

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-1843-PST-E TCEQ ID NO.: RN101536951 ENF CASE NO.: 31506

RESPONDENT NAME: CARDINAL TOWING COMPANY, INC. DBA CARDINAL TOWING & AUTO REPAIR

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 113 West Eules Boulevard, Eules, Tarrant County</p> <p>TYPE OF OPERATION: Fleet refueling station</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on July 15, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Dinniah M. Chahin, Litigation Division, MC 175, (512) 239-0617 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Mr. Philip DeFrancesco, DFW Regional Office, MC R-4, (817) 588-5933 TCEQ Regional Contact: Mr. Sam Barrett, DFW Regional Office, MC R-4, (817) 588-5903 Respondent: Mr. David Matoke, Registered Agent, President, and Director, Cardinal Towing Company, Inc. dba Cardinal Towing & Auto Repair, 113 West Eules Boulevard, Eules, Texas 76040 Respondent's Attorney: Mr. Bruce L. Mansfield, Attorney, 1550 North Norwood Drive, Suite 107, Hurst, Texas 76054</p>		

RESPONDENT'S NAME: CARDINAL TOWING COMPANY, INC.
 DBA CARDINAL TOWING & AUTO REPAIR
 DOCKET NO.: 2006-1843-PST-E

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date(s) of Investigation(s) Relating to this Case: September 1, 2006</p> <p>Date(s) of NOV(s)/NOE(s) Relating to this Case: September 14, 2006 (NOV)</p> <p>Background Facts: A settlement agreement was reached with the Respondent and a signed Agreed Order was received on May 11, 2007.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>PST</p> <p>Failed to ensure that all USTs are monitored for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].</p>	<p>Total Assessed: \$2,300</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid/Due to General Revenue: \$250/\$2050</p> <p>The Respondent has paid \$250 of the administrative penalty. The remaining amount of \$2,050 shall be payable in 10 monthly payments of \$205 each.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Avg. <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Avg. <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>The Executive Director recognizes that the Respondent implemented a release detection method at the Facility on October 26, 2006.</p>



Penalty Calculation Worksheet (PCW)

DATES	Assigned	16-Oct-2006	Screening	20-Oct-2006	EPA Due	
	PCW	22-Feb-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	Cardinal Towing Company, Inc. dba Cardinal Towing & Auto Repair
Reg. Ent. Ref. No.	RN101536951
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	31506	No. of Violations	1
Docket No.	2006-1843-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Phillip DeFrancesco
Multi-Media		EC's Team	Enforcement Team 7
Admin. Penalty \$	Limit Minimum	\$0	Maximum
			\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$2,500
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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	2% Enhancement	Subtotals 2, 3, & 7	\$50
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Notes: Enhancement for one prior written NOV with dissimilar violations.

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

Good Faith Effort to Comply	10% Reduction	Subtotal 5	\$250
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	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		X
N/A		(mark with x)

Notes: The respondent came into compliance on October 26, 2006.

Total EB Amounts	\$11	0% Enhancement*	Subtotal 6	\$0
Approx. Cost of Compliance	\$1,500	<i>*Capped at the Total EB \$ Amount</i>		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,300
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OTHER FACTORS AS JUSTICE MAY REQUIRE		Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

Final Penalty Amount	\$2,300
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,300
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DEFERRAL	0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

This is not an expedited case.

PAYABLE PENALTY	\$2,300
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Screening Date	20-Oct-2006	Docket No.	2006-1843-PST-E	PCW
Respondent	Cardinal Towing Company, Inc. dba Cardinal Towing & A			Policy Revision 2 (September 2002)
Case ID No.	31506			PCW Revision November 17, 2006
Reg. Ent. Reference No.	RN101536951			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Philip DeFrancesco			

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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 (number of judgments or consent decrees meeting criteria)	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 (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	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 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
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) 2%

>> Repeat Violator (Subtotal 3)

No **Adjustment Percentage (Subtotal 3)** 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer **Adjustment Percentage (Subtotal 7)** 0%

>> Compliance History Summary

Compliance History Notes Enhancement for one prior written NOV with dissimilar violations.

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

Screening Date 20-Oct-2006 **Docket No.** 2006-1843-PST-E **PCW**
Respondent Cardinal Towing Company, Inc. dba Cardinal Towing & Auto Rep: *Policy Revision 2 (September 2002)*
Case ID No. 31506 *PCW Revision November 17, 2006*
Reg. Ent. Reference No. RN101536951
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Philip DeFrancesco

Violation Number

Rule Cite(s) 30 Tex. Admin Code § 334.50(b)(1)(A) and Tex. Water Code § 26.3475(c)(1)

Violation Description Failed to ensure that all USTs are monitored for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Specifically, the automatic tank gauge was not put into test mode at least once per month.

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="25%"/>
	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%"/>

Matrix Notes Failing to monitor the UST system for releases could expose human health or the environment to pollutants which 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

mark only one with an x

daily	<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 based on documentation of the violation during the September 1, 2006 investigation date to the October 20, 2006 screening date.

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 Cardinal Towing Company, Inc. dba Cardinal Towing & Auto Repair
Case ID No. 31506
Reg. Ent. Reference No. RN101536951
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	Onetime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$1,500	1-Sep-2006	26-Oct-2006	0.2	\$11	n/a	\$11

Notes for DELAYED costs

The estimated cost of monitoring all USTs for releases. The date required is the investigation date and the final date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL:

\$11

Compliance History

Customer/Respondent/Owner-Operator:	CN603109760 Cardinal Towing Company, Inc.	Classification: AVERAGE BY DEFAULT	Rating: 3.01
Regulated Entity:	RN101536951 CARDINAL TOWING & AUTO REPAIR	Classification: AVERAGE BY DEFAULT	Site Rating: 3 .01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	12188
Location:	113 W EULESS BLVD, EULESS, TX, 76040		
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	October 18, 2006		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	October 18, 2001 to October 18, 2006		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Philip DeFrancesco	Phone:	817-588-5933

Site Compliance History Components

- | | |
|--|-----|
| 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 of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 09/14/2006 (511311)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 09/14/2006 (511311) Classification: Moderate
 Self Report? NO
 Citation: 30 TAC Chapter 334, SubChapter C 334.49(c)(4)[G]
 Description: Failure to perform an operability test on a cathodic protection system within 3 to 6 months after installation and at a subsequent frequency of at least once every 3 years.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 334, SubChapter C 334.45(e)(2)(D)
 Description: Failure to equip all fill pipes in a UST system with a removable or permanent factory-constructed drop tube which shall extend to within 12 inches of the tank bottom.

- 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

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6. An administrative penalty in the amount of two thousand three hundred dollars (\$2,300.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Cardinal Towing has paid two hundred fifty dollars (\$250.00) of the administrative penalty. The remaining amount of two thousand fifty dollars (\$2,050.00) of the administrative penalty shall be payable in ten monthly payments of two hundred five dollars (\$205.00) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If Cardinal Towing fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of Cardinal Towing to meet the payment schedule of this Agreed Order constitutes the failure by Cardinal Towing to timely and satisfactorily comply with all of the terms of this Agreed Order.
7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Cardinal Towing have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that Cardinal Towing implemented a release detection method at the Facility on October 26, 2006.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Cardinal Towing has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

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II. ALLEGATIONS

Cardinal Towing is alleged to have violated 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1) by failing to ensure that all USTs are monitored for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Specifically, the automatic tank gauge was not put into test mode at least once per month as documented on September 1, 2006.

III. DENIALS

Cardinal Towing generally denies each allegation in Section II ("Allegations").

IV. ORDER

1. It is, therefore, ordered by the TCEQ that Cardinal Towing pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Cardinal Towing's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Cardinal Towing Company, Inc. dba Cardinal Towing & Auto Repair, Docket No. 2006-1843-PST-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon Cardinal Towing. Cardinal Towing is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against Cardinal Towing in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

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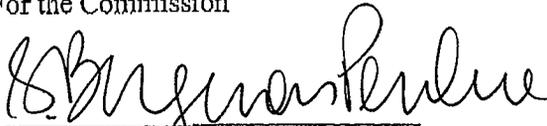
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Cardinal Towing, or three days after the date on which the Commission mails notice of the Order to Cardinal Towing, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

7/17/07

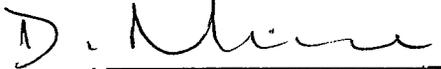
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

05-08-07

Date

David Matlock

President

Name (Printed or typed)

Title

Authorized representative of
Cardinal Towing Company, Inc.
dba Cardinal Towing & Auto Repair