

## **TCEQ Interoffice Memorandum**

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**To:** Mary Smith, General Counsel  
Ron Olson, Assistant General Counsel

**Thru:** *JSR* Jess Robinson, Senior Attorney  
Litigation Division

**From:** *WH* William Hogan, Staff Attorney  
Litigation Division

**Date:** May 19, 2023

**Subject:** **Backup Revision**  
**May 31, 2022 Commission Agenda**  
Draft Item No. 33  
F.S. DEVELOPMENT, LTD.; Docket No. 2021-1598-PST-E

Enclosed please find the following:

**A Default Order to replace the Shutdown Order:**

On May 4, 2023, OCE's Beaumont Regional Office conducted a compliance investigation and documented that Respondent no longer owns or operates the Facility. A shutdown Order is therefore no longer necessary.

**An Updated Executive Summary:**

Updates were made to reflect the change from a Shutdown Order to a Default Order.

**Respondent Contact:**

Firdous Hamani, President  
F.S. DEVELOPMENT, LTD.  
7447 Harwin Drive, Suite 213  
Houston, Texas 77036

Replacement originals are enclosed. Please do not hesitate to call me at (512) 239-5918 if you have any questions regarding this matter.

cc: Horus Garcia, Enforcement Division  
Charlie Adams, Beaumont Regional Office  
Gill Valls, Office of the General Counsel  
Michael Parrish, Enforcement Division  
Leslie Gann, Enforcement Division  
Stuart Beckley, Enforcement Division  
Joseph E. Ortiz, Owner, 2211 Woodrow Drive, Port Arthur, TX 77642

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 61677  
F.S. DEVELOPMENT, LTD.  
RN102409430  
Docket No. 2021-1598-PST-E

**Order Type:**  
Default Order

**Media:**  
PST

**Small Business:**  
Yes

**Location(s) Where Violation(s) Occurred:**  
1125 Jefferson Drive, Port Arthur, Jefferson County

**Type of Operation:**  
underground storage tank (“UST”) system 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: Joseph E. Ortiz, 2211 Woodrow Drive, Port Arthur, TX  
77642 (new owner)

**Texas Register Publication Date:** March 3, 2023

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$7,666  
**Total Paid to General Revenue:** \$0  
**Total Due to General Revenue:** \$7,666

**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):** N/A  
**Date(s) of Investigation:** November 3, 2021  
**Date(s) of NOV(s):** N/A  
**Date(s) of NOE(s):** November 30, 2021

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 61677  
F.S. DEVELOPMENT, LTD.  
RN102409430  
Docket No. 2021-1598-PST-E

**Violation Information**

1. Failed to designate, train, and certify at least one named individual for each class of operator— Class A, Class B, and Class C—for the Facility [30 TEX. ADMIN. CODE § 334.602(a)].
2. Failed to inspect the impressed current corrosion protection system at least once every 60 days to ensure the rectifier and other system components are operating properly [TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(c)(2)(C)].
3. Failed to empty the UST system within 90 days after financial assurance coverage terminates [30 TEX. ADMIN. CODE § 37.867(a)].
4. Failed to notify the agency of any change or additional information 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), (d)(1)(B) and (d)(3)].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**

None

**Technical Requirements:**

1. Within 30 days:
  - a. Designate, train, and certify a Class A and Class B operator for the Facility; and
  - b. Properly temporarily remove the UST system from service, which includes providing corrosion protection for the UST system, and either providing financial assurance or conducting a site check.
2. Within 90 days, submit an amended registration to reflect the current ownership information and the operational status of the UST system to the Petroleum Storage Tank Registration Team.
3. Within 105 days, submit written certification to demonstrate compliance with Technical Requirements Nos. 1.a., 1.b., and 2.
4. In lieu of Technical Requirements Nos. 1.a., 1.b., 2, and 3, within 195 days, permanently remove the UST system from service, which includes:
  - a. Providing a Construction Notification to the TCEQ at least 30-days prior to any removal activities; and
  - b. Employing a Licensed UST Contractor to perform all removal activities, including:
    - i. Removing the USTs from the ground, abandoning the USTs in-place, or conducting a permanent change-in-service;
    - ii. 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
    - iii. 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.
  - c. Within 225 days, submit a completely and accurately filled out registration to reflect the current ownership information, UST system information, and operational status of the UST system as permanently removed from service, to the Petroleum Storage Tank Registration Team.
  - d. Within 255 days, submit written certification to demonstrate compliance with Technical Requirements Nos. 4.a. through 4.c.

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 61677  
F.S. DEVELOPMENT, LTD.  
RN102409430  
Docket No. 2021-1598-PST-E

**Litigation Information**

**Date Petition(s) Filed:** September 27, 2022  
**Date(s) of Service:** September 29, 2022  
**Date Answer(s) Filed:** N/A

**Contact Information**

**TCEQ Attorneys:** William Hogan, 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) 239-1831

**TCEQ Regional Contact:** Charlie Adams, Beaumont Regional Office, (409) 898-3838

**Respondent Contact:** Firdous Hamani, President, F.S. DEVELOPMENT, LTD., 7447 Harwin Drive, Suite  
213, Houston, Texas 77036

**Respondent's Attorney:** N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN ENFORCEMENT ACTION CONCERNING F.S. DEVELOPMENT, LTD.; RN102409430

§ § § § §

BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

DEFAULT ORDER

DOCKET NO. 2021-1598-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 F.S. DEVELOPMENT, LTD. ("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), an underground storage tank ("UST") system and a convenience store with retail sales of gasoline located at 1125 Jefferson Drive in Port Arthur, Jefferson County, Texas (Facility ID No. 40084) (the "Facility"). The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the rules of the TCEQ, and contain a regulated petroleum substance as defined in the rules of the TCEQ.
2. During an investigation conducted on November 3, 2021, an investigator documented that Respondent:
a. Failed to designate, train, and certify at least one named individual for each class of operator—Class A, Class B, and Class C—for the Facility. Specifically, the Facility did not have a Class A and Class B Operator;
b. Failed to inspect the impressed current corrosion protection system at least once every 60 days to ensure the rectifier and other system components are operating properly. Specifically, Respondent was not performing the 60-day inspections of the cathodic protection system;
c. Failed to empty the UST system within 90 days after financial assurance coverage terminates; and
d. Failed to notify the agency of any change or additional information 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 of the USTs at the Facility.
3. The Executive Director recognizes that Respondent no longer owns the Facility, as of September 6, 2022.
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 F.S. DEVELOPMENT, LTD." (the "EDPRP") in the TCEQ Chief Clerk's office on September 27, 2022.

5. By letter dated September 27, 2022, sent to Respondent's last known address via certified mail, return receipt requested, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to USPS.com "Track & Confirm" delivery confirmation records, Respondent received notice of the EDPRP on September 29, 2022.
6. 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 designate, train, and certify at least one named individual for each class of operator—Class A, Class B, and Class C—for the Facility, in violation of 30 TEX. ADMIN. CODE § 334.602(a).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to inspect the impressed current corrosion protection system at least once every 60 days to ensure the rectifier and other system components are operating properly, in violation of TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(c)(2)(C).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to empty the UST system within 90 days after financial assurance coverage terminates, in violation of 30 TEX. ADMIN. CODE § 37.867(a).
5. As evidenced by Finding of Fact No. 2.d., Respondent failed to notify the agency of any change or additional information 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), (d)(1)(B) and (d)(3).
6. As evidenced by Findings of Fact Nos. 4 and 5, 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).
7. As evidenced by Finding of Fact No. 6, 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.
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 seven thousand six hundred sixty-six dollars (\$7,666.00) 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.

#### ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of seven thousand six hundred sixty-six dollars (\$7,666.00) 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: F.S. DEVELOPMENT, LTD.; Docket No. 2021-1598-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. Within 30 days after the effective date of this Order:
  - i. Designate, train, and certify a Class A and Class B operator for the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.602; and
  - ii. Properly temporarily remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.54, which includes providing corrosion protection for the UST system, and either providing financial assurance or conducting a site check, in accordance with 30 TEX. ADMIN. CODE §§ 334.49 and 334.54.

- b. Within 90 days after the effective date of this Order, submit an amended registration to reflect the current ownership information and the operational status of the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.7, to:

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

- c. Within 105 days after the effective date of this Order, submit written certification, in accordance with Ordering Provision No. 3.e., to demonstrate compliance with Ordering Provisions Nos. 3.a. and 3.b.
- d. In lieu of Ordering Provisions Nos. 3.a. through 3.c., within 195 days after the effective date of this Order, permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55, which includes the following actions:
  - i. Providing a Construction Notification to the TCEQ at least 30-days prior to any removal activities; and
  - ii. Employing a Licensed UST Contractor to perform all removal activities, including:
    - A. Removing the USTs from the ground, abandoning the USTs in-place, or conducting a permanent change-in-service;
    - B. 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

- C. 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 225 days after the effective date of this Order, submit a completely and accurately filled out registration to reflect the current ownership information, UST system information, and operational status of the UST system as permanently removed from service, in accordance with 30 TEX. ADMIN. CODE § 334.7 to:
  - Petroleum Storage Tank Registration Team, MC 138
  - Texas Commission on Environmental Quality
  - P.O. Box 13087
  - Austin, Texas 78711-3087
- iv. Within 255 days after the effective date of this Order, submit written certification, in accordance with Ordering Provision No. 3.e., to demonstrate compliance with Ordering Provision Nos. 3.d.i. through 3.d.iii.
- e. 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 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."

Respondent shall submit the written certifications and supporting documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and:

Waste Section Manager  
Beaumont Regional Office  
Texas Commission on Environmental Quality  
3870 Eastex Freeway  
Beaumont, Texas 77703-1830

- 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.

F.S. DEVELOPMENT, LTD.  
Docket No. 2021-1598-PST-E  
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

\_\_\_\_\_  
Date

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



## UNSWORN DECLARATION OF WILLIAM HOGAN

"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 F.S. DEVELOPMENT, LTD.' (the "EDPRP") was filed in the TCEQ Chief Clerk's office on September 27, 2022.

The EDPRP was mailed to Respondent's last known address on September 27, 2022, via certified mail, return receipt requested, postage prepaid. According to USPS.com "Track & Confirm" delivery confirmation records, Respondent received notice of the EDPRP on September 29, 2022."

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 William K. Hogan, 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 10th day of May, 2023

A handwritten signature in cursive script that reads "William K. Hogan".

\_\_\_\_\_  
Declarant

**Order Type:**  
Default Shutdown Order

**Media:**  
PST

**Small Business:**  
Yes

**Location(s) Where Violation(s) Occurred:**  
1125 Jefferson Drive, Port Arthur, Jefferson County

**Type of Operation:**  
underground storage tank (“UST”) system 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:** March 3, 2023

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$7,666  
**Total Paid to General Revenue:** \$0  
**Total Due to General Revenue:** \$7,666

**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):** N/A  
**Date(s) of Investigation:** November 3, 2021  
**Date(s) of NOV(s):** N/A  
**Date(s) of NOE(s):** November 30, 2021

**Violation Information**

1. Failed to designate, train, and certify at least one named individual for each class of operator— Class A, Class B, and Class C—for the Facility [30 TEX. ADMIN. CODE § 334.602(a)].
2. Failed to inspect the impressed current corrosion protection system at least once every 60 days to ensure the rectifier and other system components are operating properly [TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(c)(2)(C)].
3. Failed to empty the UST system within 90 days after financial assurance coverage terminates [30 TEX. ADMIN. CODE § 37.867(a)].
4. Failed to notify the agency of any change or additional information 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), (d)(1)(B) and (d)(3)].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**

None

**Technical Requirements:**

1. Immediately shut down operations of all USTs at the Facility:
  - a. Cease dispensing fuel from the USTs;
  - b. Cease receiving deliveries of regulated substances into the USTs;
  - c. Padlock the dispensers;
  - d. Empty the USTs of all regulated substances; and
  - e. Temporarily remove the USTs from service.
2. 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 of the requirements set forth in the Order, including payment of the administrative penalty in full.
3. The USTs shall remain out of service and as directed by Technical Requirement Nos. 1.a. through 1.e. until such time as Respondent demonstrates to the satisfaction of the Executive Director that the corrosion protection violation has been corrected and Respondent obtains a new fuel delivery certificate for the Facility.
4. Immediately cease accepting fuel at the Facility until such time as a valid delivery certificate is obtained from the TCEQ.
5. Within 10 days, Respondent shall surrender the Facility's UST fuel delivery certificate to the TCEQ.
6. Within 15 days, submit a detailed written report documenting the steps taken to comply with Technical Requirement Nos. 1.a. through 1.e., 4 and 5.
7. If Respondent elects to permanently remove from service any portion of the UST system at the Facility, Respondent shall, immediately, permanently remove the UST system from service, and within 15 days, shall submit a written report documenting compliance to the TCEQ.
8. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline:
  - a. Designate, train, and certify a Class A and Class B operator for the Facility.
  - b. Begin inspecting the impressed current corrosion protection system at least once every 60 days to ensure the rectifier and other system components are operating properly.
  - c. Obtain financial assurance for all USTs at the Facility.
  - d. Submit a properly completed UST registration to indicate the current ownership information for the UST system at the Facility to the Registration and Reporting Section.

- e. Obtain a new fuel delivery certificate from the TCEQ.
9. Upon obtaining a new fuel delivery certificate, post the fuel delivery certificate in a location at the Facility where the delivery certificate is clearly visible at all times.
10. Within 10 days, of resuming sales of gasoline, submit written certification to demonstrate compliance with Technical Requirement Nos. 8.a. through 8.e. and 9.

**Litigation Information**

**Date Petition(s) Filed:** September 27, 2022  
**Date(s) of Service:** September 29, 2022  
**Date Answer(s) Filed:** N/A

**Contact Information**

**TCEQ Attorneys:** William Hogan, 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:** Madelyn Flannagan, Enforcement Division, (512) 239-1853

**TCEQ Regional Contact:** Charlie Adams, Beaumont Regional Office, (409) 898-3838

**Respondent Contact:** Firdous Hamani, President, F.S. DEVELOPMENT, LTD., 7447 Harwin Drive, Suite 213, Houston, Texas 77036

**Respondent's Attorney:** N/A

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# Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

<b>DATES</b>	<b>Assigned</b>	6-Dec-2021	<b>Screening</b>	9-Dec-2021	<b>EPA Due</b>	
	<b>PCW</b>	1-Sep-2022				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	F.S. DEVELOPMENT, LTD.
<b>Reg. Ent. Ref. No.</b>	RN102409430
<b>Facility/Site Region</b>	10-Beaumont
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	61677	<b>No. of Violations</b>	3
<b>Docket No.</b>	2021-1598-PST-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Sushil Modak
		<b>EC's Team</b>	Enforcement Team 6
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$7,500</b>
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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.

<b>Compliance History</b>	<b>0.0%</b> Adjustment	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$0</b>
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Notes: No adjustment for Compliance History.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>\$0</b>
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<b>Economic Benefit</b>	<b>0.0%</b> Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts: \$418  
 Estimated Cost of Compliance: \$5,370  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$7,500</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	<b>2.2%</b> Adjustment	<b>\$166</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with Violation Nos. 2 and 3.

<b>Final Penalty Amount</b>	<b>\$7,666</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$7,666</b>
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<b>DEFERRAL</b>	Reduction Adjustment	<b>\$0</b>
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes: Deferral not offered for non-expedited settlement.

<b>PAYABLE PENALTY</b>	<b>\$7,666</b>
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**Screening Date** 9-Dec-2021

**Docket No.** 2021-1598-PST-E

**PCW**

**Respondent** F.S. DEVELOPMENT, LTD.

Policy Revision 5 (January 28, 2021)

**Case ID No.** 61677

PCW Revision February 11, 2021

**Reg. Ent. Reference No.** RN102409430

**Media** Petroleum Storage Tank

**Enf. Coordinator** Sushil Modak

### 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** 9-Dec-2021  
**Respondent** F.S. DEVELOPMENT, LTD.  
**Case ID No.** 61677  
**Reg. Ent. Reference No.** RN102409430  
**Media** Petroleum Storage Tank  
**Enf. Coordinator** Sushil Modak

**Docket No.** 2021-1598-PST-E

**PCW**

*Policy Revision 5 (January 28, 2021)  
 PCW Revision February 11, 2021*

**Violation Number** 1

**Rule Cite(s)** 30 Tex. Admin. Code § 334.602(a)

**Violation Description** Failed to designate, train, and certify at least one named individual for each class of operator - Class A, Class B, and Class C - for the Facility. Specifically, the Facility did not have a Class A and Class B Operator.

**Base Penalty** \$25,000

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

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

**>> Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
				0.0%

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

**Adjustment** \$23,750

\$1,250

**Violation Events**

Number of Violation Events 1 36 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

**Violation Base Penalty** \$1,250

One quarterly event is recommended from the November 3, 2021 investigation date to the December 9, 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** \$1,250

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount** \$4

**Violation Final Penalty Total** \$1,278

**This violation Final Assessed Penalty (adjusted for limits)** \$1,278

## Economic Benefit Worksheet

**Respondent** F.S. DEVELOPMENT, LTD.  
**Case ID No.** 61677  
**Reg. Ent. Reference No.** RN102409430  
**Media** Petroleum Storage Tank  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$90	3-Nov-2021	2-Oct-2022	0.91	\$4	n/a	\$4
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 designate, train, and certify at least one named individual as Class A and Class B Operator for 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

\$90

**TOTAL**

\$4

**Screening Date** 9-Dec-2021 **Docket No.** 2021-1598-PST-E **PCW**  
**Respondent** F.S. DEVELOPMENT, LTD. *Policy Revision 5 (January 28, 2021)*  
**Case ID No.** 61677 *PCW Revision February 11, 2021*  
**Reg. Ent. Reference No.** RN102409430  
**Media** Petroleum Storage Tank  
**Enf. Coordinator** Sushil Modak

**Violation Number**

**Rule Cite(s)** 30 Tex. Admin. Code §§ 334.49(c)(2)(C) and 37.867(a), and Tex. Water Code § 26.3475(d)

**Violation Description**

Failed to inspect the impressed current corrosion protection system at least once every 60 days to ensure the rectifier and other system components are operating properly. Specifically, the Respondent was not performing the 60-day inspections of the cathodic protection system. Also, failed to empty the UST system within 90 days after financial assurance coverage terminates.

**Base Penalty**

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

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** 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**

**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" value="X"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

**Violation Base Penalty**

One quarterly event is recommended from the November 3, 2021 investigation date to the December 9, 2021 screening date.

**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 type="text" value="x"/>	<input type="text"/>

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

**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** F.S. DEVELOPMENT, LTD.  
**Case ID No.** 61677  
**Reg. Ent. Reference No.** RN102409430  
**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	\$100	22-Mar-2019	2-Oct-2022	3.53	\$18	n/a	\$18
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$5,000	22-Mar-2019	2-Oct-2022	0.91	\$228	n/a	\$228

**Notes for DELAYED costs**

Estimated delayed cost to conduct inspection of the rectifier and other system components of the corrosion protection system (\$100) and conduct a site check for the temporarily out-of-service UST system at the Facility and perform any necessary corrective actions (\$5,000). 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	\$100	3-Nov-2021	9-Dec-2021	2.72	\$14	\$100	\$114
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

Estimated avoided cost to conduct inspection of the rectifier and other system components of the corrosion protection system at least once every 60 days. The Date Required is the investigation date and the Final Date is the screening date.

**Approx. Cost of Compliance** \$5,200

**TOTAL** \$360

**Screening Date** 9-Dec-2021 **Docket No.** 2021-1598-PST-E **PCW**  
**Respondent** F.S. DEVELOPMENT, LTD. *Policy Revision 5 (January 28, 2021)*  
**Case ID No.** 61677 *PCW Revision February 11, 2021*  
**Reg. Ent. Reference No.** RN102409430  
**Media** Petroleum Storage Tank  
**Enf. Coordinator** Sushil Modak

**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**

OR	Falsification	Harm			Percent
		Major	Moderate	Minor	
		<input 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 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 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** F.S. DEVELOPMENT, LTD.  
**Case ID No.** 61677  
**Reg. Ent. Reference No.** RN102409430  
**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)	\$40	3-Nov-2021	2-Oct-2022	0.91	\$2	n/a	\$2

#### Notes for DELAYED costs

Estimated delayed cost to submit an amended UST registration to reflect the current ownership information of the USTs 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)	\$40	3-Jun-2016	9-Dec-2021	5.52	\$12	\$40	\$52

#### Notes for AVOIDED costs

Estimated avoided cost to submit an amended UST registration to reflect the current ownership information of the USTs at the Facility. The Date Required is the ownership change date and the Final Date is the screening date.

Approx. Cost of Compliance

\$80

**TOTAL**

\$54

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 CN605645688, RN102409430, Rating Year 2021 which includes Compliance History (CH) components from September 1, 2016, through August 31, 2021.

**Customer, Respondent, or Owner/Operator:** CN605645688, F.S. DEVELOPMENT, LTD. **Classification:** UNCLASSIFIED **Rating:** -----

**Regulated Entity:** RN102409430, SUPER STOP 11 **Classification:** UNCLASSIFIED **Rating:** -----

**Complexity Points:** 2 **Repeat Violator:** NO

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

**Location:** 1125 Jefferson Drive, Port Arthur, Jefferson County, Texas 77642-0639

**TCEQ Region:** REGION 10 - BEAUMONT

**ID Number(s):**

**PETROLEUM STORAGE TANK REGISTRATION**  
REGISTRATION 40084

**PETROLEUM STORAGE TANK NON REGISTERED ID**  
NUMBER 10102409430

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

**Date Compliance History Report Prepared:** February 08, 2022

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** February 08, 2017 to February 08, 2022

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

**Name:** Alain Elegbe

**Phone:** (512) 239-6924

**Site and Owner/Operator History:**

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

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

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

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  
F.S. DEVELOPMENT, LTD.;  
RN102409430

§  
§  
§  
§  
§

BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

## DEFAULT AND SHUTDOWN ORDER

DOCKET NO. 2021-1598-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 Commission also considered the Executive Director’s Motion requesting the entry of an Order requiring the respondent to shut down and remove from service the underground storage tanks (“USTs”) located at 1125 Jefferson Drive in Port Arthur, Jefferson County, Texas. The respondent made the subject of this Order is F.S. DEVELOPMENT, LTD. (“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) and (75), a UST system and a convenience store with retail sales of gasoline located at 1125 Jefferson Drive in Port Arthur, Jefferson County, Texas (Facility ID No. 40084) (the “Facility”). The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the rules of the TCEQ, and contain a regulated petroleum substance as defined in the rules of the TCEQ.
2. During an investigation conducted on November 3, 2021, an investigator documented that Respondent:
  - a. Failed to designate, train, and certify at least one named individual for each class of operator—Class A, Class B, and Class C—for the Facility. Specifically, the Facility did not have a Class A and Class B Operator;
  - b. Failed to inspect the impressed current corrosion protection system at least once every 60 days to ensure the rectifier and other system components are operating properly. Specifically, Respondent was not performing the 60-day inspections of the cathodic protection system;
  - c. Failed to empty the UST system within 90 days after financial assurance coverage terminates; and
  - d. Failed to notify the agency of any change or additional information 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 of the USTs at the Facility.
3. By letter dated November 30, 2021, Respondent was provided with written notice of the violations and of TCEQ’s authority to shut down and remove from service USTs not in

- compliance with release detection, spill and/or overflow prevention, corrosion protection, and/or financial assurance requirements if the violations were not corrected.
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 F.S. DEVELOPMENT, LTD.” (the “EDPRP”) in the TCEQ Chief Clerk’s office on September 27, 2022.
  5. By letter dated September 27, 2022, sent to Respondent’s last known address via certified mail, return receipt requested, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to USPS.com “Track & Confirm” delivery confirmation records, Respondent received notice of the EDPRP on September 29, 2022.
  6. 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.
  7. By letter dated January 3, 2023, the Executive Director provided Respondent with notice of TCEQ’s intent to order the USTs at the Facility to be shut down and removed from service if Respondent failed to correct the corrosion protection violations within 30 days after Respondent’s receipt of the notice.
  8. As of the date of entry of this Order, Respondent has not provided the Executive Director with documentation demonstrating that the corrosion protection violation alleged in Finding of Fact No. 2.b. has been corrected.
  9. The USTs at the Facility do not have corrosion protection as required by TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(c)(2)(C), and may be releasing petroleum products to the environment. Therefore, conditions at the Facility constitute an imminent peril to public health, safety, and welfare.

#### 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 designate, train, and certify at least one named individual for each class of operator—Class A, Class B, and Class C—for the Facility, in violation of 30 TEX. ADMIN. CODE § 334.602(a).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to inspect the impressed current corrosion protection system at least once every 60 days to ensure the rectifier and other system components are operating properly, in violation of TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(c)(2)(C).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to empty the UST system within 90 days after financial assurance coverage terminates, in violation of 30 TEX. ADMIN. CODE § 37.867(a).
5. As evidenced by Finding of Fact No. 2.d., Respondent failed to notify the agency of any change or additional information 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), (d)(1)(B) and (d)(3).
6. As evidenced by Findings of Fact Nos. 4 and 5, 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).
7. As evidenced by Finding of Fact No. 6, 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.
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 seven thousand six hundred sixty-six dollars (\$7,666.00) 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. As evidenced by Findings of Fact Nos. 2.b., 3, 7, and 8, Respondent failed to correct documented violations of TCEQ corrosion protection requirements within 30 days after Respondent received notice of the violations and notice of the Executive Director's intent to shut down the USTs at the Facility.
  11. TEX. WATER CODE §§ 26.3475(e) and 26.352(i) authorize the Commission to order a UST owner or operator to shut down a UST system if, within 30 days after receiving notice of the violations, the owner or operator fails to correct violations of TCEQ regulatory requirements relating to release detection for tanks and/or piping, spill and/or overflow prevention for tanks, corrosion protection for tanks and/or piping, and/or acceptable financial assurance.
  12. 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.
  13. 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.
  14. Good cause for revocation of the Facility's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2 and 4 through 6, and Conclusions of Law Nos. 2 through 7.
  15. As evidenced by Findings of Fact Nos. 7 and 8, current conditions at the Facility constitute an imminent peril to public health, safety, and welfare. Therefore, pursuant to the Administrative Procedure Act, TEX. GOV'T CODE § 2001.144(a)(3), this Order is final and effective on the date it is signed by the Commission.

#### **ORDERING PROVISIONS**

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

1. Immediately upon the effective date of this Order, Respondent shall take the following steps to shut down operations of all USTs at the Facility:
  - a. Cease dispensing fuel from the USTs;
  - b. Cease receiving deliveries of regulated substances into the USTs;
  - c. Secure the dispensers to prevent access;
  - d. Empty the USTs of all regulated substances in accordance with 30 TEX. ADMIN. CODE § 334.54(d); and
  - e. Temporarily remove the USTs from service in accordance with 30 TEX. ADMIN. CODE § 334.54.
2. 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 of the requirements set forth in this Order, including payment of the administrative penalty in full.

3. The USTs at the Facility shall remain out of service, pursuant to TEX. WATER CODE § 26.3475(e) and as directed by Ordering Provision Nos. 1.a. through 1.e. until such time as Respondent demonstrates to the satisfaction of the Executive Director that the corrosion protection violation noted in Conclusion of Law No. 2.b. has been corrected and Respondent obtains a new fuel delivery certificate for the Facility.
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 a detailed written report, in accordance with Ordering Provision No. 13, below, documenting the steps taken to comply with Ordering Provisions Nos. 1.a. through 1.e., 4 and 5.
7. If Respondent elects to permanently remove from service any portion of the UST system at the Facility, Respondent shall, immediately upon the effective date of this Order, permanently remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.55, and within 15 days after the effective date of this Order, shall submit a written report documenting compliance with 30 TEX. ADMIN. CODE § 334.55 to:

Petroleum Storage Tank Registration Team, MC 138  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087
8. Respondent is assessed an administrative penalty in the amount of seven thousand six hundred sixty-six dollars (\$7,666.00) 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.
9. 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: F.S. DEVELOPMENT, LTD.; Docket No. 2021-1598-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

10. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline, Respondent shall undertake the following technical requirements:
  - a. Designate, train, and certify a Class A and Class B operator for the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.602;
  - b. Begin inspecting the impressed current corrosion protection system at least once every 60 days to ensure the rectifier and other system components are operating properly, in accordance with 30 TEX. ADMIN. CODE § 334.49;
  - c. Obtain financial assurance for all USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 37.815;
  - d. 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
  - e. Obtain a new fuel delivery certificate from the TCEQ.
11. 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).
12. Within 10 days of resuming retail sales of gasoline, Respondent shall submit written certification, in accordance with Ordering Provision No. 13, below, to demonstrate compliance with Ordering Provision Nos. 10.a. through 10.e. and 11.
13. 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 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.”

Respondent shall submit the written certifications and supporting documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and:

Waste Section Manager  
Beaumont Regional Office  
Texas Commission on Environmental Quality  
3870 Eastex Freeway  
Beaumont, Texas 77703-1830

14. All relief not expressly granted in this Order is denied.
15. 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.
16. 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.
17. 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.
18. 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.
19. 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.
20. 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.
21. 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 WILLIAM HOGAN

"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 F.S. DEVELOPMENT, LTD.' (the "EDPRP") was filed in the TCEQ Chief Clerk's office on September 27, 2022.

The EDPRP was mailed to Respondent's last known address on September 27, 2022, via certified mail, return receipt requested, postage prepaid. According to USPS.com "Track & Confirm" delivery confirmation records, Respondent received notice of the EDPRP on September 29, 2022."

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.

By letter dated January 3, 2023, sent via first class mail and certified mail, return receipt requested article no. 7020 1810 0000 5255 0644, I provided Respondent with notice of the TCEQ's intent to order the USTs at the Facility be shut down and removed from service if the violation pertaining to corrosion protection was not corrected within 30 days of Respondent's receipt of the letter. According to the return receipt "green card," Respondent received the notice on January 6, 2023.

As of the date of this declaration, I am not aware of any evidence that indicates that Respondent has corrected the corrosion protection violation noted during the November 3, 2021, investigation."

"My name is William K. Hogan, 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 April, 2023

*William Hogan*

Declarant