

Gerardo Castaneda
 RN111277158
 Docket No. 2021-0983-MSW-E

Order Type:
 Default Order

Media:
 MSW

Small Business:
 Yes

Location(s) Where Violation(s) Occurred:
 North of United States Highway 62, 21.1 miles west of the intersection with United States Highway 385, Seminole, Gaines County (the “Site”)

Type of Operation:
 municipal solid waste disposal site

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 27, 2023

Comments Received: None

Penalty Information

Total Penalty Assessed: \$6,203

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$6,203

Compliance History Classifications:

Person/CN - UNCLASSIFIED
 Site/RN - UNCLASSIFIED

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: January 28, 2021

Investigation Information

Complaint Date(s): March 30, 2021

Complaint Information: On March 30, 2021 the TCEQ Region 7 office received a waste complaint by phone that alleged over 100 55-gallon drums filled with used oil, lubricants, and other various wastes were illegally dumped on a private property.

Date(s) of Investigation: April 7, 2021

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

Date(s) of NOE(s): June 25, 2021

Gerardo Castaneda
RN111277158
Docket No. 2021-0983-MSW-E

Violation Information

1. Failed to prevent an unauthorized discharge of used oil, [TEX. HEALTH & SAFETY CODE § 371.041,30 TEX. ADMIN. CODE § 324.4(2)(B) and (2)(C), and 40 C.F.R. § 279.43(a)].
2. Failed to clean up and manage properly a release of used oil, [30 TEX. ADMIN. CODE §§ 324.1, 324.4(1), and 324.15, and 40 C.F.R § 279.22(d)].
3. Failed to register with the Commission and the United States Environmental Protection Agency prior to conducting used oil and used oil filter activities, [30 TEX. ADMIN. CODE § 324.11(2)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Immediately, cease conducting used oil activities until properly registered.
2. Within 30 days properly dispose of all used oil containers and oil-contaminated soil at an authorized facility.
3. Within 60 days:
 - a. Remediate the Site using appropriate corrective measures; and
 - b. Submit a report detailing remediation activities at both areas where contaminated soil was observed.
4. Within 75 days submit written certification to demonstrate compliance with Technical Requirement Nos. 1 through 3.b.

Litigation Information

Date Petition(s) Filed: June 21, 2023; August 11, 2023
Date(s) of Service: unclaimed; unclaimed
Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Casey Kurnath, 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: Reagyn Slocum, Midland Regional Office, (432) 570-1359
Respondent Contact: Gerardo Castaneda, Landowner, 194 Farm-to-Market 3306, Seminole, Texas
79360
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	28-Jun-2021	Screening	30-Jun-2021	EPA Due	
	PCW	19-Oct-2022				

RESPONDENT/FACILITY INFORMATION	
Respondent	Gerardo Castaneda
Reg. Ent. Ref. No.	RN111277158
Facility/Site Region	7-Midland
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	61076	No. of Violations	3
Docket No.	2021-0983-MSW-E	Order Type	1660
Media Program(s)	Used Oil	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Stephanie McCurley
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$5,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$6,000
---	-------------------	---------

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0.0% Adjustment	Subtotals 2, 3, & 7	\$0
---------------------------	-----------------	--------------------------------	-----

Notes: No adjustment for Compliance History.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
--------------------	----	------------------	-------------------	-----

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
--	-------------------	-----

Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
-------------------------	-------------------	-------------------	-----

Total EB Amounts	\$334	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$1,900	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$6,000
-----------------------------	-----------------------	---------

OTHER FACTORS AS JUSTICE MAY REQUIRE	3.4%	Adjustment	\$203
---	------	-------------------	-------

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with Violation No. 3.

Final Penalty Amount	\$6,203
-----------------------------	---------

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$6,203
-----------------------------------	-------------------------------	---------

DEFERRAL		Reduction	Adjustment	\$0
-----------------	--	-----------	-------------------	-----

Reduces the Final Assessed Penalty by the indicated percentage.

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$6,203
------------------------	---------

Screening Date 30-Jun-2021

Docket No. 2021-0983-MSW-E

PCW

Respondent Gerardo Castaneda

Policy Revision 5 (January 28, 2021)

Case ID No. 61076

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN111277158

Media Used Oil

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>)	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	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) 0%

>> 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

No adjustment for Compliance History.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 0%

Screening Date 30-Jun-2021
Respondent Gerardo Castaneda
Case ID No. 61076
Reg. Ent. Reference No. RN111277158
Media Used Oil
Enf. Coordinator Stephanie McCurley

Docket No. 2021-0983-MSW-E

PCW

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 324.4(2)(B) and (2)(C), Tex. Health & Safety Code § 371.041, and 40 Code of Federal Regulations § 279.43(a)

Violation Description Failed to prevent an unauthorized discharge of used oil. Specifically, a total of approximately 120 55-gallon drums of used oil were disposed of at the Site, consisting of approximately 70 drums behind the residence and approximately 50 drums along a dirt road approximately 0.5 miles northeast of the residence, some of which were open with their contents leaking onto the ground, affecting approximately 27.78 cubic yards of soil.

Base Penalty \$5,000

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

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

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
				0.0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants that do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$4,250

\$750

Violation Events

Number of Violation Events 3 84 Number of violation days

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$2,250

Three monthly events are recommended from the April 7, 2021 investigation date to the June 30, 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 \$2,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$115

Violation Final Penalty Total \$2,326

This violation Final Assessed Penalty (adjusted for limits) \$2,326

Economic Benefit Worksheet

Respondent Gerardo Castaneda
Case ID No. 61076
Reg. Ent. Reference No. RN111277158
Media Used Oil
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
------------------	-----------	---------------	------------	-----	----------------	-------------	-----------

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	\$1,500	7-Apr-2021	21-Oct-2022	1.54	\$115	n/a	\$115
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 properly dispose of all used oil containers and oil-contaminated soil at an authorized facility, remediate using appropriate corrective measures, and submit a report detailing remediation activities. 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

\$1,500

TOTAL

\$115

Screening Date 30-Jun-2021 **Docket No.** 2021-0983-MSW-E **PCW**
Respondent Gerardo Castaneda *Policy Revision 5 (January 28, 2021)*
Case ID No. 61076 *PCW Revision February 11, 2021*
Reg. Ent. Reference No. RN111277158
Media Used Oil
Enf. Coordinator Stephanie McCurley

Violation Number 2
Rule Cite(s) 30 Tex. Admin. Code §§ 324.1, 324.4(1), and 324.15, and 40 Code of Federal Regulations § 279.22(d)
Violation Description Failed to clean up and manage properly a release of used oil. Specifically, the Respondent did not clean up the release of used oil at the Site.

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual			X	15.0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0.0%

Matrix Notes Human health or the environment has been exposed to insignificant amounts of pollutants that do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$4,250

\$750

Violation Events

Number of Violation Events 3 84 Number of violation days

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$2,250

Three monthly events are recommended from the April 7, 2021 investigation date to the June 30, 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 \$2,250

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$0 **Violation Final Penalty Total** \$2,326

This violation Final Assessed Penalty (adjusted for limits) \$2,326

Economic Benefit Worksheet

Respondent Gerardo Castaneda
Case ID No. 61076
Reg. Ent. Reference No. RN111277158
Media Used Oil
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
------------------	-----------	---------------	------------	-----	----------------	-------------	-----------

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. 1.

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 30-Jun-2021 **Docket No.** 2021-0983-MSW-E **PCW**
Respondent Gerardo Castaneda *Policy Revision 5 (January 28, 2021)*
Case ID No. 61076 *PCW Revision February 11, 2021*
Reg. Ent. Reference No. RN111277158
Media Used Oil
Enf. Coordinator Stephanie McCurley

Violation Number 3
Rule Cite(s) 30 Tex. Admin. Code § 324.11(2)
Violation Description Failed to register with the Commission and the United States Environmental Protection Agency prior to conducting used oil and used oil filter activities.

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual			
Potential					

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			X		

100% of the rule requirement was not met.

Adjustment \$4,500

\$500

Violation Events

Number of Violation Events 3 84 Number of violation days

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$1,500

Three monthly events are recommended from the April 7, 2021 investigation date to the June 30, 2021 screening date.

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOE/NOV	NOE/NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	

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

Violation Subtotal \$1,500

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$219 **Violation Final Penalty Total** \$1,551

This violation Final Assessed Penalty (adjusted for limits) \$1,551

Economic Benefit Worksheet

Respondent Gerardo Castaneda
Case ID No. 61076
Reg. Ent. Reference No. RN111277158
Media Used Oil
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	\$200	14-Mar-2021	21-Oct-2022	1.61	\$16	n/a	\$16
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated delayed cost to register as a used oil transporter with the TCEQ and the United States Environmental Protection Agency. The Date Required is the date used oil was transported 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)	\$200	14-Mar-2021	30-Jun-2021	0.30	\$3	\$200	\$203

Notes for AVOIDED costs

Estimated avoided cost to register as a used oil transporter with the TCEQ and the United States Environmental Protection Agency. The Date Required is the date used oil was transported and the Final Date is the screening date.

Approx. Cost of Compliance

\$400

TOTAL

\$219

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 CN605899467, RN111277158, Rating Year 2021 which includes Compliance History (CH) components from September 1, 2016, through August 31, 2021.

Customer, Respondent, or Owner/Operator: CN605899467, Gerardo Castaneda **Classification:** UNCLASSIFIED **Rating:** -----

Regulated Entity: RN111277158, Froese Custom Harvest **Classification:** UNCLASSIFIED **Rating:** -----

Complexity Points: 0 **Repeat Violator:** NO

CH Group: 14 - Other

Location: North of United States Highway 62, 21.1 miles West of the intersection with United States Highway 385, Seminole, Gaines County, Texas

TCEQ Region: REGION 07 - MIDLAND

ID Number(s):
MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER
R07111277158

Compliance History Period: September 01, 2016 to August 31, 2021 **Rating Year:** 2021 **Rating Date:** 09/01/2021

Date Compliance History Report Prepared: November 16, 2021

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: November 16, 2016 to November 16, 2021

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.
Name: Berenice Munoz **Phone:** (915) 834-4976

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? NO
- 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:

N/A

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
GERARDO CASTANEDA;
RN111277158**

**§
§
§
§
§**

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2021-0983-MSW-E

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's First Amended Report and Petition, filed pursuant to TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE chs. 361 and 371, 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 Gerardo Castaneda ("Respondent").

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

FINDINGS OF FACT

1. Respondent operates a municipal solid waste disposal site located north of United States Highway 62, 21.1 miles west of the intersection with United States Highway 385 in Seminole, Gaines County, Texas (the "Site"). The Site contains and/or involves the management of municipal solid waste ("MSW") and used oil as defined in TEX. HEALTH & SAFETY CODE chs. 361 and 371.
2. During an investigation conducted on April 7, 2021, an investigator documented that Respondent:
 - a. Failed to prevent an unauthorized discharge of used oil. Specifically, a total of approximately 120 55-gallon drums of used oil were disposed of at the Site, consisting of approximately 70 drums behind the residence and approximately 50 drums along a dirt road approximately 0.5 miles northeast of the residence, some of which were open with their contents leaking onto the ground, affecting approximately 27.78 cubic yards of soil;
 - b. Failed to clean up and manage properly a release of used oil. Specifically, Respondent did not clean up the release of used oil at the Site; and
 - c. Failed to register with the Commission and the United States Environmental Protection Agency prior to conducting used oil and used oil filter activities.
3. The Executive Director filed the "Executive Director's First Amended 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 Gerardo Castaneda" (the "EDFARP") in the TCEQ Chief Clerk's office on June 21, 2023.
4. The EDFARP was mailed to Respondent's last known address on June 21, 2023, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDFARP sent by certified mail as "unclaimed."
5. The Executive Director re-filed the EDFARP in the TCEQ Chief Clerk's office on August 11, 2023.

6. By letter dated August 11, 2023, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDFARP. The United States Postal Service returned the EDFARP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDFARP.
7. More than 20 days have elapsed since Respondent received notice of the EDFARP. 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. HEALTH & SAFETY CODE ch. 361 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to prevent an unauthorized discharge of used oil, in violation of TEX. HEALTH & SAFETY CODE § 371.041, 30 TEX. ADMIN. CODE § 324.4(2)(B) and (2)(C), and 40 C.F.R. § 279.43(a).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to clean up and manage properly a release of used oil, in violation of 30 TEX. ADMIN. CODE §§ 324.1, 324.4(1), and 324.15, and 40 C.F.R § 279.22(d).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to register with the Commission and the United States Environmental Protection Agency prior to conducting used oil and used oil filter activities, in violation of 30 TEX. ADMIN. CODE § 324.11(2).
5. As evidenced by Findings of Fact Nos. 3 through 6, the Executive Director timely served Respondent with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
6. As evidenced by Finding of Fact No. 7, 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.
7. 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.
8. An administrative penalty in the amount of six thousand two hundred three dollars (\$6,203.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
9. 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 six thousand two hundred three dollars (\$6,203.00) 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: Gerardo Castaneda; Docket No. 2021-0983-MSW-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, cease conducting used oil activities until properly registered, in accordance with 30 TEX. ADMIN. CODE § 328.11.
 - b. Within 30 days after the effective date of this Order, properly dispose of all used oil containers and oil-contaminated soil at an authorized facility.
 - c. Within 60 days after the effective date of this Order:
 - i. Remediate the Site using appropriate corrective measures; and
 - ii. Submit a report detailing remediation activities at both areas where contaminated soil was observed, in accordance to Ordering Provision 3.d.
 - d. Within 75 days after the effective date of this Order, submit written certification to demonstrate compliance with Ordering Provision Nos. 3.a. through 3.c.ii. 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 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
Midland Regional Office
Texas Commission on Environmental Quality
9900 West IH-20, Suite 100
Midland, Texas 79706
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.
 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 CASEY KURNATH

"On behalf of the Executive Director of the Texas Commission on Environmental Quality, the 'Executive Director's First Amended 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 Gerardo Castaneda' (the "EDFARP") was filed in the TCEQ Chief Clerk's office on June 21, 2023.

The EDFARP was mailed to Respondent's last known address on June 21, 2023, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDFARP sent by certified mail as "unclaimed."

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the EDFARP was re-filed in the TCEQ Chief Clerk's office on August 11, 2021.

The EDFARP was mailed to Respondent's last known address on August 11, 2023, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDFARP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDFARP in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

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

"My name is Casey Kurnath, 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 25th day of September, 2023

Casey Kurnath

Declarant