

Elosio Carreon
RN102717493
Docket No. 2021-0707-PST-E

Order Type:
Default Order

Media:
PST

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
306 Southwest 1st Street, Roby, Fisher County

Type of Operation:
temporarily out-of-service underground storage tank (“UST”) system and a 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: February 3, 2023

Comments Received: None

Penalty Information

Total Penalty Assessed: \$11,375

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$11,375

Compliance History Classifications:

Person/CN - Unclassified
Site/RN - Unclassified

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: January 28, 2021

Investigation Information

Date(s) of Investigation: July 17, 2020; March 24, 2021

Date(s) of NOV(s): August 31, 2020

Date(s) of NOE(s): April 23, 2021

Elosio Carreon
RN102717493
Docket No. 2021-0707-PST-E

Violation Information

1. Failed to maintain required operator training certification documentation on-site and make them available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.606].
2. Failed to provide an amended registration for any change or additional information to the agency regarding the UST system within 30 days from the date of the occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(1)(A) and (d)(3)].
3. Failed to maintain all piping, pumps, manways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons [30 TEX. ADMIN. CODE § 334.54(b)(2)].
4. Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements [30 TEX. ADMIN. CODE § 334.47(a)(2)].
5. Failed to ensure that a temporarily out-of-service UST system is emptied no later than the 90th day after the coverage of financial assurance terminates [30 TEX. ADMIN. CODE § 37.867(a)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Immediately begin maintaining all UST records, including but not limited to the Class A/B operator training certification records, and ensure that they are immediately made available for inspection upon request by agency personnel.
2. Within 30 days:
 - a. Submit a properly completed UST registration to indicate the current ownership information for the UST system at the Facility; and
 - b. Properly temporarily remove the UST system from service; or
3. In lieu of Technical Requirement Nos. 2.a. and 2.b. and within 180 days, permanently remove the UST system from service.
4. Within 195 days submit a completely and accurately filled out registration to reflect the current ownership information and operational status of the UST system as permanently removed from service.
5. Within 225 days submit written certification to demonstrate compliance with Technical Requirement Nos. 1 and 2 or 3.

Litigation Information

Date Petition(s) Filed:

October 29, 2021

Date(s) of Service:

November 2, 2021; November 3, 2021

Date Answer(s) Filed:

N/A

Elosio Carreon
RN102717493
Docket No. 2021-0707-PST-E

Contact Information

TCEQ Attorneys: Barrett Hollingsworth, 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: Horus Garcia, Enforcement Division, (512) 239-1813

TCEQ Regional Contact: Michael Taylor, Abilene Regional Office, (325) 698-9674

Respondent Contact: Elosio Carreon, Owner 311 West South 2nd Street, Roby, Texas 79543

Respondent's Attorney: N/A

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Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	26-Apr-2021	Screening	6-May-2021	EPA Due	
	PCW	19-Aug-2021				

RESPONDENT/FACILITY INFORMATION	
Respondent	Elosio Carreon
Reg. Ent. Ref. No.	RN102717493
Facility/Site Region	3-Abilene
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	60737	No. of Violations	3
Docket No.	2021-0707-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Hailey Johnson
		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	30.0%	Adjustment	Subtotals 2, 3, & 7	\$2,625
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Notes: Enhancement for one NOV with same/similar violations and one Default Order.

Culpability	No	0.0%	Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

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: \$1,694
 Estimated Cost of Compliance: \$21,085
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$11,375
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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:

Final Penalty Amount	\$11,375
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$11,375
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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.

PAYABLE PENALTY	\$11,375
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Screening Date 6-May-2021

Docket No. 2021-0707-PST-E

PCW

Respondent Elosio Carreon

Policy Revision 5 (January 28, 2021)

Case ID No. 60737

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN102717493

Media Petroleum Storage Tank

Enf. Coordinator Hailey Johnson

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>)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	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	1	25%
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) 30%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Unclassified

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same/similar violations and one Default Order.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 30%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 30%

Screening Date 6-May-2021

Docket No. 2021-0707-PST-E

PCW

Respondent Elosio Carreon

Policy Revision 5 (January 28, 2021)

Case ID No. 60737

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN102717493

Media Petroleum Storage Tank

Enf. Coordinator Hailey Johnson

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 334.606

Violation Description

Failed to maintain required operator training certification documentation on-site and make them available for inspection upon request by agency personnel. Specifically, documentation for the Class A/B operator training certification was not available for review at the time of the investigation.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
	x		

Percent 10.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$22,500

\$2,500

Violation Events

Number of Violation Events 1

43 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$2,500

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 \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$9

Violation Final Penalty Total \$3,250

This violation Final Assessed Penalty (adjusted for limits) \$3,250

Economic Benefit Worksheet

Respondent Elosio Carreon
Case ID No. 60737
Reg. Ent. Reference No. RN102717493
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	\$5
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	17-Jul-2020	20-Feb-2022	1.60	\$4	n/a	\$4
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 for the underground storage tank ("UST") system on-site at the Facility. The Date Required is the initial 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

\$9

Screening Date 6-May-2021 **Docket No.** 2021-0707-PST-E **PCW**
Respondent Elosio Carreon *Policy Revision 5 (January 28, 2021)*
Case ID No. 60737 *PCW Revision February 11, 2021*
Reg. Ent. Reference No. RN102717493
Media Petroleum Storage Tank
Enf. Coordinator Hailey Johnson

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

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10.0%"/>

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"/>
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 EDRP/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 Elosio Carreon
Case ID No. 60737
Reg. Ent. Reference No. RN102717493
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	\$5
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)	\$40	17-Jul-2020	20-Feb-2022	1.60	\$3	n/a	\$3

Notes for DELAYED costs

Estimated delayed cost to submit an amended UST registration to the TCEQ to indicate the current ownership information for the UST system at the Facility. The Date Required is the initial 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

\$40

TOTAL

\$8

Screening Date 6-May-2021 **Docket No.** 2021-0707-PST-E **PCW**
Respondent Elosio Carreon *Policy Revision 5 (January 28, 2021)*
Case ID No. 60737 *PCW Revision February 11, 2021*
Reg. Ent. Reference No. RN102717493
Media Petroleum Storage Tank
Enf. Coordinator Hailey Johnson

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 334.54(b)(2), 334.47(a)(2), and 37.867(a)

Violation Description
 Failed to maintain all piping, pumps, manways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons. Specifically, the USTs and dispenser piping were not locked and secured. Also, failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements. Additionally, failed to ensure that a temporarily out-of-service UST system is emptied no later than the 90th day after the coverage of financial assurance terminates.

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 43 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$3,750

One quarterly event is recommended from the March 24, 2021 record review date to the May 6, 2021 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 \$1,677 **Violation Final Penalty Total** \$4,875

This violation Final Assessed Penalty (adjusted for limits) \$4,875

Economic Benefit Worksheet

Respondent Elosio Carreon
Case ID No. 60737
Reg. Ent. Reference No. RN102717493
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
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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)	\$21,000	17-Jul-2020	20-Feb-2022	1.60	\$1,677	n/a	\$1,677

Notes for DELAYED costs

Estimated delayed cost to permanently remove three USTs from service with a combined capacity of 14,000 gallons at \$1.50 per gallon. The Date Required is the initial 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

\$21,000

TOTAL

\$1,677

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.



Compliance History Report

Compliance History Report for CN605808716, RN102717493, Rating Year 2020 which includes Compliance History (CH) components from September 1, 2015, through August 31, 2020.

Customer, Respondent, or Owner/Operator: CN605808716, Elosio Carreon **Classification:** UNCLASSIFIED **Rating:** -----

Regulated Entity: RN102717493, Stewarts Station **Classification:** UNCLASSIFIED **Rating:** -----

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

CH Group: 01 - Gas Stations with convenience Stores and other Gas Stations

Location: 306 Southwest 1st Street, Roby, Fisher County, Texas 79543-2104

TCEQ Region: REGION 03 - ABILENE

ID Number(s):
PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 8235 **PETROLEUM STORAGE TANK NON-REGISTERED ID** NUMBER R03102717493

Compliance History Period: September 01, 2015 to August 31, 2020 **Rating Year:** 2020 **Rating Date:** 09/01/2020

Date Compliance History Report Prepared: June 03, 2021

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: June 03, 2016 to June 03, 2021

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.
Name: Hailey Johnson **Phone:** (512) 239-1756

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? CARREON, ELOSIO OWNER since 3/25/2020
- 4) Who was/were the prior owner(s)/operator(s)? COLLINS, WAYLON RAY, OWNER, 10/1/2002 to 3/24/2020

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

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

- 1 Effective Date: 01/20/2017 ADMINORDER 2015-1257-PST-E (Findings Order-Default)
Classification: Major
Citation: 30 TAC Chapter 334, SubChapter C 334.55
Rqmt Prov: Provisions 2.a. & 3. ORDER
Description: Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.
Classification: Major
Citation: 2A TWC Chapter 5, SubChapter A 5.702
30 TAC Chapter 334, SubChapter B 334.22(a)
Rqmt Prov: Provisions 2.b. & 3. ORDER
Description: Failure to timely pay annual fees and associated late fees. Failure to comply with Commission Order Docket No. 2010-0567-PST-E.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

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

Item 1	August 14, 2019	(1578382)
Item 2	October 08, 2020	(1677592)

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.

1 Date: 08/31/2020 (1672156)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter N 334.602(a)
30 TAC Chapter 334, SubChapter N 334.603(b)
30 TAC Chapter 334, SubChapter N 334.606

Description: Failure to have at least one person associated with the facility, who has completed Class A, B, and C Operator Training.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)
30 TAC Chapter 334, SubChapter A 334.7(e)(2)

Description: Failure to amend the UST Registration Form within thirty days of a change.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)

Description: Failure to upgrade or remove the existing UST system to bring into timely compliance with upgrade requirements, no later than sixty (60) days after the prescribed implementation deadline (December 22, 1998).

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.54(b)(2)

Description: Failure to secure tank access points to prevent access, tampering, and vandalism.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.54(d)

Description: Failure to provide verification that all out-of-service (OOFs) tanks are empty to less than one inch of product, to be exempt from release detection.

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
ELOSIO CARREON AKA ELOJIO
CARREON;
RN102717493

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER

DOCKET NO. 2021-0707-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 and corrective action of the respondent. The respondent made the subject of this Order is Elosio Carreon AKA Elojio Carreon ("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 with retail sales of gasoline located at 306 Southwest 1st Street in Roby, Fisher County, Texas (Facility ID No. 8235) (the "Facility"). The UST system at the Facility is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contains or contained a regulated petroleum substance as defined in the rules of the TCEQ.
2. During an investigation conducted on July 17, 2020, and a record review conducted on March 24, 2021, an investigator documented that Respondent:
 - a. Failed to maintain required operator training certification documentation on-site and make them available for inspection upon request by agency personnel. Specifically, documentation for the Class A/B operator training certification was not available for review at the time of the investigation;
 - b. Failed to provide an amended registration for any change or additional information to the agency regarding the UST system within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current ownership information for the UST system at the Facility;
 - c. Failed to maintain all piping, pumps, manways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons. Specifically, the USTs and dispenser piping were not locked and secured;
 - d. Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and
 - e. Failed to ensure that a temporarily out-of-service UST system is emptied no later than the 90th day after the coverage of financial assurance terminates.

3. 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 Elosio Carreon” (the “EDPRP”) in the TCEQ Chief Clerk’s office on October 29, 2021.
4. By letter dated October 29, 2021, sent to Respondent's last known addresses via certified mail, return receipt requested, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipts “green cards,” Respondent received notice of the EDPRP on November 2, 2021 and November 3, 2021, as evidenced by the signatures on the cards.
5. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

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 maintain required operator training certification documentation on-site and make them available for inspection upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 334.606.
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to provide an amended registration for any change or additional information to the agency regarding the UST system within 30 days from the date of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(1)(A) and (d)(3).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to maintain all piping, pumps, manways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons, in violation of 30 TEX. ADMIN. CODE § 334.54(b)(2).
5. As evidenced by Finding of Fact No. 2.d., Respondent failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, in violation of 30 TEX. ADMIN. CODE § 334.47(a)(2).
6. As evidenced by Finding of Fact No. 2.e., Respondent failed to ensure that a temporarily out-of-service UST system is emptied no later than the 90th day after the coverage of financial assurance terminates, in violation of 30 TEX. ADMIN. CODE § 37.867(a).
7. As evidenced by Findings of Fact Nos. 3 and 4, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(b)(1).
8. As evidenced by Finding of Fact No. 5, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
9. 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.

10. An administrative penalty in the amount of eleven thousand three hundred seventy-five dollars (\$11,375.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
11. 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.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of eleven thousand three hundred seventy-five dollars (\$11,375.00) 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 which 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: Elosio Carreon; Docket No. 2021-0707-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. Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, begin maintaining all UST records, including but not limited to the Class A/B operator training certification records, and ensure that they are immediately made available for inspection upon request by agency personnel, in accordance with 30 TEX. ADMIN. CODE § 334.606; and
 - b. Within 30 days after the effective date of this Order:
 - i. Submit a properly completed UST registration to indicate the current ownership information for the UST system at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

Registration and Reporting Section
Petroleum Storage Tank Registration Program, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
 - ii. Properly temporarily remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.54, which includes locking and securing all tank access points at the Facility and either emptying the USTs of all regulated substances and conducting a site check or providing financial assurance, in accordance with 30 TEX. ADMIN. CODE § 37.867; or
 - c. In lieu of Ordering Provision Nos. 3.a. and 3.b., within 180 days after the effective date of the Commission 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 UST 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 a completely and accurately filled out registration to reflect the current ownership information and 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 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
- d. Within 225 days after the effective date of this Order, submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 3.a. and 3.b., or 3.c. The certification shall be signed by the 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."

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

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

and:

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

4. All relief not expressly granted in this Order is denied.
5. The provisions of 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.
6. 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.
7. 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.
8. 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.
9. 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.
10. 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.
11. 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 BARRETT HOLLINGSWORTH

“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 Elosio Carreon’ (the “EDPRP”) was filed in the TCEQ Chief Clerk’s office on October 29, 2021.

The EDPRP was mailed to Respondent's last known addresses on October 29, 2021, via certified mail, return receipt requested, postage prepaid. According to the return receipt “green cards,” Respondent received notice of the EDPRP on November 2, 2021 and November 3, 2021, as evidenced by the signatures on the cards.

More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.”

"My name is Barrett Hollingsworth, 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 12th day of January, 2023

A handwritten signature in cursive script that reads "Barrett Hollingsworth".

Declarant