

HEAVENIN, INC.
RN102356292
Docket No. 2020-0481-PST-E

Order Type:
Default Order (SOAH Preliminary Hearing)

Media:
PST

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
102 East Parsons Street, Manor, Travis County

Type of Operation:
convenience store with retail sales of gasoline

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: August 12, 2022

Comments Received: None

Penalty Information

Total Penalty Assessed: \$10,500

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$10,500

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: November 12, 2019

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

Date(s) of NOE(s): March 14, 2020

HEAVENIN, INC.
RN102356292
Docket No. 2020-0481-PST-E

Violation Information

1. Failed to provide corrosion protection for the UST system [30 TEX. ADMIN. CODE § 334.49(a)(1)].
2. Failed to monitor the USTs in a manner that will detect a release at a frequency of at least once every 30 days [TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A)].
3. Failed to maintain operator training certification records on-site and make them available for review upon request by agency personnel [30 TEX. ADMIN. CODE § 334.606].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

1. Provided corrosion protection for the UST system, as of September 2, 2021.
2. Provided release detection for the USTs, as of October 18, 2021.
3. Began maintaining operator training certification records on-site and made them available for review upon request by Agency personnel, as of September 6, 2021.

Technical Requirements:

1. The Facility's UST fuel delivery certificate is revoked immediately. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all the requirements, including payment of the administrative penalty in full.
2. Immediately Respondent shall cease accepting fuel at the Facility until such time as a valid delivery certificate is obtained from the TCEQ.
3. Within 10 days, Respondent shall send the Facility's UST fuel delivery certificate to the TCEQ.
4. Within 15 days, Respondent shall submit written certification to demonstrate compliance with Technical Requirements Nos. 2 and 3.
5. Upon obtaining a new fuel delivery certificate, Respondent shall post the fuel delivery certificate in a location at the Facility where the delivery certificate is clearly visible at all times.
6. Within 15 days after obtaining a new delivery certification, submit written certification to demonstrate compliance with Technical Requirement No. 5.

Litigation Information

Date Petition(s) Filed:	October 30, 2020; June 29, 2021
Date Green Card(s) Signed:	unclaimed; July 8, 2021
Date Answer(s) Filed:	October 20, 2021
SOAH Referral Date:	January 14, 2022
Hearing Date(s):	
Preliminary hearing:	March 10, 2022 (defaulted)
Evidentiary hearing:	N/A

Contact Information

TCEQ Attorneys: Misty James, Litigation Division, (512) 239-3400

Garrett Arthur, Public Interest Counsel, (512) 239-6363

TCEQ Litigation Agenda Coordinator: Katherine McKenzie, Litigation Division, (512) 239-2575

TCEQ Enforcement Coordinator: Sushil Modak, Enforcement Division, (915) 834-4976

TCEQ Regional Contact: Elijah Gandee, Austin Regional Office, (512) 339-2929

Respondent Contact: Nasruddin Ali, President, HEAVENIN, INC., 102 East Parsons Street, Manor, Texas
78653

Respondent's Attorney: N/A

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Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

DATES	Assigned	23-Mar-2020		
	PCW	30-Mar-2020	Screening	27-Mar-2020
			EPA Due	

RESPONDENT/FACILITY INFORMATION	
Respondent	HEAVENIN, INC. dba Manor Grocery
Reg. Ent. Ref. No.	RN102356292
Facility/Site Region	11-Austin
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	59152	No. of Violations	3
Docket No.	2020-0481-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Berenice Munoz
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$8,750
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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	\$1,750
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Notes	Enhancement for one 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	\$589	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$7,545	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$10,500
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$10,500
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$10,500
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$10,500
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Screening Date 27-Mar-2020

Docket No. 2020-0481-PST-E

PCW

Respondent HEAVENIN, INC. dba Manor Grocery

Case ID No. 59152

Policy Revision 4 (April 2014)

Reg. Ent. Reference No. RN102356292

PCW Revision March 26, 2014

Media Petroleum Storage Tank

Enf. Coordinator Berenice Munoz

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 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 27-Mar-2020

Docket No. 2020-0481-PST-E

PCW

Respondent HEAVENIN, INC. dba Manor Grocery

Policy Revision 4 (April 2014)

Case ID No. 59152

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102356292

Media Petroleum Storage Tank

Enf. Coordinator Berenice Munoz

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.49(a)(1)

Violation Description Failed to provide corrosion protection for the underground storage tank ("UST") 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 1 136 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	X
annual	
single event	

Violation Base Penalty \$3,750

One semiannual event is recommended from the November 12, 2019 investigation date to the March 27, 2020 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 \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$497

Violation Final Penalty Total \$4,500

This violation Final Assessed Penalty (adjusted for limits) \$4,500

Economic Benefit Worksheet

Respondent HEAVENIN, INC. dba Manor Grocery
Case ID No. 59152
Reg. Ent. Reference No. RN102356292
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	\$6,000	12-Nov-2019	17-Jan-2021	1.18	\$24	\$473	\$497
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

Estimated delayed cost to install and test a corrosion protection system for the UST system at the Facility. The Date Required is the investigation date 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				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

\$6,000

TOTAL

\$497

Screening Date 27-Mar-2020
Respondent HEAVENIN, INC. dba Manor Grocery
Case ID No. 59152
Reg. Ent. Reference No. RN102356292
Media Petroleum Storage Tank
Enf. Coordinator Berenice Munoz

Docket No. 2020-0481-PST-E

PCW

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

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="15.0%"/>
	Potential	<input type="text" value="X"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0.0%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text" value="X"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Good Faith Efforts to Comply

Reduction

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

Extraordinary	<input type="text"/>
Ordinary	<input type="text"/>
N/A	<input type="text" value="X"/>

Notes

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent HEAVENIN, INC. dba Manor Grocery
Case ID No. 59152
Reg. Ent. Reference No. RN102356292
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)	\$1,500	12-Nov-2019	17-Jan-2021	1.18	\$89	n/a	\$89

Notes for DELAYED costs

Estimated delayed cost to implement a release detection method for the USTs at the Facility. The Date Required is the investigation date and the Final Date 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				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

\$1,500

TOTAL

\$89

Screening Date 27-Mar-2020
Respondent HEAVENIN, INC. dba Manor Grocery
Case ID No. 59152
Reg. Ent. Reference No. RN102356292
Media Petroleum Storage Tank
Enf. Coordinator Berenice Munoz

Docket No. 2020-0481-PST-E

PCW

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

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0.0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		<input checked="" type="text" value="X"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="5.0%"/>
<input type="text" value="100% of the rule requirement was not met."/>					

Adjustment

Violation Events

Number of Violation Events Number of violation days

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="text" value="X"/>

Violation Base Penalty

Good Faith Efforts to Comply

Reduction

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="X"/>	<input type="text"/>

Notes

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent HEAVENIN, INC. dba Manor Grocery
Case ID No. 59152
Reg. Ent. Reference No. RN102356292
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	\$45	12-Nov-2019	17-Jan-2021	1.18	\$3	n/a	\$3
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	Estimated delayed cost to maintain operator training certification records on-site and make them available for review upon request by agency personnel. The Date Required is the investigation date 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				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 \$45

TOTAL \$3



Compliance History Report

Compliance History Report for CN604844324, RN102356292, Rating Year 2019 which includes Compliance History (CH) components from September 1, 2014, through August 31, 2019.

Customer, Respondent, or Owner/Operator:	CN604844324, Heavenin, Inc.	Classification:	SATISFACTORY	Rating:	6.43
Regulated Entity:	RN102356292, MANOR GROCERY	Classification:	SATISFACTORY	Rating:	6.43
Complexity Points:	6	Repeat Violator:	NO		
CH Group:	14 - Other				
Location:	102 EAST PARSONS ST, MANOR, TX 78653-5153, TRAVIS COUNTY				
TCEQ Region:	REGION 11 - AUSTIN				
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 11320				
Compliance History Period:	September 01, 2014 to August 31, 2019	Rating Year:	2019	Rating Date:	09/01/2019
Date Compliance History Report Prepared:	August 15, 2022				
Agency Decision Requiring Compliance History:	Enforcement				
Component Period Selected:	March 25, 2015 to March 25, 2020				
TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.					
Name:	Sushil Modak			Phone:	(512) 239-2142

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? YES
- 3) Who is the current owner/operator? Heavenin, Inc. OWNER OPERATOR since 5/27/2015
- 4) Who was/were the prior owner(s)/operator(s)? Jamlay, Inc., OWNER OPERATOR, 8/31/2003 to 5/26/2015

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

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

- 1 Effective Date: 10/17/2017 ADMINORDER 2017-0400-PST-E (1660 Order-Agreed Order With Denial)
Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)
30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)
Description: Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring)

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

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

Item 1 December 13, 2017 (1454745)

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
HEAVENIN, INC.;
RN102356292**

**§
§
§
§
§**

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2020-0481-PST-E

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition, filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty, corrective action of the respondent, and revocation of the facility's fuel delivery certificate. The respondent made the subject of this Order is HEAVENIN, INC. ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns and operates, as defined in 30 TEX. ADMIN. CODE § 334.2(78) and (75), an underground storage tank ("UST") system and a convenience store with retail sales of gasoline located at 102 East Parsons Street in Manor, Travis County, Texas (Facility ID No. 11320) (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 TCEQ rules.
2. During an investigation conducted on November 12, 2019, an investigator documented that Respondent:
 - a. Failed to provide corrosion protection for the UST system;
 - b. Failed to monitor the USTs in a manner that will detect a release at a frequency of at least once every 30 days; and
 - c. Failed to maintain operator training certification records on-site and make them available for review upon request by agency personnel. Specifically, a Class A/B Operator training certificate was not provided for review.
3. The Executive Director recognizes that Respondent implemented the following corrective measures at the Facility:
 - a. Provided corrosion protection for the UST system, as of September 2, 2021;
 - b. Provided release detection for the USTs, as of October 18, 2021; and
 - c. Began maintaining operator training certification records on-site and made them available for review upon request by Agency personnel, as of September 6, 2021.
4. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of HEAVENIN, INC." (the "EDPRP") in the TCEQ Chief Clerk's office on June 29, 2021.
5. Respondent filed an answer requesting a hearing on October 20, 2021, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on January 14, 2022.

6. On February 11, 2022, the TCEQ Chief Clerk mailed notice of the March 10, 2022 preliminary hearing via certified mail, return receipt requested, and via first-class mail, postage prepaid, to Respondent.
7. On March 10, 2022, the Administrative Law Judge (“ALJ”) convened the preliminary hearing. Respondent failed to appear, and the Executive Director requested that the ALJ enter a finding that Respondent was served with proper notice of the hearing, and that the matter be dismissed from the SOAH Docket and remanded to the Executive Director so that a Default Order may be entered by the Commission.
8. On March 14, 2022, the ALJ entered a finding that Respondent was served with proper notice of the hearing and remanded the matter to the Executive Director by SOAH Order No. 2, so that TCEQ may dispose of this case on a default basis.

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 provide corrosion protection for the UST system, in violation of 30 TEX. ADMIN. CODE § 334.49(a)(1).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to monitor the USTs in a manner that will detect a release at a frequency of at least once every 30 days, in violation of TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to maintain operator training certification records on-site and make them available for review upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 334.606.
5. As evidenced by Finding of Fact No. 5, Respondent filed an answer requesting a hearing as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105, and the matter was referred to SOAH pursuant to 1 TEX. ADMIN. CODE §§ 155.53(b) and 155.101(b) and 30 TEX. ADMIN. CODE § 70.109.
6. As evidenced by Finding of Fact No. 6, Respondent was provided proper notice of the preliminary hearing in accordance with TEX. GOV'T CODE §§ 2001.051(1) and 2001.052, TEX. WATER CODE § 7.058, 1 TEX. ADMIN. CODE §§ 155.105(a) and (c)(3), 155.401, and 155.501, and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.23, 39.25, 39.405, 39.413, 39.423, 39.425, and 80.6.
7. As evidenced by Findings of Fact Nos. 7 and 8, Respondent failed to appear for the preliminary hearing, and pursuant to TEX. GOV'T CODE § 2001.056(4) and 1 TEX. ADMIN. CODE § 155.501(d), the ALJ dismissed the case from the SOAH docket so that the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106(b).
8. Pursuant to TEX. WATER CODE § 7.051, the Commission 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.
9. An administrative penalty in the amount of ten thousand five hundred dollars (\$10,500.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
10. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.
11. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke the Facility's UST fuel delivery certificate if the Commission finds that good cause exists.

12. Good cause for revocation of the Facility's UST fuel delivery certificate exists, as justified by Findings of Fact Nos. 2 and 4 through 8, and Conclusions of Law Nos. 2 through 8.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of ten thousand five hundred dollars (\$10,500.00) for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondent's compliance with all the 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 that are not raised here.
2. The penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to TCEQ and shall be sent with the notation "Re: HEAVENIN, INC.; Docket No. 2020-0481-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

3. The Facility's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all the requirements of this Order, including payment of the administrative penalty in full.
4. Immediately upon the effective date of this Order, Respondent shall cease accepting fuel at the Facility until such time as a valid delivery certificate is obtained from the TCEQ in accordance with 30 TEX. ADMIN. CODE §§ 334.7 and 334.8.
5. Within 10 days after the effective date of this Order, Respondent shall send the Facility's UST fuel delivery certificate to:

Petroleum Storage Tank Registration Team, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

6. Within 15 days after the effective date of this Order, Respondent shall submit written certification in accordance with Ordering Provision No. 7.c., below, to demonstrate compliance with Ordering Provision Nos. 4 and 5.
7. Respondent shall undertake the following technical requirements:
- Upon obtaining a new fuel delivery certificate, Respondent shall post the fuel delivery certificate in a location at the Facility where the delivery certificate is clearly visible at all times, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii).
 - Within 15 days after obtaining a new fuel delivery certificate pursuant to Ordering Provision No. 4, submit written certification in accordance with Ordering Provision No. 7.c., below, to demonstrate compliance with Ordering Provision No. 7.a.
 - The certifications required by these Ordering Provisions 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 based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

The written certification and supporting documentation necessary to demonstrate compliance with these Ordering Provisions shall be sent to:

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

and:

Waste Section Manager
Austin Regional Office, MC R11
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

8. All relief not expressly granted in this Order is denied.
9. The provisions of this Order shall apply to and be binding on 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.
10. 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.
11. 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.
12. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") 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.
13. 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.
14. 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.
15. The Chief Clerk shall provide a copy of this fully executed Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



UNSWORN DECLARATION OF JOHN S. MERCULIEF II

"On behalf of the Executive Director of the Texas Commission on Environmental Quality, the 'Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of HEAVENIN, INC.' (the "EDPRP") was filed in the TCEQ Chief Clerk's office on June 29, 2021.

Respondent filed an answer requesting a hearing on October 20, 2021, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on January 14, 2022. On February 11, 2022, the TCEQ Chief Clerk mailed notice of the March 10, 2022 preliminary hearing via certified mail, return receipt requested, and via first-class mail, postage prepaid, to Respondent.

Respondent failed to appear at the hearing on March 10, 2022. At that hearing, I requested that the ALJ enter a finding that Respondent was served with proper notice of the hearing, and that the matter be remanded to the Executive Director pursuant to 1 TEX. ADMIN. CODE § 155.501(d), which gives an ALJ the authority to remand the case back to the TCEQ for informal disposition on a default basis in accordance with TEX. GOV'T CODE § 2001.056.

The ALJ remanded the matter to the Executive Director by SOAH Order No. 2, issued on March 14, 2022, so that TCEQ may dispose of this case on a default basis."

"My name is John S. Mercurief II, and I am an employee of the following governmental agency: Texas Commission on Environmental Quality. I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the foregoing is true and correct."

Executed in Travis County,
State of Texas,
on the 14th day of July, 2022

A handwritten signature in black ink that reads "John S. Mercurief II".

Declarant