

Bryan W. Shaw, Ph.D., *Chairman*  
Buddy Garcia, *Commissioner*  
Carlos Rubinstein, *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
*Protecting Texas by Reducing and Preventing Pollution*

April 20, 2011

Via Certified Mail, Return Receipt Requested,  
Article Number Via First Class Mail, Postage Pre-Paid  
7010 3090 0000 7807 0745

The Honorable Roy Scudday  
State Office of Administrative Hearings  
William P. Clements Building  
300 West 15<sup>th</sup> Street, Suite 504  
Austin, Texas 78701

Re: Waylon Collins; RN102717493;  
TCEQ Docket No. 2010-0597-PST-E  
SOAH Docket No. 582-11-0470

Dear Judge Scudday:

Please find enclosed a copy of the "Executive Director's Exceptions and Suggested Modifications to the Administrative Law Judge's Proposed Order" and a copy of the Proposed Order with the suggested modifications.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie J. Frazee".

Stephanie J. Frazee, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality  
[Stephanie.Frazee@tceq.texas.gov](mailto:Stephanie.Frazee@tceq.texas.gov)

Enclosure

cc: Blas Coy, Public Interest Counsel  
Andrea Park, Enforcement Division  
Mike Taylor, Waste Section Manager

SOAH DOCKET NO. 582-11-0470  
TCEQ DOCKET NO. 2010-0597-PST-E

EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY  
Petitioner

V.

WAYLON COLLINS  
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**EXECUTIVE DIRECTOR'S EXCEPTIONS AND SUGGESTED MODIFICATIONS TO  
THE ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER**

NOW COMES the Executive Director, by and through his attorney, Stephanie J. Frazee, and makes the following exceptions and suggestions to modify the Administrative Law Judge's ("ALJ's") Proposed Order, pursuant to 30 TEX. ADMIN. CODE § 80.257.

1. That in Finding of Fact No. 1, the period be removed after "Waylon Collins."
2. That in Finding of Fact No. 2, "(UST)" be changed to "(USTs)".
3. That the third and fourth lines of Finding of Fact No. 3 be changed to state "update the TCEQ UST Registration Form; failure to perform the permanent removal of a UST system that has not met upgrade requirements; failure to properly secure USTs against tampering" because there are three USTs at the Facility.
4. That last two lines of Finding of Fact No. 8 be changed to state "system from service; failing to properly maintain the UST system in a secured manner; and failing to timely pay annual fees and associated late fees" in order to include a reference to the violation of 30 TEX. ADMIN. CODE § 334.54(b)(2) and to reflect that there is only one UST system at the Facility.
5. That Finding of Fact No. 10 be changed to state "specifically for failing to permanently remove the UST system from service; failing to properly maintain the UST system in a secured manner; and failing to timely pay annual fees and associated late fees" in order to include a reference to the violation of 30 TEX. ADMIN. CODE § 334.54(b)(2), to reflect that there is only one UST system at the Facility, and to include a reference to the assessed late fees.
6. That the second Finding of Fact No. 11 be changed to No. 12.

7. That the second Finding of Fact No. 14 be changed to No. 15 and the subsequent Finding of Fact paragraphs be renumbered accordingly.
8. That in the final Finding of Fact paragraph, the phrase "appearing by telephone" be removed because Mr. Collins appeared in person at the evidentiary hearing.
9. That the citations in Ordering Provision No. 1 be changed to include the citations for the outstanding violations as follows: "30 TAC §§ 334.47(a)(2), 334.54(b)(2), and 334.22(a) and Code § 5.702."
10. That Conclusion of Law No. 5 be changed to Conclusion of Law No.4 and the subsequent Conclusion of Law paragraphs be renumbered accordingly.

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

*Stephanie Frazee*

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Stephanie J. Frazee  
State Bar of Texas No. 24059778  
Litigation Division, MC 175  
P.O. Box 13087  
Austin, TX 78711  
(512) 239-3693  
(512) 239-3434 (FAX)

**CERTIFICATE OF SERVICE**  
**Waylon Collins**  
**SOAH Docket No. 582-11-0470**  
**TCEQ Docket No. 2010-0597-PST-E**

I hereby certify that on this 20th day of April, 2011, 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) 322-2061**

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

**Via First Class Mail and Via Certified Mail, Return Receipt Requested**

Mr. Waylon Collins  
903 Avenue Q  
Anson, Texas 79501

**Article No. 7010 3090 0000 7807 0738**

**Via electronic mail**

Blas Coy, Public Interest Counsel

*Stephanie Frazee*

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Stephanie J. Frazee  
Attorney  
Litigation Division  
Texas Commission on Environmental Quality

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER Assessing Administrative Penalties Against and  
Requiring Corrective Action by  
Waylon Collins  
TCEQ DOCKET NO. 2010-0597-PST-E  
SOAH DOCKET NO. 582-11-0470**

On \_\_\_\_\_, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's Second Amended Report and Petition (EDSARP) recommending that the Commission enter an enforcement order assessing administrative penalties against and requiring corrective action from Waylon Collins (Respondent). Roy G. Scudday, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted a public hearing on this matter on March 30, 2011, in Austin, Texas, and presented the Proposal for Decision.

The following are parties to the proceeding: Respondent, the Commission's Executive Director (ED), and the Office of Public Interest Counsel.

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. Waylon Collins (Respondent) is the record owner of a closed gasoline station located at 301 S.H. 70N, Roby, Fisher County, Texas (Facility).

2. On October 1, 2009, TCEQ Investigator Patty Gough, conducted a petroleum storage tank (PST) out of service inspection of the Facility. As a result of her inspection, Investigator Gough determined that Respondent had committed four violations of the TCEQ rules regarding underground storage tanks (USTs).
3. On March 30, 2010, Investigator Gough conducted a follow-up inspection after the issuance of a Notice of Violation on November 30, 2009, which set forth four violations: failure to update TCEQ UST Registration Form; failure to perform the permanent removal of a UST system that has not met upgrade requirements; failure to properly secure USTs against tampering and vandalism; and failure to have records available for inspection. As a result of her inspection, Investigator Gough determined that the Facility had the same violations as on the October 1, 2009 inspection.
4. The UST Registration for the Facility dated January 9, 2003, was signed by Respondent as Owner.
5. The records of the Fisher County Appraisal District show Respondent as the owner of the Facility.
6. Respondent is the owner of the Facility and responsible for its compliance with the rules of TCEQ pursuant to 30 TEX. ADMIN. CODE (TAC) §§ 334.1(b)(3) and 334.2(73).
7. On April 9, 2010, the ED issued a Notice of Enforcement for the Facility to Respondent regarding the violations found in the inspection on March 30, 2010.
8. On March 24, 2011, the ED issued the EDSARP in accordance with TEX. WATER CODE ANN. (Code) § 7.054, alleging that Respondent violated 30 TAC §§ 334.47(a)(2), 334.54(b)(2), and 334.22(a), and Code § 5.702, specifically for failing to permanently remove the UST

system from service; failing to properly maintain the UST system in a secured manner; and failing to timely pay annual fees and associated late fees.

9. The ED recommended the imposition of an administrative penalty in the total amount of \$2,625, and corrective action to bring the site into compliance.
10. Respondent violated 30 TAC §§ 334.47(a)(2), 334.54(b)(2), and 334.22(a), and Code § 5.702, specifically for failing to permanently remove UST systems from service; failing to properly maintain the UST system in a secured manner; and failing to timely pay annual fees.
11. The penalty amount for the Facility for the first violation, failing to permanently remove a UST system from service, comprises a penalty of \$2,500 for one monthly violation event, for a total of \$2,500. Because Respondent had one previous Notice of Violation for the same or similar violations, the penalty was enhanced by 5% or \$125, for a total of \$2,625.
12. No penalty was requested for the second violation as the fees would be billed as part of the routine fee billing process.
13. An administrative penalty of \$2,625 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.
14. On August 9, 2010, Respondent requested a contested case hearing on the allegations in the Executive Director's Preliminary Report and Petition (EDPRP) issued on August 3, 2010.
15. On September 20, 2010, the case was referred to SOAH for a hearing.
16. On November 1, 2010, the Commission's Chief Clerk issued notice of the preliminary hearing to all parties, which included the date, time, and place of the hearing, the legal authority under which the hearing was being held, and the violations asserted.
17. The preliminary hearing was waived by the parties, and the ED established jurisdiction to

proceed.

18. The hearing on the merits was conducted on March 30, 2011, in Austin, Texas, by ALJ Roy G. Scudday.
19. Respondent represented himself at the hearing. The ED was represented by Stephanie J. Frazee, attorney in TCEQ's Litigation Division. The Office of Public Interest Counsel was represented by attorney Amy Swanholm.

## 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 §§ 334.47(a)(2), 334.54(b)(2), and 334.22(a), and Code § 5.702.
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 Executive Director correctly calculated the penalties for the alleged violations and a total administrative penalty of \$2,625 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 Executive Director recommends.

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

1. Waylon Collins is assessed an administrative penalty in the amount of \$2,625 for violation of 30 TAC §§ 334.47(a)(2), 334.54(b)(2), and 334.22(a) and Code § 5.702. The payment of this administrative penalty and Waylon Collin's 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: Waylon Collins; Docket No. 2010-0597-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:
  - a. Permanently remove the UST system from service, in accordance with 30 TAC § 334.55; and
  - b. Submit payment for all outstanding fees, including any associated interest and penalties with the notation, "Waylon Collins, TCEQ Financial Administration Account No. 0033911U 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

3. Within 45 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 Provision 2. 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:

Waste Section, Manager  
Texas Commission on Environmental Quality  
Abilene Regional Office  
1977 Industrial Boulevard  
Abilene, Texas 79602-7833

4. 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 Commission Order.

5. 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.
6. 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.
7. As required by Code. § 7.059, the Commission's Chief Clerk shall forward a copy of this Order to Respondent.
8. 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**