



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

To the extent that the Administrative Law Judge's Proposal for Decision is inconsistent with these recommended modifications, the Executive Director excepts to the Proposal for Decision. A copy of the Proposed Order with the recommended modifications is attached.

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



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Steven M. Fishburn  
State Bar of Texas No. 24050600  
Litigation Division, MC 175  
P.O. Box 13087  
Austin, TX 78711  
(512) 239-0635  
(512) 239-3434 (FAX)

**CERTIFICATE OF SERVICE**  
**Ira Betts**  
**SOAH Docket No. 582-10-0209**  
**TCEQ Docket No. 2008-1814-PST-E**

I hereby certify that on this 25th day of October, 2010, the original and 7 copies of the foregoing "Executive Director's Exceptions and Suggested Modifications to the Administrative Law Judge's Proposed Order" ("Modifications") were 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 Modifications were sent to the following:

**Via Inter-Agency Mail and Via Facsimile to (512) 475-4994**

The Honorable Richard R. Wilfong  
State Office of Administrative Hearings  
300 W. 15<sup>th</sup> Street, Suite 504  
Austin, Texas 78701-1649

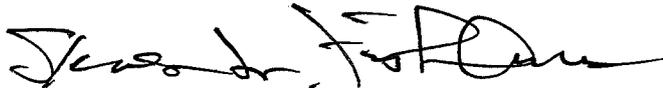
**Via Certified Mail, Postage Prepaid**

Mr. Philip C. Banks  
The Law Offices of Philip C. Banks  
500 East 29<sup>th</sup> Street  
Bryan, Texas 77803

**Article No. 7010 0290 0002 7775 1459**

**Via electronic mail**

Blas Coy, Public Interest Counsel



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Steven M. Fishburn  
Attorney  
Litigation Division  
Texas Commission on Environmental Quality

THE UNIVERSITY OF CHICAGO  
DEPARTMENT OF CHEMISTRY  
PHYSICAL CHEMISTRY LABORATORY

MEMORANDUM FOR THE RECORD  
DATE: 10/10/50  
SUBJECT: [Illegible]

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**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**



**AN ORDER Assessing Administrative Penalties Against and  
Requiring Corrective Action by  
Ira Betts  
TCEQ DOCKET NO. 2008-1814-PST-E  
SOAH DOCKET NO. 582-10-0209**

On \_\_\_\_\_, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's Preliminary Report and Petition (EDPRP) recommending that the Commission enter an enforcement order assessing administrative penalties against and seeking corrective action from Ira Betts (Respondent). Richard R. Wilfong, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted a public hearing on this matter on August 31, 2010, in Austin, Texas, and presented the Proposal for Decision.

The following are parties to the proceeding: Respondent and the Commission's Executive Director (ED).

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

**I. FINDINGS OF FACT**

1. Ira Betts (Respondent) owns property formerly used for a retail gasoline service station at the intersection of FM 39 and FM 244 in Iola, Grimes County, Texas (Property).

2. Respondent acquired the Property by General Warranty Deed dated December 2, 1983.
3. One non-exempt underground storage tank (UST) is located on the Property.
4. On August 7, 2007, TCEQ Investigator Jason Neumann conducted an investigation and documented that the UST on Respondent's Property was not in compliance with registration and permanent removal from service requirements. As a result of his inspection, Investigator Neumann determined that Respondent had committed two violations of the TCEQ rules regarding USTs.
5. There was no evidence of corrosion or cathodic protection on Respondent's UST.
6. There was no evidence of spill or overfill prevention on Respondent's UST.
7. Respondent had not registered the UST with the TCEQ.
8. Respondent is an owner of the Property, presumed to be the owner of the UST, and is responsible for compliance with the rules of TCEQ pursuant to 30 TEX. ADMIN. CODE (TAC) §§ 334.1(b)(3) and 334.2(73).
9. On October 16, 2008, the ED issued a Notice of Enforcement letter to Respondent.
10. On July 17, 2009, the ED issued the EDPRP to Respondent in accordance with TEX. WATER CODE ANN. (Code) § 7.054, alleging that Respondent violated 30 TAC § 334.7(a)(1) by failing to register the UST with TCEQ, and violated § 334.47(a)(2) by failing to permanently remove the UST from service.
11. The ED recommended the imposition of an administrative penalty in the total amount of \$6,300, and corrective action to bring the Property into compliance.

12. An administrative penalty of \$6,300 takes into account culpability, economic benefit, good faith efforts to comply, compliance history, release potential, and other factors set forth in Code § 7.053 and in the Commission's 2002 Penalty Policy.
13. On August 7, 2009, Respondent requested a contested case hearing on the allegations in the EDPRP.
14. On September 8, 2009, the case was referred to SOAH for a contested case hearing.
15. On October 5, 2009, the Commission's Chief Clerk issued notice of the preliminary hearing to Respondent, which included the date, time, and place of the hearing, the legal authority under which the hearing was being held, and the violations asserted.
16. At the preliminary hearing that was held on November 5, 2009, the ED established jurisdiction to proceed.
17. The hearing on the merits was conducted on August 31, 2010, in Austin, Texas, by ALJ Richard R. Wilfong
18. Respondent represented himself at the hearing, appearing by telephone. The ED was represented by Steven M. Fishburn, attorney in TCEQ's Litigation Division.

## **II. CONCLUSIONS OF LAW**

1. Under Code § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Code within the Commission's jurisdiction or of any rule, order, or permit adopted or issued thereunder.
2. Under Code § 7.052, a penalty may not exceed \$10,000 per violation, per day, for the violations at issue in this case.
3. Respondent is subject to the Commission's enforcement authority, pursuant to Code § 7.002.

Additionally, the Commission may order the violator to take corrective action, pursuant to Code § 7.073.

4. As required by Code § 7.055 and 30 TAC §§ 1.11 and 70.104, Respondent was notified of the EDPRP and of the opportunity to request a hearing on the alleged violations, or the penalties and the corrective actions proposed therein.
5. As required by TEX. GOV'T CODE ANN. §§ 2001.051(1) and 2001.052; Code § 7.058; 1 TAC § 155.27, and 30 TAC §§ 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.
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 Respondent violated 30 TAC §§ 334.7(a)(1) and 334.47(a)(2).
8. In determining the amount of an administrative penalty, Code § 7.053 requires the Commission to consider several factors including:
  - 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.
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 Code § 7.053, and the Commission's Penalty Policy, the ED correctly calculated the penalties for the alleged violations and a total administrative penalty of \$6,300 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 measures that the ED 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. Ira Betts is assessed an administrative penalty in the amount of \$6,300 for violation of 30 TAC §§ 334.7(a)(1) and 334.47(a)(2). The payment of this administrative penalty and Ira Betts' compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. 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: Ira Betts; TCEQ Docket No. 2008-1814-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 from the effective date of the Commission Order, Respondent shall permanently remove the UST in accordance with 30 TAC § 334.55.
3. Within 45 days after the effective date of the Commission Order, Respondent shall submit a completed registration for the UST in accordance with 30 TAC § 334.7 to:

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

4. Within 60 days after the effective date of the Commission Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions 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 fine and imprisonment for knowing violations."

The certification shall be submitted 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:

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

5. The ED may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Respondent if the 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 TAC § 80.273 and TEX. GOV'T CODE ANN. § 2001.144.
8. The Commission's Chief Clerk shall forward a copy of this Order to Respondent.
9. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

**ISSUED:**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

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