

Jon Niermann, *Chairman*
Bobby Janecka, *Commissioner*
Catarina R. Gonzales, *Commissioner*
Kelly Keel, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 5, 2024

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

Re: Executive Director's Request for Remand regarding a Default Order concerning Bruce Reyes; TCEQ Docket No. 2022-0958-PST-E.

The above-referenced matter is currently scheduled to be considered by the Texas Commission on Environmental Quality at its August 14, 2024, public meeting. However, the Executive Director filed a request to remand this item on August 5, 2024, as the Respondent engaged a licensed contractor to remove the tanks at the facility, and the final backfill was completed on July 30, 2024. Pursuant to 30 TAC § 10.4, this matter is hereby remanded to the Executive Director.

If you have any questions about this matter, please contact Colleen Ford, Assistant General Counsel at Colleen.Ford@tceq.texas.gov.

Respectfully,

A handwritten signature in black ink that reads "Mary Smith".

Mary Smith
General Counsel

Mailing List

Mailing List
Bruce Reyes
TCEQ Docket No. 2022-0958-PST-E

Bruce Reyes
1045 Monterrey Drive
Beaumont, Texas 77706
breyes@cmosetx.com

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TCEQ Interoffice Memorandum

To: Mary Smith, General Counsel
Colleen Ford, Assistant General Counsel

Thru: Anna Treadwell, Senior Attorney
AWT Litigation Division

From: Taylor Pack Ellis, Staff Attorney
TPE Litigation Division

Date: August 5, 2024

Subject: **Request for Remand**
August 14, 2024 Commission Agenda
Draft Item No. 50 - Bruce Reyes
Docket No. 2022-0958-PST-E

The Executive Director respectfully requests that the above-referenced item be remanded to the Executive Director. Respondent engaged a licensed contractor to remove the tanks at the facility. Final backfill was completed on July 30, 2024, and a Release Determination Report will be submitted.

Respondent Contact:

Bruce Reyes, Owner
1045 Monterrey Drive
Beaumont, Texas 77706
Phone: 409-454-1128; 409-736-9010
Email: breyes@cmosetx.com

Respondent has been notified of this Request for Remand. Please do not hesitate to call me at (512) 239-6860 if you have any questions regarding this matter.

cc: Celia Garza, Enforcement Coordinator
David King, Beaumont Regional Office
Sheldon Wayne, Office of Public Interest Counsel
Michael Parrish, Enforcement Division
Leslie Gann, Enforcement Division
Stuart Beckley, Enforcement Division
Gill Valls, Office of the General Counsel
Bruce Reyes

Bruce Reyes
RN101767846
Docket No. 2022-0958-PST-E

Order Type:
Default Order

Media:
Petroleum Storage Tank

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
5121 Farm-to-Market Road 226, Woden, Nacogdoches County

Type of Operation:
temporarily out-of-service underground storage tank ("UST")

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: June 28, 2024

Comments Received: None

Penalty Information

Total Penalty Assessed: \$7,500

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$7,500

Compliance History Classifications:

Person/CN - N/A
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: April 4, 2022

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

Date(s) of NOE(s): May 13, 2022

Bruce Reyes
RN101767846
Docket No. 2022-0958-PST-E

Violation Information

1. Failed to provide financial assurance or conduct a site check and perform any necessary corrective actions for a temporarily out-of-service UST system in order to meet financial assurance exemption requirements [30 TEX. ADMIN. CODE §§ 37.815(a) and (b) and 334.54(e)(5)].
2. Failed to monitor a temporarily out-of-service UST system for releases [TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE §§ 334.50(b)(1)(A) and 334.54(c)(1)].
3. Failed to provide adequate corrosion protection for the UST system [TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(e)].
4. 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)].
5. Failed to notify the agency of any change or additional information regarding the USTs within 30 days of 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. Either, within 30 days:
 - a. Properly temporarily remove the UST system from service which includes providing release detection and either providing financial assurance, or emptying the USTs of all regulated substances and conducting a site check and performing any necessary corrective actions; and maintaining documentation verifying the material construction of the UST system;
 - b. Designate, train, and certify at least one named individual as a Class A and Class B operator for the temporarily out-of-service UST system;
 - c. Submit an amended registration to reflect the current ownership and operational status of the UST system; and
 - d. Within 45 days submit written certification to demonstrate compliance with Technical Requirement Nos. 1.a. through 1.c.
2. Or, within 180 days permanently remove the UST system from service which includes the following actions:
 - a. Providing a Construction Notification to the TCEQ at least 30 days prior to any removal activities;
 - 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. Emptying the USTs of all regulated substances and accumulated sludges or residues and purging the USTs of all residual vapors;
 - iii. 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
 - iv. 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

Bruce Reyes
RN101767846
Docket No. 2022-0958-PST-E

suspected releases to the TCEQ, preparing a detailed written record of the release determination, and compliance with all applicable corrective action requirements.

- c. Within 195 days submit a completed and accurately filled out amended registration to reflect the operational status of the UST system as permanently removed from service; and
- d. Within 210 days submit written certification to demonstrate compliance with Technical Requirement Nos. 2.b. and 2.c.

Litigation Information

Date Petition(s) Filed: September 25, 2023; November 14, 2023
Date(s) of Service: unclaimed; unclaimed
Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Taylor Pack Ellis, 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: Celia Garza, Enforcement Division, (210) 657-8422
TCEQ Regional Contact: David King, Beaumont Regional Office, (409) 899-8709
Respondent Contact: Bruce Reyes, Owner, 1045 Monterrey Drive, Beaumont, Texas 77706
Respondent's Attorney: N/A

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Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	31-May-2022	Screening	4-Aug-2022	EPA Due	
	PCW	4-Aug-2022				

RESPONDENT/FACILITY INFORMATION	
Respondent	Bruce Reyes
Reg. Ent. Ref. No.	RN101767846
Facility/Site Region	10-Beaumont
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	62723	No. of Violations	3
Docket No.	2022-0958-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Courtney Gooris
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$7,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0.0% Adjustment	Subtotals 2, 3, & 7	\$0
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Notes: No adjustment for Compliance History.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$1,473
 Estimated Cost of Compliance: \$30,130
 *Capped at the Total EB \$ Amount

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

Notes:

Final Penalty Amount	\$7,500
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$7,500
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DEFERRAL	0.0% Reduction Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$7,500
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Screening Date 4-Aug-2022

Docket No. 2022-0958-PST-E

PCW

Respondent Bruce Reyes

Policy Revision 5 (January 28, 2021)

Case ID No. 62723

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN101767846

Media Petroleum Storage Tank

Enf. Coordinator Courtney Gooris

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)

N/A

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 4-Aug-2022	Docket No. 2022-0958-PST-E	PCW
Respondent Bruce Reyes		<i>Policy Revision 5 (January 28, 2021)</i>
Case ID No. 62723		<i>PCW Revision February 11, 2021</i>
Reg. Ent. Reference No. RN101767846		
Media Petroleum Storage Tank		
Enf. Coordinator Courtney Gooris		

Violation Number	1	
Rule Cite(s)	30 Tex. Admin. Code §§ 37.815(a) and (b) and 334.54(e)(5), 334.54(c)(1) and 334.50(b)(1)(A), and 334.49(e) and Tex. Water Code § 26.3475(c)(1) and (d)	
Violation Description	Failed to provide financial assurance or conduct a site check and perform any necessary corrective actions for a temporarily out-of-service underground storage tank ("UST") system in order to meet financial assurance exemption requirements. Also, failed to monitor a temporarily out-of-service UST system for releases. Additionally, failed to provide adequate corrosion protection for the UST system. Specifically, the Respondent did not provide documentation verifying the material construction of the UST system at the Facility.	
Base Penalty		\$25,000

>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual				Percent 15.0%
Potential	x				
>> Programmatic Matrix					
		Major	Moderate	Minor	
					Percent 0.0%
Matrix Notes	Human health or the environment will or could be exposed to pollutants that would exceed levels that are protective of human health or environmental receptors as a result of the violation.				
Adjustment					\$21,250

\$3,750

Violation Events

Number of Violation Events	1		122	Number of violation days	
	daily				Violation Base Penalty \$3,750
	weekly				
	monthly				
	quarterly				
	semiannual	x			
	annual				
	single event				
One semiannual event is recommended from the April 4, 2022 investigation date to the August 4, 2022 screening date.					

Good Faith Efforts to Comply 0.0% Reduction \$0

		Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer	
Extraordinary			
Ordinary			
N/A	x		
Notes	The Respondent does not meet the good faith criteria for this violation.		
Violation Subtotal			\$3,750

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount \$1,467	Violation Final Penalty Total \$3,750
This violation Final Assessed Penalty (adjusted for limits) \$3,750	

Economic Benefit Worksheet

Respondent Bruce Reyes
Case ID No. 62723
Reg. Ent. Reference No. RN101767846
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$30,000	4-Apr-2022	27-Mar-2023	0.98	\$1,467	n/a	\$1,467

Notes for DELAYED costs

Estimated delayed cost to permanently remove two USTs from service with a combined capacity of 20,000 gallons at \$1.50 per gallon. The Date Required is the investigation date and the Final Date is the estimated compliance date.

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

\$30,000

TOTAL

\$1,467

Screening Date 4-Aug-2022 **Docket No.** 2022-0958-PST-E **PCW**
Respondent Bruce Reyes *Policy Revision 5 (January 28, 2021)*
Case ID No. 62723 *PCW Revision February 11, 2021*
Reg. Ent. Reference No. RN101767846
Media Petroleum Storage Tank
Enf. Coordinator Courtney Gooris

Violation Number 2
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 Respondent had not designated, trained, and certified a Class A and Class B operator for the Facility.

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 that would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 122 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	x
annual	
single event	

Violation Base Penalty \$1,250

One semiannual event is recommended from the April 4, 2022 investigation date to the August 4, 2022 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	

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** \$1,250

This violation Final Assessed Penalty (adjusted for limits) \$1,250

Economic Benefit Worksheet

Respondent Bruce Reyes
Case ID No. 62723
Reg. Ent. Reference No. RN101767846
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	\$90	4-Apr-2022	27-Mar-2023	0.98	\$4	n/a	\$4
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0
Notes for DELAYED costs	Estimated delayed cost to designate, train, and certify 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 4-Aug-2022 **Docket No.** 2022-0958-PST-E **PCW**
Respondent Bruce Reyes *Policy Revision 5 (January 28, 2021)*
Case ID No. 62723 *PCW Revision February 11, 2021*
Reg. Ent. Reference No. RN101767846
Media Petroleum Storage Tank
Enf. Coordinator Courtney Gooris

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.7(d)(1)(A), (d)(1)(B), and (d)(3)

Violation Description
 Failed to notify the agency of any change or additional information regarding the USTs within 30 days of occurrence of the change or addition. Specifically, the registration was not updated after the ownership change on August 6, 2021, and to reflect the current operational status as temporarily out-of-service.

Base Penalty \$25,000

>> 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 \$22,500

\$2,500

Violation Events

Number of Violation Events 1 122 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$2,500

One single event is recommended.

Good Faith Efforts to Comply 0.0% Reduction \$0

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

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

Violation Subtotal \$2,500

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

Estimated EB Amount \$2 **Violation Final Penalty Total** \$2,500

This violation Final Assessed Penalty (adjusted for limits) \$2,500

Economic Benefit Worksheet

Respondent Bruce Reyes
Case ID No. 62723
Reg. Ent. Reference No. RN101767846
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	4-Apr-2022	27-Mar-2023	0.98	\$2	n/a	\$2

Notes for DELAYED costs

Estimated delayed cost to submit an amended UST registration to reflect the current ownership and operational status of the UST system to the TCEQ. 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 \$40

TOTAL \$2



Compliance History Report

Compliance History Report for CN606008134, RN101767846, Rating Year 2021 which includes Compliance History (CH) components from September 1, 2016, through August 31, 2021.

Customer, Respondent, or Owner/Operator: CN606008134, Bruce Reyes **Classification:** NOT APPLICABLE **Rating:** N/A

Regulated Entity: RN101767846, Woden Grocery **Classification:** UNCLASSIFIED **Rating:** -----

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

CH Group: 14 - Other

Location: 5121 Farm-to-Market Road 226, Woden, Nacogdoches County, Texas 75978

TCEQ Region: REGION 10 - BEAUMONT

ID Number(s):
PETROLEUM STORAGE TANK REGISTRATION **PETROLEUM STORAGE TANK NON REGISTERED ID**
REGISTRATION 31547 NUMBER RN10101767846

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

Date Compliance History Report Prepared: August 03, 2022

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: August 03, 2017 to August 03, 2022

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.
Name: Courtney Gooris **Phone:** (817) 588-5863

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.):

Item 1 August 09, 2021 (1750468)

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
BRUCE REYES;
RN101767846

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER

DOCKET NO. 2022-0958-PST-E

On _____, the Texas Commission on Environmental Quality (“Commission” or “TCEQ”) considered the Executive Director’s Preliminary Report and Petition, filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Bruce Reyes (“Respondent”).

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

FINDINGS OF FACT

1. Respondent owns, as defined in 30 TEX. ADMIN. CODE § 334.2(78), a temporarily out-of-service underground storage tank (“UST”) system and a convenience store located at 5121 Farm-to-Market Road 226 in Woden, Nacogdoches County, Texas (Facility ID No. 31547) (the “Facility”). The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contain or contained a regulated petroleum substance as defined in the rules of the TCEQ.
2. During an investigation conducted on April 4, 2022, an investigator documented that Respondent:
 - a. Failed to provide financial assurance or conduct a site check and perform any necessary corrective actions for a temporarily out-of-service UST system in order to meet financial assurance exemption requirements;
 - b. Failed to monitor a temporarily out-of-service UST system for releases;
 - c. Failed to provide adequate corrosion protection for the UST system. Specifically, Respondent did not provide documentation verifying the material construction of the UST system at the Facility;
 - d. 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, Respondent had not designated, trained, and certified a Class A and Class B operator for the Facility; and
 - e. Failed to notify the agency of any change or additional information regarding the USTs within 30 days of occurrence of the change or addition. Specifically, the registration was not updated after the ownership change on August 6, 2021, and to reflect the current operational status as temporarily out-of-service.
3. The Executive Director filed the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Bruce Reyes” (the “EDPRP”) in the TCEQ Chief Clerk’s office on September 25, 2023.

4. By letter dated September 25, 2023, 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. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed."
5. The Executive Director re-filed the EDPRP in the TCEQ Chief Clerk's office on November 14, 2023.
6. By letter dated on November 14, 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 EDPRP. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.
7. 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 provide financial assurance or conduct a site check and perform any necessary corrective actions for a temporarily out-of-service UST system in order to meet financial assurance exemption requirements, in violation of 30 TEX. ADMIN. CODE §§ 37.815(a) and (b) and 334.54(e)(5).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to monitor a temporarily out-of-service UST system for releases, in violation of TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE §§ 334.50(b)(1)(A) and 334.54(c)(1).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to provide adequate corrosion protection for the UST system, in violation of TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(e).
5. As evidenced by Finding of Fact No. 2.d., 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).
6. As evidenced by Finding of Fact No. 2.e., Respondent failed to notify the agency of any change or additional information regarding the USTs within 30 days of occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(1)(A), (d)(1)(B), and (d)(3).
7. As evidenced by Findings of Fact Nos. 3 through 6, 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(c)(2).
8. 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.
9. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

10. An administrative penalty in the amount of \$7,500 is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
11. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of \$7,500 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: Bruce Reyes; Docket No. 2022-0958-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. Either, within 30 days after the effective date of this Order:
 - i. Properly temporarily remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.54, which includes providing release detection and either providing financial assurance, in accordance with 30 TEX. ADMIN. CODE § 37.815, or emptying the USTs of all regulated substances and conducting a site check and performing any necessary corrective actions; and maintaining documentation verifying the material construction of the UST system, 30 TEX. ADMIN. CODE § 334.49;
 - ii. Designate, train, and certify at least one named individual as a Class A and Class B operator for the temporarily out-of-service UST system, in accordance with 30 TEX. ADMIN. CODE § 334.602; and
 - iii. Submit an amended registration to reflect the current ownership and operational status of the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.7, to:

Registration and Reporting Section
Permitting & Registration Support Division, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- iv. Within 45 days after the effective date of this Order, submit written certification, in accordance with Ordering Provision No. 3.c., to demonstrate compliance with Ordering Provision Nos. 3.a.i. through 3.a.iii.
- b. Or, within 180 days after the effective date of this Order, permanently remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.55, which includes the following actions:
 - i. Providing a Construction Notification to the TCEQ at least 30 days prior to any removal activities; and
 - ii. Employing a Licensed UST Contractor to perform all removal activities, including:
 - 1. Removing the USTs from the ground, abandoning the USTs in-place, or conducting a permanent change-in-service;
 - 2. Emptying the USTs of all regulated substances and accumulated sludges or residues and purging the USTs of all residual vapors;
 - 3. Handling, transporting, and properly disposing of the empty USTs, the regulated substances removed from the UST system, and any contaminated soils, backfill material, groundwater, wash water or other similar materials removed from the UST system or Facility; and
 - 4. Determining whether or not there has been a release of regulated substance from the UST system, performance of a comprehensive site assessment, reporting confirmed or suspected releases to the TCEQ, preparing a detailed written record of the release determination, and compliance with all applicable corrective action requirements.
 - iii. Within 195 days after the effective date of this Order, submit a completed and accurately filled out amended registration to reflect the operational status of the UST system as permanently removed from service, in accordance with 30 TEX. ADMIN. CODE § 334.7, to the address listed in Ordering Provision No. 3.a.iii.; and
 - iv. Within 210 days after the effective date of this Order, submit written certification, in accordance with Ordering Provision No. 3.c., to demonstrate compliance with Ordering Provision Nos. 3.b.ii. and 3.b.iii.
- c. 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.”

The written certifications 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
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.
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.

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



UNSWORN DECLARATION OF TAYLOR PACK ELLIS

“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 Bruce Reyes’ (the “EDPRP”) was filed in the TCEQ Chief Clerk’s office on September 25, 2023.

The EDPRP was mailed to Respondent’s last known address on September 25, 2023, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the click to choose sent by certified mail as “unclaimed.”

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the EDPRP was re-filed in the TCEQ Chief Clerk’s office on November 14, 2023.

The EDPRP was mailed to Respondent’s last known address on November 14, 2023, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as “unclaimed.” The first-class mail has not been returned, indicating that Respondent received notice of the EDPRP in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

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 Taylor Pack Ellis. 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 13th day of May, 2024

A handwritten signature in blue ink that reads "TP Ellis".

Declarant