said property line 140 feet to intersection with said Easterly prolongation of the North line of Main Street;

THENCE Easterly along said Street line as prolonged 50 feet to the PLACE OF BEGINNING, Containing 16/100 acres of land, more or less.

EXHIBIT "A"

RECORDER'S MEMORANDUM
At the time of recordation this instrument was found to be inadequate for the best photographic reproduction because of illegibility.

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FILED FOR RECORD AT
'84 FEB 8 PM 1 31

TRINSTON HARRIS CO. CLK.
GRIMES CO., TEX.
Ann Lee

VOL. 498 PAGE 700

GUARANTY TITLE COMPANY
GRIMES COUNTY
P. O. BOX 290
ANDERSON, TEXAS 77830

THE STATE OF TEXAS
COUNTY OF GRIMES

THIS CERTIFIES that the foregoing instrument, with its certificates of authentication was filed for record in my office on the 8th day of February, A.D. 1984 and duly recorded by me on the 10th day of February, A.D. 1984 in Vol. 498, Page 697, of the Real Property records of Grimes County, Texas.

Trinston Harris
County Clerk, Grimes County, Texas
by Chris Sciarabba, Deputy

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pertinent verbs, nouns and pronouns were changed correspondingly, and when executed by or to a corporation, the words "heirs, executors and administrators" or "heirs and assigns" shall be construed to mean "successors and assigns".

EXECUTED as of the 2nd day of December, 1983.

BOBBY L. HOLLIDAY

Mailing Address of Grantee:

Ira Betts
P. O. Box 462
Iola, Texas 77861

THE STATE OF TEXAS :

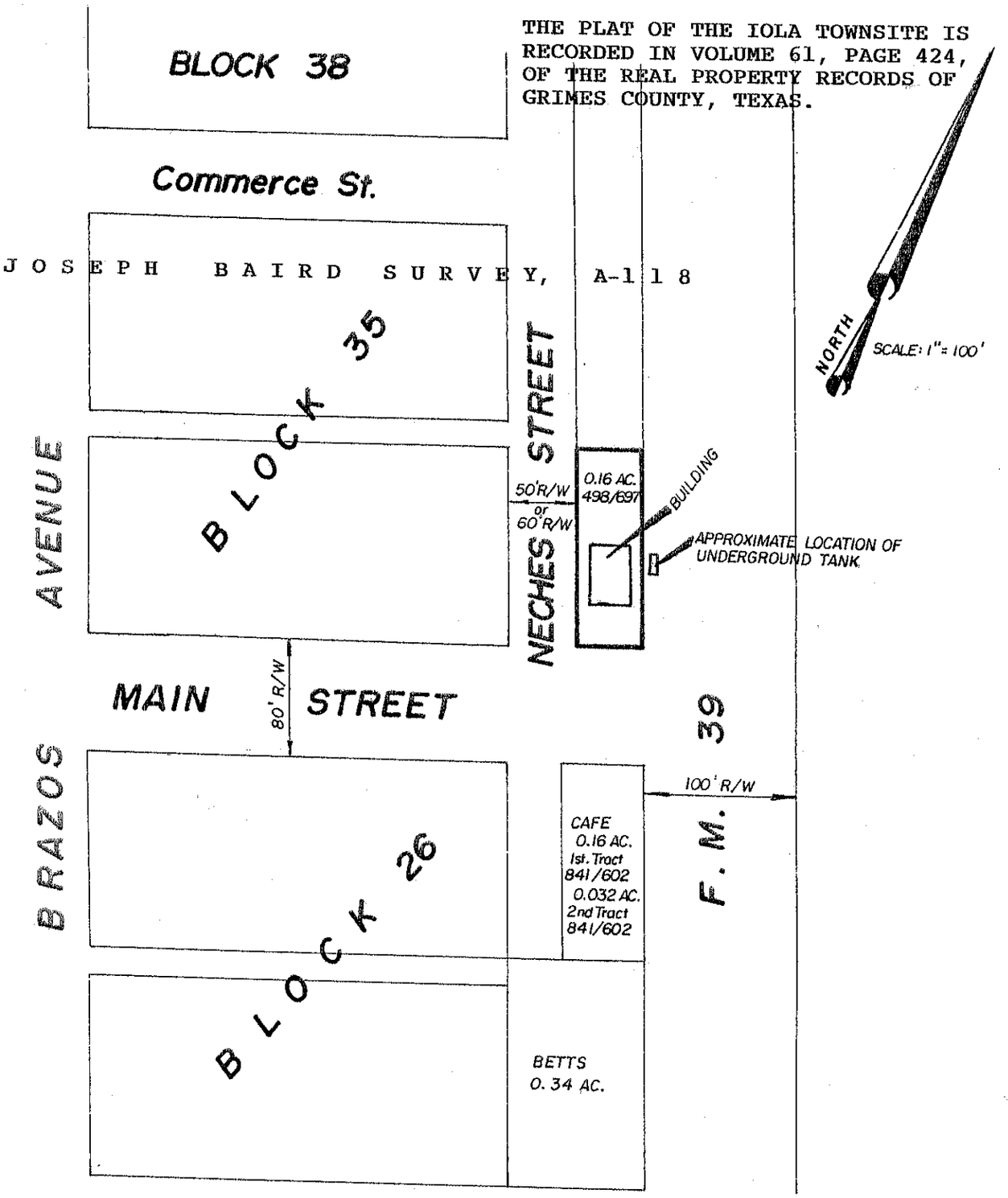
COUNTY OF BRAZOS :

This instrument was acknowledged before me on the 2nd day of December, 1983, by BOBBY L. HOLLIDAY.

NOTARY PUBLIC in and for
The State of Texas

My Commission expires: 11-21-84

Lanay A. Catlin
(type or print name of Notary)



This plat has been prepared in response to a controversy as to the location of an underground tank on the property of Mr. Ira Betts in the Town of Iola, Grimes County, Texas. The location of the property line between the Betts 0.16 acre tract and the right-of-way line of F. M. 39 is in question. According to Tax Maps and Deeds of Record to adjacent properties, the right-of-way of Neches Street is 50-feet. If that is true, the underground tank is on Highway Department Right-of-way. If the right-of-way of Neches Street is 60-feet as indicated on the recorded plat of the Iola Townsite, the underground tank is on Mr. Betts Tract. I have studied the situation to a large degree and I am unable to make a call either direction. It is open to interpretation. The recorded plat is very vague (unreadable) and County Officials, property owners and others have used a right-of-way of 50-feet numerous times in legal transactions. I would lean toward an accepted right-of-way width of 50-feet because of the widespread use of that width for many years in the past.

I am available to discuss this matter at any time. Please call me at 979-589-2457.

Martin L. Riley Jr.

Martin L. Riley, Jr., R.P.L.S.
Riley Engineering Company
7182 Riley Road
Bryan, Texas 77808

STATE OF TEXAS REGISTERED MARTIN L. RILEY, JR. 4089 PROFESSIONAL LAND SURVEYOR

7/28/04

EXHIBIT

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Depot
Feed Store
Stores
Main Street
Stores
IOLA
Existing County Road
Sta 0+00 Beginning FAS 61-A(1)
Control 917-7-1
Sta. 39+70.7 - 44+90.7
J.B. RICE
Deed
Vol. 149
0.61 Acres
Page 267
Δ = 19° 25'
D = 2°00'
T = 490.1
L = 970.8
E = 41.6'
P.C. = 33+19.9
P.T. = 43+80.7
J.B. RICE
P.I. 38+10
R.H. DUNHAM SURVEY
Sta. 44+60 to 60+20
R.E. CLEVELAND JR.
Deed
Vol. 129
3.106 Acres
Page 275
EXHIBIT
C

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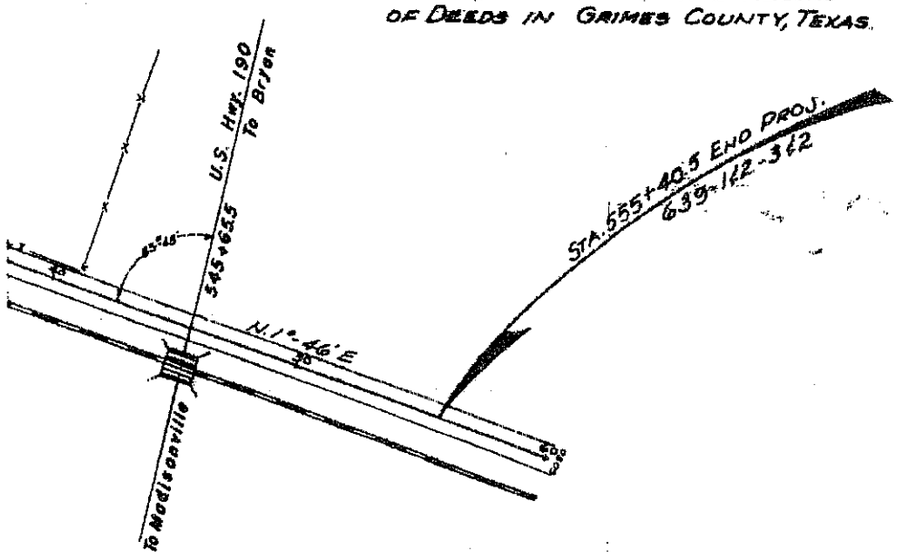
CONTROL 639 SECTION 1&2 JOB 3&2

THIS PROJECT WAS BUILT ON THE R.O.W. DEEDED TO GRIMES COUNTY & MADISON COUNTY BY THE HOUSTON & TEXAS CENTRAL RAILROAD COMPANY. THESE DEEDS APPEAR IN VOL. 44, PAGE 230 OF THE RECORD OF DEEDS IN MADISON COUNTY, TEXAS AND IN VOL. 132, PAGE 366 OF THE RECORD OF DEEDS IN GRIMES COUNTY, TEXAS.



TEXAS STATE HIGHWAY DEPARTMENT

RIGHT OF WAY MAP
GRIMES-MADISON COUNTIES
FROM IOLA TO NORTH ZULCH

FARM TO MARKET HIGHWAY NO. 39

LENGTH = 10.519 MILES

OFFICE OF DISTRICT ENGINEER BRYAN, TEXAS

DISTRICT NO. 17

MARCH, 1953

SCALE 1" = 400'

EXHIBIT C-1

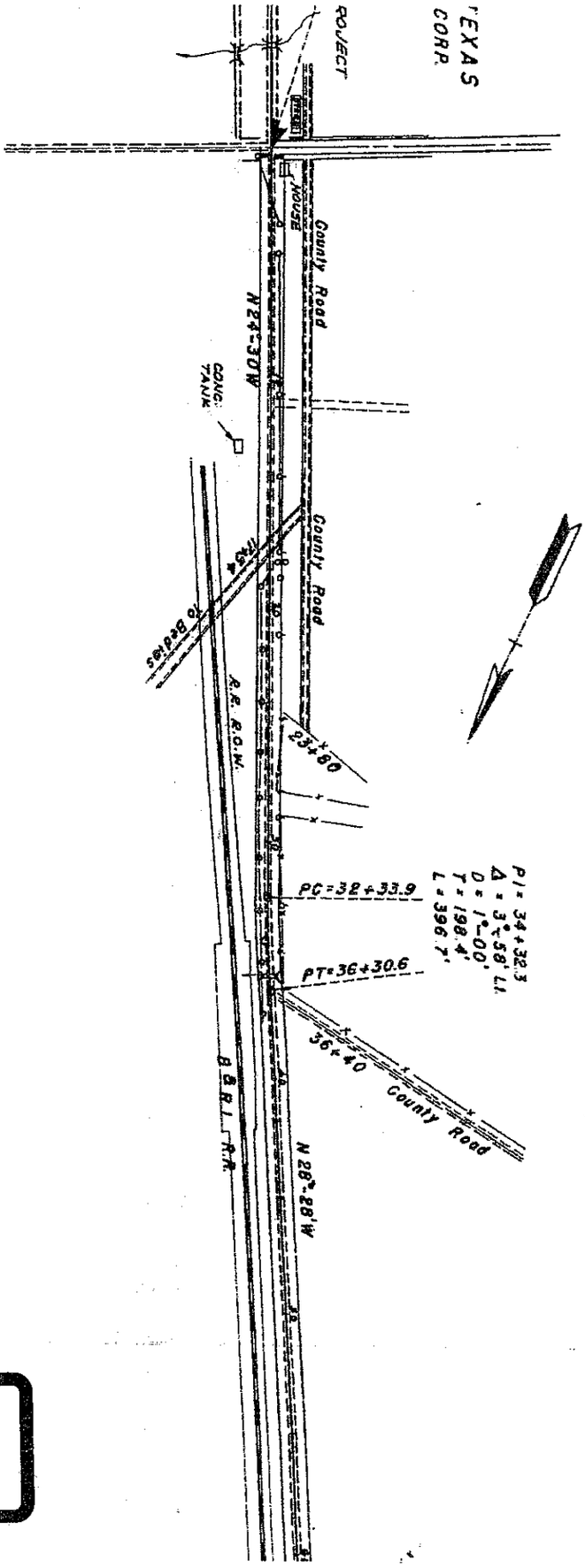
CORRECT: 3-4-53

Q.A. Vance

SR. RESIDENT ENGINEER

RECOMMENDED FOR APPROVAL:

DISTRICT ENGINEER



EXHIBIT

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C-2

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N 28°- 26' W

B. & R.I. R.R.

EXHIBIT
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THE STATE OF TEXAS) #12176 VOL 287 PAGE 448

COUNTY OF GRIMES)

KNOW ALL MEN BY THESE PRESENTS:

That the County of Grimes, acting by and through its duly authorized agent and County Judge, H. W. Haynie, and in pursuance to a resolution and order of the Commissioners Court of Grimes County, Texas, made on August 12, 1968, for and in consideration of the execution and delivery by A. B. Thomas and H. O. Thomas of deed conveying to Grimes County four certain parcels of land, being extensions of Fort Worth, Houston, Dallas and Cleburne Streets to F. M. Highway #39 within the town of Iola, Grimes County, Texas, more fully described therein, have Granted, Sold and Conveyed, and by these presents do Grant, Sell and Convey unto the said A. B. Thomas and H. O. Thomas of Grimes County, Texas, the following described tract or parcel of land, to-wit:

Being a portion of Neches Street in the town of Iola, Grimes County, Texas, and being 50 feet wide and 1300 feet long, lying immediately West of and adjacent to that certain 1.49 acres out of the J. Baird Survey in Grimes County, Texas, described as "Second" in deed from Southern Pacific Company to A. B. Thomas and H. O. Thomas of record in Volume 273, page 357, Deed Records of Grimes County, Texas, and

BEGINNING at the N. W. corner of said 1.49 acres tract;

THENCE Southerly along the West line of said 1.49 acres tract, a distance of 1300 feet to the N. W. corner of a certain 0.815 of an acre tract conveyed by Texas & New Orleans Railroad Company to Iola Independent School District by deed dated May 28, 1956 of record in Vol. _____, Page _____, Deed Records of Grimes County, Texas;

THENCE Westerly a distance of 50 feet to the N. E. corner of Block No. 2, of the town of Iola according to map thereof;

THENCE Northerly along the West line of Neches Street according to map of the town of Iola, Texas, a distance of 1300 feet to a stake in the East line of Block No. 26, of said town of Iola, Texas;

THENCE Easterly a distance of 50 feet to the place of beginning.

EXHIBIT F

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise

#12176 VOL 287 PAGE 449

belonging unto the said A. B. THOMAS and H. O. THOMAS, their heirs and assigns forever, and H. W. Haynie, County Judge of Grimes County, Texas, does hereby bind himself and his successors in office, to warrant and forever defend all and singular the said premises unto the said A. B. THOMAS and H. O. THOMAS, their heirs and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS MY HAND this 9th day of September, A. D. 1968.

H W Haynie
H. W. Haynie, County Judge of Grimes County, Texas

THE STATE OF TEXAS)

COUNTY OF GRIMES)

BEFORE ME, the undersigned authority, in and for Grimes County, Texas, on this day personally appeared H. W. Haynie, in his capacity as County Judge of Grimes County, Texas, and known to me to be the person whose name is subscribed to the foregoing instrument, acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 9 day of September, A. D. 1968.

Trinston Harris
County Clerk of Grimes County, Texas

THE STATE OF TEXAS
COUNTY OF GRIMES

THIS CERTIFIES that the foregoing instrument, with its certificates of authentication was filed for record in my office on the 18 day of Sept., A. D. 1968 and duly recorded by me on the 18 day of Sept., A. D. 1968 in Vol. 287, Page 448, of the Deed records of Grimes County, Texas.

Trinston Harris
County Clerk, Grimes County, Texas

GRIMES COUNTY ATTORNEY

Jon C. Fultz

382 FM 149 West · Anderson, Texas 77830
(936) 873-6455 · Fax (936) 873-6457

RECEIVED
MAR 19 2010
TCEQ
REGION 9 - WACO

March 18, 2010

Texas Commission on Environmental Quality
Attn: Jason Neumann
6801 Sanger Ave., Suite 2500
Waco, TX 76710

Re: Underground Fuel Tank in Iola, Grimes County, Texas

Dear Mr. Neumann:

Please allow this correspondence to confirm our telephone conversation of March 11, 2010 wherein you advised that the Texas Commission on Environmental Quality ("TCEQ" herein) was pursuing sanctions against Mr. Ira Betts in regards to an underground fuel tank located in Iola, Texas when TCEQ developed concerns regarding the ownership of property within which the tank lies. There has been a suggestion made that the tank may lie within a public road owned by Grimes County, Texas.

I have reviewed several maps and other documents to ascertain upon whose property the tank lies. Such documents are enclosed herewith. However, without a survey, it will be difficult to ascertain exactly where the tank lies in relation to the boundaries of Mr. Betts' property and the abutting public road.

Please note that because Iola became an incorporated municipality on November 6, 2007, any public roads lying within the municipal boundaries of Iola which were previously held in trust by Grimes County for the benefit of the public are now held by the Town of Iola as such trustee. Accordingly, regardless of whether the tank is solely within the boundaries of Mr. Betts' property, solely within the public road, or within portions of each, Grimes County should not be a party to your action.

If you have any questions, please do not hesitate to contact our office.

Sincerely,

Jon C. Fultz
Grimes County Attorney

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On March 11, 2010, the investigator received a phone call from Mr. Jon Fultz, Grimes County Attorney. Mr. Fultz informed the investigator that he was preparing a letter and would be submitting written information regarding the ownership of property within which the underground storage tank lies in Iola, Texas. On March 19, 2010, the Waco Regional Office received correspondence from Mr. Jon Fultz, Grimes County Attorney. Mr. Fultz indicates in the letter that he has reviewed several maps and other documents to ascertain upon whose property the tank lies. Howver, without a survey, it will be difficult to ascertain exactly where the tank lies in relation to the boundaries of Mr. Betts' property and the abutting public road. Mr. Fultz also noted that Iola became an incorporated municipality on November 6, 2007 and any public roads lying within the municipal boundaries of Iola which were previously held in trust by Grimes County for the benefit of the public are now held by the Town of Iola. The information received was scanned and forwarded to Mr. Richard on March 29, 2010 for further review.

A follow-up record review investigation will be conducted once a determination has been made to where the UST lies.

No Violations Associated to this Investigation

Signed _____ **Date** 4/5/10
Environmental Investigator

Signed _____ **Date** 4/6/2010
Supervisor

Attachments: (in order of final report submittal)

___Enforcement Action Request (EAR)
___Letter to Facility (specify type) : _____
Investigation Report
___Sample Analysis Results
___Manifests
___NOR
___Maps, Plans, Sketches
___Photographs
_X_Correspondence from the facility
___Other (specify) :

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TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2009 JUL 17 PM 4:22

CHIEF CLERKS OFFICE

TCEQ DOCKET NO. 2008-1814-PST-E

IN THE MATTER OF	§	BEFORE THE
AN ENFORCEMENT ACTION	§	
AGAINST	§	TEXAS COMMISSION ON
IRA BETTS;	§	
RN104047436	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S PRELIMINARY REPORT AND PETITION RECOMMENDING THAT THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ENTER AN ENFORCEMENT ORDER ASSESSING AN ADMINISTRATIVE PENALTY AGAINST AND REQUIRING CERTAIN ACTIONS OF IRA BETTS

INTRODUCTION

1. The Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ"), by and through a representative of the Litigation Division, hereby issues this Preliminary Report and Petition pursuant to TEX. WATER CODE § 7.054 and chs. 7 and 26 and 30 TEX. ADMIN. CODE chs. 70 and 334. Discovery related to this matter is intended to be conducted under Level 3 pursuant to TEX. R. CIV. P. 190.

2. Ira Betts ("Mr. Betts") is subject to the enforcement authority of the Commission pursuant to TEX. WATER CODE § 7.002 because the violations alleged herein are within the Commission's general jurisdiction, pursuant to TEX. WATER CODE § 5.013, as they involve violations of the state's petroleum storage tank program.

3. The Executive Director has come to the conclusion that Mr. Betts violated 30 TEX. ADMIN. CODE §§ 334.7(a)(1) and 334.47(a)(2). The Executive Director recommends that the Commission enter an order assessing an administrative penalty against Mr. Betts in the amount of six thousand three hundred dollars ($6,300.00). Further, the Executive Director recommends that the Commission order Mr. Betts to undertake such actions as are necessary to bring his operations into compliance with the Texas Water Code and TCEQ rules.

REVOCATION OF DELIVERY CERTIFICATE UPON FAILURE TO ANSWER OR FAILURE TO PARTICIPATE IN HEARING

4. **IT IS THE POLICY OF THE COMMISSION TO REVOKE UNDERGROUND STORAGE TANK ("UST") DELIVERY CERTIFICATES FOR FAILURE TO FILE AN ANSWER TO AN EXECUTIVE DIRECTOR'S REPORT AND**

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PETITION, TO FILE AN ANSWER AND NOT PARTICIPATE IN ANY HEARING HELD BY THE STATE OFFICE OF ADMINISTRATIVE HEARINGS, OR OTHERWISE DEFAULT ON AN ACTION.

5. **IF MR. BETTS DOES NOT FILE AN ANSWER TO THIS REPORT AND PETITION, FILES AN ANSWER AND DOES NOT PARTICIPATE IN ANY HEARING HELD BY THE STATE OFFICE OF ADMINISTRATIVE HEARINGS, OR OTHERWISE DEFAULTS ON THIS ACTION, THE ALLEGATIONS IN THIS PETITION WILL BE FOUND TO BE TRUE. BASED UPON THE FINDING THAT THE ALLEGATIONS ARE TRUE, MR. BETTS'S DEFAULT, AND THAT CORRECTIVE ACTION AND/OR PENALTIES ARE TO BE ORDERED, THE EXECUTIVE DIRECTOR WILL RECOMMEND THAT THE COMMISSION FIND GOOD CAUSE EXISTS PURSUANT TO 30 TEX. ADMIN. CODE § 334.8(c)(6)(A)(iii) TO REVOKE, AND WILL REQUEST THAT THE COMMISSION REVOKE, MR. BETTS'S UST DELIVERY CERTIFICATE PURSUANT TO 30 TEX. ADMIN. CODE § 334.8(c)(6) AND TEX. WATER CODE § 7.302(b). UPON REVOCATION, MR. BETTS WILL NOT HAVE A VALID DELIVERY CERTIFICATE AND WILL NOT BE ABLE TO ACCEPT DELIVERY OF PETROLEUM ANY OTHER REGULATED SUBSTANCE INTO ANY UNDERGROUND STORAGE TANK.**

FACTS SUPPORTING VIOLATIONS

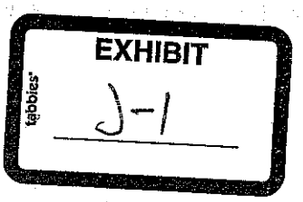
6. Mr. Betts owns real estate located at the junction of Farm-to-Market Roads 39 and 244 in Iola, Grimes County, Texas (the "Facility"). Mr. Betts's one underground storage tank ("USTs") is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Betts's USTs contain a regulated petroleum substance as defined in the rules of the Commission.

7. During an investigation conducted on October 6, 2008, a TCEQ Waco Regional Office investigator documented that Mr. Betts violated the following requirements:

   a. 30 TEX. ADMIN. CODE § 334.7(a)(1), by failing to register an UST with the agency. Specifically, the UST was never registered with the agency; and

   b. 30 TEX. ADMIN. CODE § 334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.

8. Mr. Betts received notice of the violations on or about October 16, 2008.



IMPOSITION OF PENALTY

9. Based on the facts supporting the violations, the Executive Director recommends that an administrative penalty be imposed pursuant to TEX. WATER CODE § 7.051. The Commission has the authority to assess an administrative penalty of up to $10,000 for each day of each violation under TEX. WATER CODE § 7.052.

AMOUNT OF PENALTY

10. In determining the amount of the penalty, the Commission is required by TEX. WATER CODE § 7.053 to consider:

a. the nature, circumstances, extent, duration, and gravity of the prohibited act, with special emphasis on the impairment of existing water rights or the hazard or potential hazard created to the health or safety of the public;

b. the impact of the violation on:
   i. air quality in the region;
   ii. a receiving stream or underground water reservoir;
   iii. instream uses, water quality, aquatic and wildlife habitat, or beneficial freshwater inflows to bays and estuaries; or
   iv. affected persons;

c. with respect to the alleged violator:
   i. the history and extent of previous violations;
   ii. the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;
   iii. the demonstrated good faith, including actions taken by the alleged violator to rectify the cause of the violation and to compensate affected persons;
   iv. economic benefit gained through the violation; and
   v. the amount necessary to deter future violations; and

d. any other matters that justice may require.

11. Based on the facts supporting the violations, and having considered the above-described factors, the Executive Director recommends that Mr. Betts be required to pay an administrative penalty in the amount of six thousand three hundred dollars ($6,300.00).

12. The penalty calculation worksheet ("PCW") for the recommended administrative penalty is attached hereto and incorporated herein by reference ("Attachment A"). The PCW sets forth each alleged violation and the statutory factors the Executive Director considered in determining the recommended administrative penalty.

EXHIBIT
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13. The Executive Director followed an established Penalty Policy approved by the Commission in calculating the penalty in this enforcement action. *See* Texas Commission on Environmental Quality Penalty Policy (September 1, 2002).

CORRECTIVE ACTION ORDERING PROVISIONS

14. Pursuant to TEX. WATER CODE § 7.073, if a person violates any statute or rule within the Commission's jurisdiction, the Commission may order the person to take corrective action.

15. The Executive Director recommends that Mr. Betts be required to implement the following corrective measures:

a. Within 30 days after the effective date of the Commission Order, permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55; and

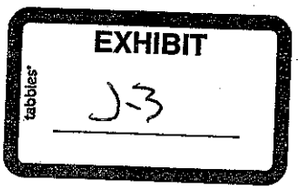
b. Within 45 days after the effective date of the Commission Order, register the UST in accordance with 30 TEX. ADMIN. CODE § 334.7 and send to:

Registration and Reporting Section
Permitting & Registration Support Division, MC 138
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

c. Within 60 days after the effective date of the Commission Order, Mr. Betts shall submit written certification and detailed supporting documentation, including photographs, receipts, and /or other records, to demonstrate compliance with Ordering Provision No. 15.a. and 15.b. 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."

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



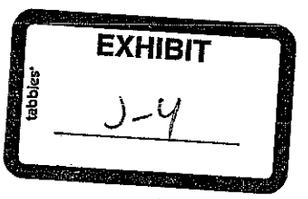
Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Frank Burleson, Waste Section Manager
Texas Commission on Environmental Quality
Waco Regional Office
6801 Sanger Avenue, Suite 2500
Waco, Texas 76710-7826

RESPONDENT'S RIGHTS AND RESPONSIBILITIES

16. According to TEX. WATER CODE § 7.056 and the TCEQ's procedural rules, Mr. Betts has a right to a hearing on the occurrence of the violations, the amount of the proposed penalty, or both. To preserve this right to a hearing, within 20 days after the day Mr. Betts receives this Preliminary Report and Petition, Mr. Betts must submit a written response to the Executive Director in accordance with TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105(a).



PRAYER

17. **ACCORDINGLY**, the Executive Director respectfully requests that the Commission enter an order, pursuant to TEX. WATER CODE chs. 7 and 26, assessing a penalty and granting other relief as requested above, together with any other relief the Commission finds appropriate.

Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G.
Executive Director

Stephanie Bergeron Perdue, Deputy Director
Office of Legal Services

Kathleen C. Decker, Division Director
Litigation Division

by _____
Barham A. Richard
State Bar of Texas No. 24056201
Litigation Division, MC 175
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-3400
(512) 239-3434 (FAX)

EXHIBIT
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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of July, 2009, the original of the foregoing "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Ira Betts" ("EDPRP") was filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

I further certify that on this day a true and correct copy of the foregoing EDPRP was mailed via Certified Mail, Return Receipt Requested Article No. **70022030000570579144**, and via First Class Mail, postage prepaid, to:

Mr. Ira Betts
Post Office Box 86
Iola, Texas 77861

I further certify that on this day a true and correct copy of the foregoing EDPRP was electronically submitted to the Office of the Public Interest Counsel, Texas Commission on Environmental Quality, Austin, Texas.

Barham A. Richard, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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CHIEF CLERKS OFFICE

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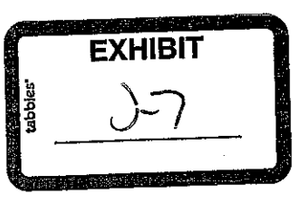
Attachment A
Penalty Calculation Worksheet



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision October 30, 2008*

TCEQ

DATES Assigned: 20-Oct-2008 | PCW: 29-Jun-2009 | Screening: 21-Nov-2008 | EPA Due:

RESPONDENT/FACILITY INFORMATION

Respondent	Ira Betts
Reg. Ent. Ref. No.	RN104047436
Facility/Site Region	9-Waco
Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	36828	No. of Violations	2
Docket No.	2008-1814-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Danielle Porras
		EC's Team	Enforcement Team 7

Admin. Penalty $ Limit Minimum: $0 Maximum: $10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1*: $6,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History — 5.0% Enhancement — *Subtotals 2, 3, & 7*: $300

Notes: Enhancement for one NOV with the same or similar violation.

Culpability: No — 0.0% Enhancement — *Subtotal 4*: $0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments — *Subtotal 5*: $0

Economic Benefit — *Subtotal 6*: $0

Total EB Amounts: $2,704
Approx. Cost of Compliance: $5,100

0.0% Enhancement*
**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal*: $6,300

OTHER FACTORS AS JUSTICE MAY REQUIRE: 0.0% — *Adjustment*: $0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount: $6,300

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty*: $6,300

DEFERRAL: 0.0% Reduction — *Adjustment*: $0

Reduces the Final Assessed Penalty by the indicted percentage. *(Enter number only; e.g. 20 for 20% reduction.)*

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY: $6,300

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Screening Date 21-Nov-2008 **Docket No.** 2008-1814-PST-E **PCW**

Policy Revision 2 (September 200

PCW Revision October 30, 200

Respondent Ira Betts

Case ID No. 36828

Reg. Ent. Reference No. RN104047436

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Danielle Porras

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which notices were submitted)*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%

		Please Enter Yes or No	
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> **Repeat Violator (Subtotal 3)**

No

Adjustment Percentage (Subtotal 3) 0%

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

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for one NOV with the same or similar violation.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

EXHIBIT

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Screening Date 21-Nov-2008 **Docket No.** 2008-1814-PST-E **PCW**

Respondent Ira Betts *Policy Revision 2 (September 2002)*

Case ID No. 36828 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN104047436

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Danielle Porras

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.7(a)(1)

Violation Description Failed to register an underground storage tank ("UST") with the agency. Specifically, the UST was never registered with the agency.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

	Release	Harm: Major	Moderate	Minor
OR	Actual			
	Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events: 1 — 47 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $1,000

One event is recommended based on documentation of the violation during the October 6, 2008 investigation.

Good Faith Efforts to Comply

0.0% Reduction — $0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes: The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal $1,000

Economic Benefit (EB) for this violation

Estimated EB Amount: $5

Statutory Limit Test

Violation Final Penalty Total $1,050

This violation Final Assessed Penalty (adjusted for limits) $1,050

EXHIBIT

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Economic Benefit Worksheet

Respondent Ira Betts
Case ID No. 36828
Reg. Ent. Reference No. RN104047436
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)	$100	6-Oct-2008	6-Oct-2009	1.00	$5	n/a	$5
Notes for DELAYED costs	Estimated cost to accurately prepare and submit an updated UST registration. The date required is the date of the investigation and the final date is the estimated date of compliance.						
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Notes for AVOIDED costs							
Approx. Cost of Compliance	$100					TOTAL	$5

Screening Date 21-Nov-2008 **Docket No.** 2008-1814-PST-E **PCW**

Respondent Ira Betts

Policy Revision 2 (September 2002)

Case ID No. 36828

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104047436

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Danielle Porras

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.47(a)(2)

Violation Description Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

	Release	Harm: Major	Moderate	Minor
OR	Actual			
	Potential	x		

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events: 2 — 47 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $5,000

Two monthly events are recommended based on documentation of the violation during the October 6, 2008 investigation to the November 21, 2008 screening date.

Good Faith Efforts to Comply 0.0% Reduction — $0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes: The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal $5,000

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount $2,699 **Violation Final Penalty Total** $5,250

This violation Final Assessed Penalty (adjusted for limits) $5,250

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Economic Benefit Worksheet

Respondent Ira Betts
Case ID No. 36828
Reg. Ent. Reference No. RN104047436
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
	No commas or $						
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)	$5,000	22-Dec-1998	6-Oct-2009	10.80	$2,699	n/a	$2,699
Notes for DELAYED costs	Estimated minimum cost to permanently remove from service the UST system. The date required is the date the Respondent was required to upgrade the UST system and the final date is the estimated date of compliance.						
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Notes for AVOIDED costs							

Approx. Cost of Compliance $5,000

TOTAL $2,699

EXHIBIT
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