

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

December 12, 2022

To: Persons on the Attached Mailing List (by email only)

Re: Executive Director's Request for Remand regarding an Agreed Order concerning Hermilo Pena; TCEQ Docket No. 2020-0231-PST-E.

The above-referenced matter is currently scheduled to be considered by the Texas Commission on Environmental Quality at its December 14, 2022, public meeting. However, on December 8, 2022, the Executive Director submitted a request to remand this matter for further consideration and development. Pursuant to 30 TAC §10.4, this matter is hereby remanded to the Executive Director.

If you have any questions about this matter, please contact Elaine M. Lucas, Assistant General Counsel, at Elaine.Lucas@TCEQ.Texas.gov.

Respectfully,

A handwritten signature in cursive script that reads "Mary Smith".

Mary Smith
General Counsel

Mailing List

Mailing List
Hermilo Pena
TCEQ Docket No. 2020-0231-PST-E

Hermilo Pena
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TCEQ Interoffice Memorandum

To: Mary Smith, General Counsel
Dinniah Tadema, Assistant General Counsel

Thru: Anna Treadwell, Senior Attorney
AMT Litigation Division

From: Benjamin Warms, Staff Attorney
BW Litigation Division

Date: December 8, 2022

**Subject: Request for Remand
December 14, 2022 Commission Agenda
Item No. 39 - Hermilo Pena
Docket No. 2020-0231-PST-E**

The Executive Director respectfully requests that the above-referenced item be remanded to the Executive Director for further consideration and development.

Respondent Contact:

Hermilo Pena
P.O. Box 130
Banquete, Texas 78339

Phone: 361-944-2560
361-387-0630

Email: hermilopena@yahoo.com

Respondent has been notified of this Request for Remand. Please do not hesitate to call me at (512) 644-3743 if you have any questions regarding this matter.

cc: Stephanie McCurley, Enforcement
Tim Perdue, Corpus Christi Regional Office
Sheldon Wayne, Public Interest Counsel
Michael Parrish, Enforcement
Leslie Gann, Enforcement
Stuart Beckley, Enforcement
Dinniah Tadema, Office of the General Counsel
Gill Valls, Office of the General Counsel
Hermilo Pena, Owner Pena's Exxon

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 54482
Hermilo Pena dba Penas Exxon
RN101874717
Docket No. 2020-0231-PST-E

Order Type:

Findings Agreed Order

Findings Order Justification:

Indifference to legal duty based on violation of a previous order.

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

5585 State Highway 44, Banquete, Nueces County

Type of Operation:

temporarily out-of-service underground storage tank ("UST") system and convenience store

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: October 14, 2022

Comments Received: None

Penalty Information

Total Penalty Assessed: \$43,856

Deferred for Financial Inability to Pay: \$40,256

Confidential information, which may include financial information, has been provided to the Commission for its consideration.

Total Paid to General Revenue: \$100

Total Due to General Revenue: \$3,500

Payment Plan: 35 payments of \$100 each

Compliance History Classifications:

Person/CN - Satisfactory
Site/RN - Satisfactory

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): N/A

Date(s) of Investigation: September 20, 2019

Date(s) of NOV(s): N/A

Date(s) of NOE(s): November 14, 2019

Hermilo Pena dba Penas Exxon

RN101874717

Docket No. 2020-0231-PST-E

Violation Information

1. Failed to identify and designate for the UST Facility at least one named individual for each class of operator – Class A, Class B, and Class C [30 TEX. ADMIN. CODE § 334.602(a) and TCEQ Agreed Order Docket No. 2017-0730-PST-E, Ordering Provision No. 2.d.iii.].
2. Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition [30 TEX. ADMIN. CODE §§ 334.7(d)(1)(A), (d)(1)(B), and (d)(3), and TCEQ Agreed Order Docket No. 2017-0730-PST-E, Ordering Provision No. 2.a.ii.].
3. Failed to maintain corrosion protection for the temporarily out of service UST system and also, failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years [TEX. WATER CODE § 26.3475(d), 30 TEX. ADMIN. CODE §§ 334.49(a), (c)(2)(C), and (c)(4)(C), and 334.54(c)(1), and TCEQ Agreed Order Docket No. 2017-0730-PST-E, Ordering Provision No. 2.d.iv.].

Corrective Actions/Technical Requirements**Corrective Action(s) Completed:**

None

Technical Requirements:

1. Either, within 30 days:
 - a. Repair and test the corrosion protection system with passing results;
 - b. Designate, train, and certify at least one named individual for each class of operator: Class A, Class B, and Class C for the Facility; and
 - c. Submit an amended registration to reflect the current ownership and operational status of the UST system.
2. Within 45 days, submit written certification to demonstrate compliance with Technical Requirement Nos. 1.a. through 1.c.
3. Or, in Lieu of Technical Requirement Nos. 1.a. through 1.c. and 2. and within 180 days, permanently remove the UST system from service:
 - a. Provide a Construction Notification to the TCEQ at least 30-days prior to any removal activities; and
 - b. Employ a Licensed Underground Storage Tank Contractor to perform all removal activities.
4. Within 195 days, submit an amended registration to reflect the operational status of the UST system as permanently removed from service.
5. Within 210 days, submit written certification to demonstrate compliance with Technical Requirement Nos. 3.a., 3.b. and 4.

Hermilo Pena dba Penas Exxon

RN101874717

Docket No. 2020-0231-PST-E

Litigation Information

Date Petition(s) Filed: March 3, 2021
Date Green Card(s) Signed: March 6, 2021
Date Answer(s) Filed: April 21, 2021
SOAH Referral Date: July 19, 2021
Hearing Date(s):
 Preliminary hearing: September 23, 2021
Settlement Date: August 12, 2022

Contact Information

TCEQ Attorneys: Benjamin Warms, Litigation Division, (512) 239-3400
 Sheldon Wayne, Public Interest Counsel, (512) 239-6363
TCEQ Litigation Agenda Coordinator: Katherine McKenzie, Litigation Division, (512) 239-2575
TCEQ Enforcement Coordinator: Stephanie McCurley, Enforcement Division, (512) 239-2607
TCEQ Regional Contact: Tim Perdue, Corpus Christi Regional Office, (361) 825-3100
Respondent Contact: Hermilo Pena, P.O. Box 130, Banquete, Texas 78339
Respondent's Attorney: N/A

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Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	18-Nov-2019	Screening	20-Nov-2019	EPA Due	
	PCW	20-Jul-2022				

RESPONDENT/FACILITY INFORMATION

Respondent	Hermilo Pena dba Penas Exxon				
Reg. Ent. Ref. No.	RN101874717				
Facility/Site Region	14-Corpus Christi	Major/Minor Source	Minor		

CASE INFORMATION

Enf./Case ID No.	54482	No. of Violations	3
Docket No.	2020-0231-PST-E	Order Type	Findings
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Stephanie McCurley
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$36,250
-------------------------------------------------------------	-------------------	-----------------

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	20.0% Adjustment	Subtotals 2, 3, & 7	\$7,250
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Notes	Enhancement for one previous Agreed Order containing a denial of liability.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$1,729	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$18,342	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$43,500
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.8% Adjustment	\$356
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Enhancement to capture the avoided cost of compliance associated with Violation Nos. 1 and 3.
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Final Penalty Amount	\$43,856
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$43,856
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DEFERRAL	0.0% Reduction Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes	No deferral is recommended for Findings Orders.
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PAYABLE PENALTY	\$43,856
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Screening Date 20-Nov-2019

Docket No. 2020-0231-PST-E

PCW

Respondent Hermilo Pena dba Penas Exxon

Case ID No. 54482

Policy Revision 4 (April 2014)

Reg. Ent. Reference No. RN101874717

PCW Revision March 26, 2014

Media Petroleum Storage Tank

Enf. Coordinator Stephanie McCurley

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	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 (<i>number of judgments or consent decrees meeting criteria</i>)	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 (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	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 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
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) 20%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one previous Agreed Order containing a denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 20%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 20%

Screening Date 20-Nov-2019
Respondent Hermilo Pena dba Penas Exxon
Case ID No. 54482
Reg. Ent. Reference No. RN101874717
Media Petroleum Storage Tank
Enf. Coordinator Stephanie McCurley

Docket No. 2020-0231-PST-E

PCW

*Policy Revision 4 (April 2014)
 PCW Revision March 26, 2014*

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.602(a) and TCEQ Agreed Order Docket No. 2017-0730-PST-E, Ordering Provision No. 2.d.iii

Violation Description Failed to identify and designate for the underground storage tank ("UST") Facility at least one named individual for each class of operator - Class A, Class B, and Class C.

Base Penalty \$25,000

>> **Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				5.0%
	Potential		x		

>> **Programmatic Matrix**

Matrix Notes	Falsification	Major	Moderate	Minor	Percent

Human health or the environment will or could be exposed to significant amounts pollutants that would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 7 624 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$8,750

Seven quarterly events are recommended from the March 6, 2018 effective date of TCEQ Agreed Order Docket No. 2017-0730-PST-E to the November 20, 2019 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	

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

Violation Subtotal \$8,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$59

Violation Final Penalty Total \$10,586

This violation Final Assessed Penalty (adjusted for limits) \$10,586

Economic Benefit Worksheet

Respondent Hermilo Pena dba Penas Exxon
Case ID No. 54482
Reg. Ent. Reference No. RN101874717
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Economic Benefit included in Violation No. 3.

Avoided Costs

ANNUALIZE 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
Training	\$33	6-Mar-2018	20-Nov-2019	1.71	\$3	\$56	\$59
Financial Assurance				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to obtain the required Class A and Class B (\$90 for a three year class), and Class C (\$10 for a three year class) operator training. The Date Required is the date of the effective Order and the Final Date is the screening date.

Approx. Cost of Compliance

\$56

TOTAL

\$59

Screening Date 20-Nov-2019
Respondent Hermilo Pena dba Penas Exxon
Case ID No. 54482
Reg. Ent. Reference No. RN101874717
Media Petroleum Storage Tank
Enf. Coordinator Stephanie McCurley

Docket No. 2020-0231-PST-E

PCW

Policy Revision 4 (April 2014)
PCW Revision March 26, 2014

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 334.7(d)(1)(A),(d)(1)(B), and (d)(3) and TCEQ Agreed Order Docket No. 2017-0730-PST-E, Ordering Provision No. 2.a.ii

Violation Description

Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the correct owner information and current operational status of the USTs.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0.0%
	Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	x			5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 624 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,250

One single event is recommended.

Good Faith Efforts to Comply

0.0%

Reduction \$0

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

Extraordinary	
Ordinary	
N/A	x

Notes

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

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$1,512

This violation Final Assessed Penalty (adjusted for limits) \$1,512

Economic Benefit Worksheet

Respondent Hermilo Pena dba Penas Exxon
Case ID No. 54482
Reg. Ent. Reference No. RN101874717
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	Costs Saved	EB Amount
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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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Economic Benefit included in Violation No. 3.

Avoided Costs

ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

TOTAL

\$0

Screening Date 20-Nov-2019
Respondent Hermilo Pena dba Penas Exxon
Case ID No. 54482
Reg. Ent. Reference No. RN101874717
Media Petroleum Storage Tank
Enf. Coordinator Stephanie McCurley

Docket No. 2020-0231-PST-E

PCW

*Policy Revision 4 (April 2014)
 PCW Revision March 26, 2014*

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 334.49(a), (c)(2)(C), and (c)(4)(C) and 334.54(c)(1), and Tex. Water Code § 26.3475(d) and TCEQ Agreed Order Docket No. 2017-0730-PST-E, Ordering Provision No. 2.d.iv

Violation Description

Failed to maintain corrosion protection for the temporarily out-of-service UST system. Specifically, the rectifier was non-operational. Also, failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years. Specifically, the Respondent did not conduct the triennial testing of the cathodic protection system.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				15.0%
	Potential	x			

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0.0%

Matrix Notes

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

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 7 624 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$26,250

Seven quarterly events are recommended from the March 6, 2018 effective date of TCEQ Agreed Order Docket No. 2017-0730-PST-E to the November 20, 2019 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	

Notes

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

Violation Subtotal \$26,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,670

Violation Final Penalty Total \$31,758

This violation Final Assessed Penalty (adjusted for limits) \$31,758

Economic Benefit Worksheet

Respondent Hermilo Pena dba Penas Exxon
Case ID No. 54482
Reg. Ent. Reference No. RN101874717
Media Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	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)	\$18,000	6-Mar-2019	13-Sep-2020	1.53	\$1,373	n/a	\$1,373

Notes for DELAYED costs

Estimated cost to permanently remove four USTs from service with a combined capacity of 18,000 gallons at \$1.00 per gallon. The Date required is the effective date of the Order and the Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE 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	\$167	6-Mar-2018	20-Nov-2019	1.71	\$11	\$286	\$297
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost for conducting the triennial test of the corrosion protection system (\$500 for a three year test). The Date Required is the effective date of the Order and the Final Date is the screening date.

Approx. Cost of Compliance

\$18,286

TOTAL

\$1,670

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



TCEQ Compliance History Report

Compliance History Report for CN603016973, RN101874717, Rating Year 2019 which includes Compliance History (CH) components from September 1, 2014, through August 31, 2019.

Customer, Respondent, or Owner/Operator: CN603016973, PENA, HERMILO **Classification:** SATISFACTORY **Rating:** 37.50

Regulated Entity: RN101874717, Penas Exxon **Classification:** SATISFACTORY **Rating:** 37.50

Complexity Points: 3 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 5585 State Highway 44 in Banquete, Nueces County, Texas

TCEQ Region: REGION 14 - CORPUS CHRISTI

ID Number(s):

PETROLEUM STORAGE TANK REGISTRATION
REGISTRATION 28520

PETROLEUM STORAGE TANK NON REGISTERED ID
NUMBER R14101874717

Compliance History Period: September 01, 2014 to August 31, 2019 **Rating Year:** 2019 **Rating Date:** 09/01/2019

Date Compliance History Report Prepared: January 23, 2020

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: January 23, 2015 to January 23, 2020

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Stephanie McCurley

Phone: (512) 239-2607

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

- 1 Effective Date: 03/06/2018 ADMINORDER 2017-0730-PST-E (1660 Order-Agreed Order With Denial)
 - Classification: Moderate
 - Citation: 30 TAC Chapter 334, SubChapter N 334.602(a)
 - Description: Failed to identify and designate for the UST Facility at least one named individual for each class of operator - Class A, Class B, and Class C
 - Classification: Minor
 - Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(1)(A)
30 TAC Chapter 334, SubChapter A 334.7(d)(1)(B)
30 TAC Chapter 334, SubChapter A 334.7(d)(3)
 - Description: Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition
 - Classification: Moderate
 - Citation: 2D TWC Chapter 26, SubChapter A 26.3475(d)
30 TAC Chapter 334, SubChapter C 334.49(a)
30 TAC Chapter 334, SubChapter C 334.54(c)(1)
 - Description: Failed to maintain corrosion protection for the temporarily out-of-service UST system
 - Classification: Moderate
 - Citation: 2D TWC Chapter 26, SubChapter A 26.3475(d)
30 TAC Chapter 334, SubChapter C 334.49(c)(2)(C)
30 TAC Chapter 334, SubChapter C 334.54(c)(1)

Description: Failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

N/A

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

Component Appendices

Appendix A

All NOVs Issued During Component Period 1/23/2015 and 1/23/2020

1	Date:	07/21/2016	(1337995)	Classification:	Moderate
	Self Report?	NO	For Informational Purposes Only		
	Citation:	30 TAC Chapter 334, SubChapter N 334.602(a)			
	Description:	Failed to identify and designate for the UST Facility at least one named individual for each class of operator - Class A, Class B, and Class C			
			Classification:	Minor	
	Self Report?	NO	For Informational Purposes Only		
	Citation:	30 TAC Chapter 334, SubChapter A 334.7(d)(1)(A) 30 TAC Chapter 334, SubChapter A 334.7(d)(1)(B) 30 TAC Chapter 334, SubChapter A 334.7(d)(3)			
	Description:	Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition			
			Classification:	Moderate	
	Self Report?	NO	For Informational Purposes Only		
	Citation:	2D TWC Chapter 26, SubChapter A 26.3475(d) 30 TAC Chapter 334, SubChapter C 334.49(a) 30 TAC Chapter 334, SubChapter C 334.54(c)(1)			
	Description:	Failed to maintain corrosion protection for the temporarily out-of-service UST system			

* NOVs applicable for the Compliance History rating period 9/1/2014 to 8/31/2019

Appendix B

All Investigations Conducted During Component Period January 23, 2015 and January 23, 2020

		(1337995)	For Informational Purposes Only
Item 1	July 21, 2016**		
		(1378022)	For Informational Purposes Only
Item 2	December 07, 2016**		
		(1409594)	For Informational Purposes Only
Item 3	May 05, 2017**		
		(1604813)	For Informational Purposes Only
Item 4	November 14, 2019		

* No violations documented during this investigation

**Investigation applicable for the Compliance History Rating period between 09/01/2014 and 08/31/2019.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN ENFORCEMENT
ACTION CONCERNING
HERMILO PENA DBA PENAS EXXON;
RN101874717

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2020-0231-PST-E

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Hermilo Pena dba Penas Exxon ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent presented this Order to the Commission.

Respondent understands that he has certain procedural rights at certain points in the enforcement process, including the right to formal notice of violations, to request an evidentiary hearing, receive notice of an evidentiary hearing, and a right to appeal. By entering into this Order, Respondent agrees to waive all notice and procedural rights which might otherwise be authorized or required in this action.

It is further understood and agreed that this Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Order are binding upon Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondent owns, as defined in 30 TEX. ADMIN. CODE § 334.2(78), a temporarily out-of-service underground storage tank ("UST") system and a convenience store located at 5585 State Highway 44 in Banquete, Nueces County, Texas (Facility ID No. 28520) (the "Facility"). The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission and contain or contained a regulated petroleum substance as defined in the rules of the TCEQ.
2. During an investigation conducted on September 20, 2019, an investigator documented that Respondent:
 - a. Failed to identify and designate for the UST Facility at least one named individual for each class of operator - Class A, Class B, and Class C.
 - b. Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the correct owner information and current operational status of the USTs.
 - c. Failed to maintain corrosion protection for the temporarily out of service UST system. Also, failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every

three years. Specifically, the rectifier was non-operational, and Respondent did not conduct the triennial testing of the cathodic protection system.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to identify and designate for the UST Facility at least one named individual for each class of operator - Class A, Class B, and Class C, in violation of 30 TEX. ADMIN. CODE § 334.602(a) and TCEQ Agreed Order Docket No. 2017-0730-PST-E, Ordering Provision No. 2.d.iii.
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE §§ 334.7(d)(1)(A), (d)(1)(B), and (d)(3), and TCEQ Agreed Order Docket No. 2017-0730-PST-E, Ordering Provision No. 2.a.ii.
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to maintain corrosion protection for the temporarily out of service UST system and also, failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years., in violation of TEX. WATER CODE § 26.3475(d), 30 TEX. ADMIN. CODE §§ 334.49(a), (c)(2)(C), and (c)(4)(C), and 334.54(c)(1), and TCEQ Agreed Order Docket No. 2017-0730-PST-E, Ordering Provision No. 2.d.iv.
5. Pursuant to TEX. WATER CODE § 7.051, TCEQ has the authority to assess an administrative penalty against Respondent for violations of state statutes within TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of forty-three thousand eight hundred fifty-six dollars (\$43,856.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Revenue Operations Section of TCEQ's Financial Administration Division reviewed the financial documentation submitted by Respondent and determined that Respondent is unable to pay all or part of the penalty. Therefore, forty thousand two hundred fifty-six dollars (\$40,256.00) of the penalty is deferred contingent upon Respondent's timely and satisfactory compliance with all the terms of this Order and shall be waived only upon full compliance with all the terms and conditions contained in this Order.

Respondent paid one hundred dollars (\$100.00) of the three thousand six hundred dollar (\$3,600.00) undeferred penalty. The remaining amount of three thousand five hundred dollars (\$3,500.00) of the undeferred penalty shall be paid in thirty-five (35) monthly payments of one hundred dollars (\$100.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until the penalty is paid in full. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Order, including the payment schedule, 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, Respondent's failure to meet the payment schedule of this Order and/or the acceleration of any remaining balance constitutes the failure by Respondent to timely and satisfactorily comply with all the terms and conditions of this Order and the Executive Director may demand payment of all or part of the deferred penalty amount.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Respondent is assessed an administrative penalty as set forth in Conclusion of Law No. 6 for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondent's compliance with all requirements set forth in this Order resolve only 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 violations which are not raised here. Penalty payments shall be made payable to TCEQ and shall be sent with the notation "Re: Hermilo Pena dba Penas Exxon, Docket No. 2020-0231-PST-E" to:

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

2. Respondent shall undertake the following technical requirements:
 - a. Either, within 30 Days after the effective date of this Order:
 - i. Repair and test the corrosion protection system with passing results, in accordance with 30 TEX. ADMIN. CODE §§ 334.49 and 334.54;
 - ii. Designate, train, and certify at least one named individual for each class of operator: Class A, Class B, and Class C for the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.602; and
 - iii. Submit an amended registration to reflect the current ownership and operational status of the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.7, to:

Registration and Reporting Section
Permitting & Registration Support Division, MC 129
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- iv. Within 45 days after the effective date of this Order, submit written certification to demonstrate compliance with Corrective Action Ordering Provision Nos. 2.a.i. through 2.a.iii. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by Respondent, and shall 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 fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Waste Section Manager
Corpus Christi Regional Office
Texas Commission on Environmental Quality
6300 Ocean Drive, Suite 1200
Corpus Christi, Texas 78412-5839

- b. Or, in Lieu of Ordering Provision Nos. 2.a.i through 2.a.iv within 180 days after the effective date of this Order, permanently remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.55, which includes the following actions:
- i. Providing a Construction Notification to the TCEQ at least 30-days prior to any removal activities; and
 - ii. Employing a Licensed Underground Storage Tank Contractor to perform all removal activities, including:
 1. Removing the USTs from the ground, abandoning the USTs in-place, or conducting a permanent change-in-service;
 2. Emptying the USTs of all regulated substances and accumulated sludges or residues and purging the USTs of all residual vapors;
 3. Handling, transporting, and properly disposing of the empty USTs, the regulated substances removed from the UST system, and any contaminated soils, backfill material, groundwater, wash water or other similar materials removed from the UST system or Facility; and
 4. Determining whether or not there has been a release of regulated substance from the UST system, performance of a comprehensive site assessment, reporting confirmed or suspected releases to the TCEQ, preparing a detailed written record of the release determination, and compliance with all applicable corrective action requirements.
 - iii. Within 195 days after the effective date of this Order, submit an amended registration to reflect the operational status of the UST system as permanently removed from service, in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

Registration and Reporting Section
Permitting & Registration Support Division, MC 129
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
 - iv. Within 210 days after the effective date of this Order, submit written certification to demonstrate compliance with Corrective Action Ordering Provision Nos. 2.b.i through 2.b.iii. The certification shall be accompanied by detailed supporting documentation, including

photographs, receipts, and/or other records, shall be signed by Respondent, and shall 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 fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Waste Section Manager
Corpus Christi Regional Office
Texas Commission on Environmental Quality
6300 Ocean Drive, Suite 1200
Corpus Christi, Texas 78412-5839

3. All relief not expressly granted in this Order is denied.
4. The duties and provisions imposed by this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Enforcement Division at the address listed above.
6. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. This Order, issued by the Commission, shall not be admissible against Respondent in a civil proceeding, unless the proceeding is brought by the Office of the Attorney General of the State of Texas ("OAG") to: (1) enforce the terms of this Order, or (2) pursue violations of a statute within TCEQ's jurisdiction, or of a rule adopted or an order or permit issued by TCEQ under such a statute. The Executive Director may, without further notice or hearing, refer this matter to the OAG for further enforcement proceedings if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.

8. The provisions of this Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
9. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
10. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Order may be copied, scanned, digitized, converted to electronic portable document format (“pdf”), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term “signature” shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms: electronic transmission, owner, person, writing, and written, shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
11. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

Erin E. Chanallop

11/14/22

For the Executive Director

Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions in this Order and/or failure to timely pay the penalty amount may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution.

Hermilo Peña
Signature - Hermilo Peña
P.O. Box 130
Banquete, Texas 78339

8-12-2022
Date

If mailing address has changed, please check this box and provide the new address below:
