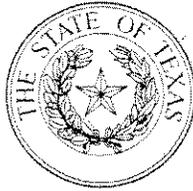


# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

July 6, 2011

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

Re: SOAH Docket No. 582-11-1398; TCEQ Docket No. 2009-1377-MLM-E;  
In Re: IN THE MATTER OF AN ENFORCEMENT ACTION AGAINST  
THOMAS V. HOPE D/B/A SWT FARM & RANCH SUPPLY

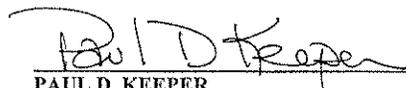
Dear Mr. Trobman:

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 Tuesday, July 26, 2011. Any replies to exceptions or briefs must be filed in the same manner no later than Friday, August 5, 2011

This matter has been designated **TCEQ Docket No. 2009-1377-MLM-E; SOAH Docket No. 582-11-1398**. 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,

  
\_\_\_\_\_  
PAUL D. KEEPER  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

PDK:cm  
Enclosures 1 audio CD and Exhibit Certification.  
cc: Mailing List

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SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)  
STYLE/CASE: THOMAS V. HOPE / SWT FARM & RANCH SUPPLY  
SOAH DOCKET NUMBER: 582-11-1398  
REFERRING AGENCY CASE: 2009-1377-MLM-E

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STATE OFFICE OF ADMINISTRATIVE  
HEARINGS

ADMINISTRATIVE LAW JUDGE  
ALJ PAUL D. KEEPER

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REPRESENTATIVE / ADDRESS

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EXECUTIVE DIRECTOR

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(830) 663-2885 (PH)  
(830) 665-4709 (CELL)

SWT FARM & RANCH SUPPLY

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**SOAH DOCKET NO. 582-11-1398**  
**TCEQ DOCKET NO. 2009-1377-MLM-E**

<b>IN THE MATTER OF AN</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>ENFORCEMENT ACTION AGAINST</b>	§	
<b>THOMAS V. HOPE,</b>	§	<b>OF</b>
<b>d/b/a SWT FARM &amp; RANCH SUPPLY,</b>	§	
<b>RN101898229</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) seeks an order against Thomas V. Hope, d/b/a SWT Farm & Ranch Supply, Devine, Texas, in Medina County. The order would require Mr. Hope to permanently remove three underground storage tanks and pay an administrative penalty. The administrative law judge (ALJ) recommends that the order be issued.

**I. JURISDICTION AND NOTICE**

No party disputed notice or jurisdiction of the Commission or of the State Office of Administrative Hearings (SOAH). These matters are addressed in the proposed order.

**II. PROCEDURAL HISTORY**

In the 1980s, Mr. Hope operated a farm and ranch supply store at 102 North Bright Drive in Devine, Texas. The site, formerly a service station, has three inactive 13,000 gallon, single-wall, steel underground storage tanks. The tanks were installed in 1980 and were used for the storage of automotive fuels.<sup>1</sup> In 1999, the ED inspected the site and notified Mr. Hope that it was noncompliant with TCEQ's underground storage tank laws.<sup>2</sup> Despite the ED's written demand that Mr. Hope cure the violations, Mr. Hope did not bring the property into compliance.

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<sup>1</sup> ED Ex. 4 at 1.

<sup>2</sup> ED Exs. 2 and 3.

On September 13, 2010, the ED informed Mr. Hope that it would seek an order requiring Mr. Hope to remove the tanks and pay an administrative penalty of \$10,500.<sup>3</sup> On October 1, 2010, Mr. Hope filed a written request for a hearing, explaining that the tanks had been empty for at least ten years.<sup>4</sup> On December 27, 2010, Mr. Hope received the ED's notice that SOAH would convene a hearing on the ED's claims.<sup>5</sup> On April 29, 2011, the ED amended its list of alleged violations and reduced the proposed administrative penalty to \$9,000.<sup>6</sup>

On May 19, 2011, the ALJ convened the hearing on the merits. Mr. Hope represented himself, and Peipey Tang, a staff attorney, represented the ED. The hearing concluded the same day. The parties agreed that by June 9, 2011, each could submit responses to the other's proposed findings of fact and conclusions of law. On that day, the administrative record closed.

### III. GOVERNING LAWS

#### A. Underground Storage Tanks

##### 1. Corrosion protection system

The TCEQ requires that all underground storage tanks have corrosion protection systems.<sup>7</sup> The systems must be designed, installed, operated, and maintained so that corrosion protection will be continuously provided to a tank's underground metal components. The tanks and their components must be built with noncorrodible material or must be electrically isolated from the corrosive elements of the surrounding water or earth. An approved form of electric isolation includes cathodic protection.

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<sup>3</sup> ED Ex. A.

<sup>4</sup> ED Ex. B.

<sup>5</sup> ED Ex. E.

<sup>6</sup> ED Ex. 1. At the hearing, the ED proposed that the penalty be further reduced to \$3,600.

<sup>7</sup> 30 TEX. ADMIN. CODE (TAC) § 334.49(a).

## 2. Vent lines

Underground storage tank systems that are temporarily removed from service must include vent lines that are to be kept open and functioning.<sup>8</sup>

## 3. Temporary versus permanent removal from service

An underground storage tank system is considered to be temporarily out of service when the system is deliberately, but temporarily, discontinued for any reason or when the system's release detection procedures have been determined to be inadequate.<sup>9</sup> The deadline by which underground storage tanks installed in 1980 must have been brought into compliance with the agency's corrosion protection rules was December 22, 1993.<sup>10</sup> If an existing system had not been brought into timely compliance, then the system could no longer be considered temporarily out of service and must have been permanently removed from service within 60 days of the implementation date.<sup>11</sup>

Permanent removal may be achieved by removing the tank from the ground, abandoning the tank in-place, or conducting a permanent change-in-service.<sup>12</sup> Abandoning the tank in-place requires the tank to be filled with a solid inert material, like sand, fine gravel, or cement/concrete slurries.<sup>13</sup> A permanent change-in-service requires a tank to be emptied, cleaned, and purged of

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<sup>8</sup> 30 TAC § 334.54(b)(1)

<sup>9</sup> 30 TAC § 334.54(a).

<sup>10</sup> 30 TAC § 334.44(b)(1)(D)(1)(vi).

<sup>11</sup> 30 TAC § 334.47(a)(2).

<sup>12</sup> 30 TAC § 334.55(a)(1).

<sup>13</sup> 30 TAC § 334.55(c)(2)(A).

vapors before being used for another purpose.<sup>14</sup> An owner's failure to comply with permanent removal may result in the Commission's issuance of a shut-down order.<sup>15</sup>

#### **4. Notice of changes**

An owner of an underground storage tank system must file with TCEQ notice of any change or additional information about the status, use, or condition of the system. The filing must be made within 30 days from the date of the change or addition.<sup>16</sup>

#### **5. Payment of fees**

The owner of an underground storage tank system must pay annual fees and, if the fees are unpaid, interest and penalties.<sup>17</sup>

### **B. Municipal Solid Waste**

Municipal solid waste includes garbage, rubbish, street cleanings, and all other solid waste other than industrial solid waste.<sup>18</sup> A person who stores municipal solid waste must have a permit.<sup>19</sup> A person who stores municipal solid waste must not: (1) discharge the waste or create an imminent threat of discharge of the waste without a permit; (2) create or maintain the waste as a nuisance; or (3) endanger human health and welfare or the environment.<sup>20</sup>

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<sup>14</sup> 30 TAC § 334.55(d).

<sup>15</sup> TEX. WATER CODE §§ 26.3475(e) and 26.352(k).

<sup>16</sup> 30 TAC § 334.7(d)(3).

<sup>17</sup> 30 TAC § 334.22.

<sup>18</sup> 30 TAC § 330.3(88).

<sup>19</sup> 30 TAC § 330.7(a).

<sup>20</sup> 30 TAC § 330.15(a).

#### IV. EVIDENCE AND ANALYSIS

##### A. ED's Inspections and Reports

###### 1. Alleged violations

On July 30, 1999, Alan Jones, a member of the ED's staff, inspected Mr. Hope's facility. He found that the site had three 13,000-gallon underground storage tanks, but the registration for the site inaccurately included a 3,000-gallon underground storage tank that was actually located at another location.

Mr. Hope demonstrated to Mr. Jones that he had tried to hire a contractor to remove the three 13,000-gallon tanks, but the removal process had been stopped when Mr. Hope disputed the contract amount.<sup>21</sup> The removal work was not resumed, and Mr. Jones' photographs showed an abandoned facility at which an underground storage tank removal project had also been abandoned.

Mr. Jones informed Mr. Hope that his facility violated a number of the TCEQ's rules, including failure to: (1) install or maintain corrosion protection systems; (2) permanently remove the tanks from service by the deadline because of their loss of temporary out-of-service status; (3) maintain the vent lines to the tanks in a functional condition; and (4) update the facility registration to accurately reflect the number of underground storage tanks.<sup>22</sup> Mr. Jones issued a violation report to Mr. Hope with instructions that Mr. Hope's site come into compliance.

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<sup>21</sup> Mr. Hope agreed to pay a contractor \$4,631 for the removal. The contractor began the project. When Mr. Hope learned that the contractor intended to charge \$46,031, Mr. Hope canceled the removal project.

<sup>22</sup> ED Ex. 2.

On September 30, 1999, Mr. Jones reinspected Mr. Hope's facility and found that none of the conditions had changed.<sup>23</sup> In addition to the violations identified in July, Mr. Jones informed Mr. Hope that he had also failed to provide the financial assurance required by law.<sup>24</sup>

Nearly ten years later, on June 9, 2009, Cameron Lopez, a member of the ED's staff, conducted another compliance investigation of Mr. Hope's facility.<sup>25</sup> Mr. Lopez found no changes in the conditions identified by Mr. Jones ten years before. In addition, Mr. Lopez found about four cubic yards of municipal solid waste at the site, including several 55-gallon drums, five-gallon pails, and one-gallon cans containing waste oil, water, and other substances. Mr. Lopez considered these to create a nuisance condition that posed an imminent threat to the environment.<sup>26</sup> On July 30, 2009, Mr. Lopez issued an investigation report that added an alleged violation of the TCEQ rule prohibiting the improper storage of municipal solid waste.<sup>27</sup>

## 2. ED's proposed remedy

At the hearing, the ED asked that Mr. Hope be ordered to permanently remove the three underground storage tanks and pay a penalty of \$3,600. The ED recommended that the penalty be paid at the rate of \$100 per month over a period of three years. The reduced penalty was based on the calculations of John Martinez, a financial analyst for the ED, about Mr. Hope's ability to pay.<sup>28</sup> Mr. Martinez's recommendation did not take into account Mr. Hope's living expenses or medical expenses. Under the ED's proposal, Mr. Hope would have to remove the tanks within 180 days after the effective date of the proposed order, with the possibility that he

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<sup>23</sup> ED Ex. 3.

<sup>24</sup> 30 TAC § 334.92(a) and (b).

<sup>25</sup> ED Ex. 4.

<sup>26</sup> 30 TAC § 330.15(a).

<sup>27</sup> 30 TAC ch. 330.

<sup>28</sup> ED Ex. 23.

could seek an extension of that period by submitting a written request supported by evidence that the property is still for sale.<sup>29</sup>

## **B. Mr. Hope's Responses**

### **1. Maintenance and removal of the tanks**

Mr. Hope offered no documentary evidence, but he described his efforts to find someone to remove the three tanks at a price that he could afford. He obtained two bids for the tanks' removal, one for about \$2,000 and, through a referral from the ED, another for \$33,150.<sup>30</sup> The first bid was from a friend who was not licensed, a service that the ED would not authorize. The second bid was from a list of TCEQ-licensed tank-removal services. The \$33,150 bid was beyond Mr. Hope's financial means.

Mr. Hope explained that he and his wife live on Social Security. His wife has health problems. The couple has a small savings on which they depend for emergencies. If Mr. Hope were to pay \$33,150 for the removal of the tanks, he and his wife would have no financial cushion to pay Mrs. Hope's medical bills. Mr. Hope is 80 years old, and his wife is 78 years old. The property on which the underground storage tanks are located has been for sale for more than two years. Mr. Hope has agreed to fund the cost of removal of the tanks from any proceeds from the sale of the property.

Mr. Hope did not contest the ED's allegations that the tanks had no cathodic protection or that the vent lines were nonfunctional. The ED produced photographs of the lines, showing that

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<sup>29</sup> The ED initially proposed that Mr. Hope pay a \$9,000 penalty and that the penalty be paid within 30 days after the effective date of the ED's proposed order. ED Ex. 1 at 5.

<sup>30</sup> The ED's representative gave Mr. Hope the name of a list of small business contractors from which to find a licensed removal company. It was from this list that Mr. Hope got the \$31,150 bid. Although not precisely the same, these amounts are in the range of the numbers that Mr. Jones noted in his report.

they were below grade and capped with empty plastic soft drink bottles.<sup>31</sup> Mr. Hope explained that the vent lines had been capped to keep dirt from getting in them. He asserted that there was little need, if any, to vent the tanks since they had been empty and unused for more than a decade. To ensure that nothing could be put in the tanks, Mr. Hope had put locks on the fill caps.<sup>32</sup> Mr. Hope made clear that he had tried to comply with the rules by doing all that made sense to him and that was within his means.

## **2. Notice of changes**

Mr. Hope did not explain his failure to file with the TCEQ an accurate record about his underground storage tanks.

## **3. Payment of fees**

Mr. Hope explained that he had paid his annual filing fees until the TCEQ stopped sending him invoices for payment. He later learned that the agency had mistakenly dropped his name from the list of persons to whom invoices were mailed, resulting in his violation of the rule.

## **4. Municipal solid waste**

Mr. Hope explained that the site had suffered a fire a few years after Mr. Jones' 1999 inspection. The containers held some of the mess left behind after the fire was extinguished. Mr. Hope agreed that waste oil was in some of the containers but only on the surface of water that had filled them. He asserted that the items posed no threat to the environment.

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<sup>31</sup> ED Ex. 4 at 41, photo 5.

<sup>32</sup> ED Ex. 4 at 39, photo 4.

## 5. Proposed penalty

Mr. Hope expressed his willingness to maintain the property for sale so he could take advantage of the reduced penalty, but he also expressed concern about the TCEQ's potential legal action against his property and the threat to his and his wife's financial future.

### C. Analysis

Mr. Hope's explanations related to how these conditions developed, but he did not refute any of the information in the exhibits or testimony offered by the ED. Mr. Hope did not disagree with the ED's allegations that his acts violated the laws. He attempted to show that he had done the best that he could to correct the violations at his site, given his limited resources. He repeatedly stressed that he would do more to comply when his property is sold. He also emphasized his concern that the ED not mistake his explanations as rudeness or lack of cooperation.

As Mr. Hope acknowledged, his site in Devine does not comply with the TCEQ's laws governing underground storage tanks. Specifically, the tanks' status as temporarily out of service was compromised by Mr. Hope's failure to install and maintain a corrosion protection system and a functional ventilation system, as required by 30 TAC § 334.54(b)(1). Mr. Hope's inaction supports a legal conclusion that his tanks are subject to permanent removal, as required by 30 TAC § 334.47(a)(2). The facts also support conclusions that: (1) Mr. Hope has failed to notify the TCEQ about the correct number of underground storage tanks at the site, as provided in 30 TAC § 334.7(d)(3); and (2) the accumulation of the municipal solid waste at the site violates 30 TAC § 330.15(a).

The ED's penalty provision is reasonable and appropriate under the circumstances. Specifically, Mr. Hope should be required to remove the three underground storage tanks and to pay an administrative penalty of \$3,600 over a period of three years, and the period by which

Mr. Hope must come into compliance should be 180 days from the issuance of a final administrative order, subject to his right to submit written requests for extensions, contingent on his efforts to sell the property at a price that is reasonable in the market.

**Signed July 6, 2011.**

  
\_\_\_\_\_  
PAUL D. KEEPER  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**



**AN ORDER  
IN THE MATTER OF AN ENFORCEMENT ACTION AGAINST THOMAS V.  
HOPE, d/b/a SWT FARM & RANCH SUPPLY, RN101898229  
TCEQ DOCKET NO. 2009-1377-MLM-E  
SOAH DOCKET NO. 582-11-1398**

On \_\_\_\_\_, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Proposal for Decision (PFD) regarding Thomas V. Hope, d/b/a SWT Farm & Ranch Supply, (Respondent), which was presented by Paul D. Keeper, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who issued the PFD on July 1, 2011.

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

**I. FINDINGS OF FACT**

1. Thomas V. Hope d/b/a SWT Farm & Ranch Supply ("Respondent") owns real property located at 102 North Bright Drive in Devine, Medina County, Texas (the "Facility").
2. Respondent owns the underground storage tank ("UST") system at the Facility. The UST system is not exempt or excluded from regulation under the Texas Water Code or the rules of the Texas Commission on Environmental Quality.

3. The Facility involves the management and/or disposal of municipal solid waste (“MSW”) as defined in TEX. HEALTH & SAFETY CODE ch. 361.
4. Respondent is the owner of the Facility and is responsible for compliance with the rules of TCEQ pursuant to 30 TEX. ADMIN. CODE (TAC) § 334.2(73) and TEX. WATER CODE § 26.342(9).
5. On June 10, 2009, TCEQ investigator Cameron Lopez conducted an inspection of Respondent’s Facility and observed violations of the TCEQ rules relating to underground storage tanks and municipal solid waste.
6. On August 7, 2009, the Executive Director issued a Notice of Enforcement to Respondent.
7. On August 25, 2009, TCEQ enforcement coordinator Brianna Carlson conducted a record review of Respondent’s outstanding TCEQ fees and documented an outstanding UST fee and associated late fees for the Respondent.
9. On October 1, 2010, Respondent requested a contested case hearing on the allegations in the EDFARP, and on November 15, 2010, the Chief Clerk referred this dispute to SOAH for hearing.
10. A Notice of Hearing was issued on December 23, 2010.
11. The preliminary hearing was on February 3, 2011, before ALJ William Newchurch, at SOAH, William P. Clements Building, Fourth Floor, 300 West 15th Street, Austin, Texas.
12. On April 29, 2011, the Executive Director issued the Executive Director’s First Amended Report and Petition (“EDFARP”), in accordance with TEX. WATER CODE § 7.055, alleging that Respondent violated 30 TAC § 334.47(a)(2) by

failing to permanently remove the UST 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; 30 TAC § 334.54(b)(1), by failing to keep all vent lines open and functioning; 30 TAC §§ 330.7(a), 330.15(a), and 330.15(c), by failing to prevent the unauthorized disposal and discharge of municipal solid waste; and 30 TAC § 334.22(a) and TEX. WATER CODE § 5.702, by failing to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0014818U for fiscal year 2007.

13. The hearing on the merits convened on May 19, 2011, before ALJ Paul Keeper, also at SOAH, William P. Clements Building, Fourth Floor, 300 West 15th Street, Austin, Texas. The Executive Director was represented by staff attorney, Peipey Tang. Respondent represented himself. The record closed that day.
14. Respondent failed to provide corrosion protection and spill and overfill prevention equipment for the UST at the Facility and therefore did not meet upgrade requirements.
15. Respondent failed to 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 was not brought into timely compliance with the upgrade requirements.
16. Respondent failed to keep the UST system vent lines open and functioning.
17. Respondent failed to prevent the unauthorized disposal and discharge of municipal solid waste.
18. Respondent failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0014818U for fiscal year 2007.

19. The Executive Director calculated an administrative penalty of nine thousand dollars (\$9,000.00) pursuant to the Commission's 2002 Penalty Policy.
20. An administrative penalty of nine thousand dollars (\$9,000.00) takes into account the factors contained in TEX. WATER CODE § 7.053 and the Commission's 2002 Penalty Policy.
21. The TCEQ Financial Administration Division performed a financial review to determine Respondent's ability to pay the proposed administrative penalty and recommends an administrative penalty of three thousand six hundred dollars (\$3,600.00) to be paid in thirty-six (36) monthly installments of one hundred dollars (\$100.00) contingent on Respondent completing the requested corrective actions.
22. The Executive Director recommends an administrative penalty of three thousand six hundred dollars (\$3,600.00) to be paid in thirty-six (36) monthly installments of one hundred dollars (\$100.00) contingent on Respondent completing the requested corrective actions.

## **II. CONCLUSIONS OF LAW**

1. Under TEX. WATER CODE § 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 § 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 § 7.073.
4. As required by TEX. WATER CODE. § 7.055 and 30 TAC §§ 1.11 and 70.104, Respondent was notified of the EDFARP 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 §§ 2001.051(1) and 2001.052; TEX. WATER CODE § 7.058; 1 TAC § 155.401; 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 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 ch. 2003.
7. Based on the above Findings of Fact and Conclusions of Law:
  - a. Respondent violated 30 TAC § 334.47(a)(2) by failing to 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 was not brought into timely compliance with the upgrade requirements;
  - b. Respondent violated 30 TAC § 334.54(b)(1), by failing to keep all vent lines open and functioning;
  - c. Respondent violated 30 TAC §§ 330.7(a), 330.15(a), and 330.15(c), by failing to prevent the unauthorized disposal and discharge of MSW; and

- d. Respondent violated 30 TAC § 334.22(a) and TEX. WATER CODE § 5.702, by failing to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0014818U for fiscal year 2007.
  
8. In determining the amount of an administrative penalty, TEX. WATER CODE § 7.053 requires the Commission to consider several factors including:
  - a. Its impact or potential impact on public health and safety, natural resources, and their uses, and other persons;
  - b. The nature, circumstances, extent, duration, and gravity of the prohibited act;
  - c. The history and extent of previous violations by the violator;
  - d. The violator's degree of culpability, good faith, and economic benefit gained through the violations;
  - e. The amount necessary to deter future violations; and
  - f. 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 § 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 nine thousand dollars (\$9,000.00) is reasonable and justified.

11. Based on consideration of Findings of Fact Nos. 20 and 21, a penalty of three thousand six hundred dollars (\$3,600.00) to be paid in thirty-six (36) monthly installments of one hundred dollars (\$100.00) is assessed against the Respondent contingent on Respondent's completion of the requested corrective actions. Five thousand four hundred dollars (\$5,400.00) of the administrative penalty is deferred contingent upon Respondent's timely and satisfactory compliance with all the terms of the corrective actions and shall be waived only upon full compliance with all the terms and conditions contained in the corrective actions, as set forth in the Ordering Provisions that follow.
12. Based on the above Findings of Fact, Respondent should be required to take the corrective actions 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. Thomas V. Hope is assessed an undeferred administrative penalty of three thousand six hundred dollars (\$3,600.00) for the violations of TEX. WATER CODE § 5.702, 30 TAC §§ 330.7(a), 330.15(a), 330.15(c), 334.22(a), 334.47(a)(2), and 334.54(b)(1). Respondent is directed to pay the undeferred administrative penalty in thirty-six (36) monthly payments of one hundred dollars (\$100.00). The payment of the undeferred administrative penalty and compliance with all the terms and conditions set forth in this Order will completely resolve the violations set forth by this Order. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Order, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the acceleration of any remaining balance constitutes the failure by Respondent to timely and satisfactorily comply with all

the terms of this Order and the Executive Director may demand payment of the deferred penalty amount. The Executive Director 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 to "TCEQ." Administrative penalty payments shall be sent with the notation "Re: Thomas V. Hope d/b/a SWT Farm & Ranch Supply; TCEQ Docket No. 2009-1377-MLM-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P. O. Box 13087  
Austin, Texas 78711-3087

2. Immediately upon the effective date of this Order, Respondent shall cease disposing of any additional MSW at the Facility.
3. Within 30 days after the effective date of this Order, Respondent shall remove all MSW from the Facility and dispose of the MSW at an authorized facility.
4. Within 30 days after the effective date of this Order, Respondent shall submit a report, which includes a summary of remediation activities that took place, confirming that all contaminated soils at the Facility have been properly remediated. Remediation activities will address all areas where stained soils and soils contaminated with oil and lubricant were observed. The report shall include analytical results of soil confirmation sampling which characterizes the effectiveness of contaminated soil removal in all contaminated areas and documentation that contaminated soils have been disposed in an authorized manner.
5. Within 30 days after the effective date of this Order, Respondent shall submit payment for all outstanding fees, including any associated penalties and interest

and with the notation, "Re: Thomas V. Hope, TCEQ Financial Administration Account No. 0014818U," 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

6. Within 45 days after the effective of this Order, Respondent shall submit written certification as described below in Ordering Provision No. 10, and include supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 1 through 5.
7. Within 180 days after the effective date of this Order, Respondent shall permanently remove the UST system from service, in accordance with 30 TAC § 334.55; and Respondent may seek an extension of that period by submitting a written request supported by evidence that the property is still for sale.
8. Within 195 days after the effective date of this Order, Respondent shall register the remaining UST in accordance with 30 TAC § 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

9. Within 210 days after the effective date of this Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provisions Nos. 7 and 8.

10. The certifications required by Ordering Provision Nos. 6 and 9 shall be notarized by a State of Texas Notary Public and include the following certification language:

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

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

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

with a copy to:

Joel Anderson, Waste Section Manager  
San Antonio Regional Office  
Texas Commission on Environmental Quality  
14250 Judson Road  
San Antonio, Texas 78233-4480

11. 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 Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.

12. 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.
13. 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 § 2001.144.
14. As required by TEX. WATER CODE § 7.059, the Commission's Chief Clerk shall forward a copy of this Order to Respondent.
15. 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, Ph.D., Chairman  
For the Commission**