EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-0462-PST-E **TCEQ ID:** RN101782605 **CASE NO.:** 29210

RESPONDENT NAME: Rick Lumbley dba Lum's Country Store

ORDER TYPE:

X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__AMENDED ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__SHUTDOWN ORDER	__FINDINGS DEFAULT ORDER	__EMERGENCY ORDER	

CASE TYPE:

__AGRICULTURE	__AIR	__INDUSTRIAL AND HAZARDOUS WASTE	__MUNICIPAL SOLID WASTE
__OCCUPATIONAL CERTIFICATION	X PETROLEUM STORAGE TANKS	__PUBLIC WATER SUPPLY	__RADIOACTIVE WASTE
__MULTI-MEDIA (check all that apply)	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL	__USED OIL
__USED OIL FILTER	__WATER QUALITY		

SITE WHERE VIOLATION(S) OCCURRED: Lum's Country Store, 2031 Main Street, Junction, Kimble County

TYPE OF OPERATION: Barbeque restaurant with retail sales of gasoline

SMALL BUSINESS: __X__ Yes ___ No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on February 26, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Mr. Rajesh Acharya, Enforcement Division, Enforcement Section IV, MC 128, (512) 239-0577; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896
TCEQ Field Investigator: Ms. Lynn Owens, San Angelo Regional Office, MC R-08, (325) 655-9479
Respondent: Mr. Rick Lumbley, Owner/Manager, Lum's Country Store, 2031 Main Street, Junction, Texas 76849
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint __X_ Routine __ Enforcement Follow-up __ Records Review **Date of Complaint Relating to this Case:** None **Date of Investigation Relating to this Case:** April 17, 2006 **Date of NOE Relating to this Case:** April 20, 2006 (NOE) **Background Facts:** This was a routine investigation. One violation was documented. **WASTE** Failed to inspect and test the cathodic protection system for operability and adequacy of protection at a frequency of at least once every three years. Specifically, Mr. Lumbley did not conduct the triennial test [30 TEX. ADMIN. CODE § 334.49(c)(4) and TEX. WATER CODE § 26.3475(d)].	**Total Assessed:** $2,750 **Total Deferred:** $550 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid (Due) to General Revenue:** $370 (remaining $1,830 due in 5 monthly payments of $366 each) **Site Compliance History Classification:** __High _X_Avg. __Poor **Person Compliance History Classification:** __High _X_Avg. __Poor **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** The Order will require the Respondent to: a. Within 30 days after the effective date of this Agreed Order, conduct triennial testing of the cathodic protection system at the Facility; and b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.

Penalty Calculation Worksheet (PCW)

TCEQ

Policy Revision 2 (September 2002) *PCW Revision May 19, 2005*

DATES					
Assigned	24-Apr-2006				
PCW	01-May-2006	Screening	26-Apr-2006	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Rick Lumbley dba Lum's Country Store		
Reg. Ent. Ref. No.	RN101782605		
Facility/Site Region	8-San Angelo	Major/Minor Source	Minor Source

CASE INFORMATION

Enf./Case ID No.	29210	No. of Violations	1
Docket No.	2006-0462-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Rajesh Acharya
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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 10% Enhancement *Subtotals 2, 3, & 7* $250

Notes: Enhancement for two previous NOVs with same or similar violations.

Culpability No 0% Enhancement *Subtotal 4* $0

Notes: The respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction *Subtotal 5* $0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	*(mark with a small x)*

Notes: The respondent has not yet come into compliance.

Economic Benefit 0% Enhancement* *Subtotal 6* $0

**Capped at the Total EB $ Amount*

Total EB Amounts	$1,150
Approx. Cost of Compliance	$0

SUM OF SUBTOTALS 1-7 Final Subtotal $2,750

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment $0

Reduces or enhances the Final Subtotal by the indicated percentage. *(Enter number only; e.g. -30 for -30%.)*

Notes:

Final Penalty Amount $2,750

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty $2,750

DEFERRAL 20% Reduction Adjustment -$550

Reduces the Final Assessed Penalty by the indicted percentage. *(Enter number only; e.g. 20 for 20% reduction.)*

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY $2,200

Screening Date	26-Apr-2006	**Docket No.** 2006-0462-PST-E	**PCW**
Respondent	Rick Lumbley dba Lum's Country Store		*Policy Revision 2 (September 2002)*
Case ID No.	29210		*PCW Revision May 19, 2005*
Reg. Ent. Reference No.	RN101782605		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Rajesh Acharya		

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)*	2	10%
	Other written NOVs	0	0%
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 judgements 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*	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%
		Please Enter Yes or No	
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) **10%**

>> 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 two previous NOVs with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) **10%**

PCW

Policy Revision 2 (September 2002)
PCW Revision May 19, 2005

Screening Date	26-Apr-2006
Docket No.	2006-0462-PST-E
Respondent	Rick Lumbley dba Lum's Country Store
Case ID No.	29210
Reg. Ent. Reference No.	RN101782605
Media [Statute]	Petroleum Storage Tank
Enf. Coordinator	Rajesh Acharya
Violation Number	1
Primary Rule Cite(s)	30 Tex. Admin. Code § 334.49(c)(4)
Secondary Rule Cite(s)	Tex. Water Code § 26.3475(d)
Violation Description	Failed to inspect and test the cathodic protection system for operability and adequacy of protection at a frequency of at least once every three years. Specifically, the respondent did not conduct the triennial test.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent

Matrix Notes: Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment -$7,500

Base Penalty Subtotal $2,500

Violation Events

Number of Violation Events: 1

mark only one
use a small x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $2,500

One single event is recommended for the three year period preceding the April 17, 2006 investigation date.

Economic Benefit (EB) for this violation

Estimated EB Amount $1,150

Statutory Limit Test

Violation Final Penalty Total $2,750

This violation Final Assessed Penalty (adjusted for limits) $2,750

Economic Benefit Worksheet

Respondent: Rick Lumbley dba Lum's Country Store
Case ID No.: 29210
Reg. Ent. Reference No.: RN101782605
Media [Statute]: Petroleum Storage Tank
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)				0.0	$0	n/a	$0
Notes for DELAYED costs							
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)	$1,000	17-Apr-2003	17-Apr-2006	3.0	$150	$1,000	$1,150
Notes for AVOIDED costs	Avoided cost for completing the triennial test. Date Required is three years prior to the investigation date. Final Date is the investigation date.						

Approx. Cost of Compliance: $0

TOTAL: $1,150

Compliance History

Customer/Respondent/Owner-Operator:	CN600964480	LUMBLEY, RICK	Classification: AVERAGE	Rating: 2.00
Regulated Entity:	RN101782605	LUM'S COUNTRY STORE	Classification: AVERAGE	Site Rating: 2.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	56459	
Location:	2031 MAIN STREET, JUNCTION, TX, 76849		Rating Date: 9/1/2005 Repeat Violator: NO	
TCEQ Region:	REGION 08 - SAN ANGELO			
Date Compliance History Prepared:	May 01, 2006			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	May 01, 2001 to May 01, 2006			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Rajesh Acharya Phone: (512) 239-0577

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 03/03/2003 (26607)

2 04/20/2006 (462854)

3 03/27/2003 (29328)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 03/27/2003 (29328)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.49(c)(4)[G]

Description: Failure to inspect and test corrosion protection systems within three to six months after installation and once every three years thereafter.

Date: 03/03/2003 (26607)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.49(c)(4)[G]

Description: Failure to inspect and test corrosion protection systems within three to six months after installation and once every three years thereafter.

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	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	
RICK LUMBLEY DBA LUM'S	§	**TEXAS COMMISSION ON**
COUNTRY STORE	§	
RN101782605	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2006-0462-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Rick Lumbley dba Lum's Country Store ("Mr. Lumbley") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Mr. Lumbley appear before the Commission and together stipulate that:

1. Mr. Lumbley owns and operates a barbeque restaurant with retail sales of gasoline at 2031 Main Street in Junction, Kimble County, Texas (the "Facility").

2. Mr. Lumbley's two underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.

3. The Commission and Mr. Lumbley agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Lumbley is subject to the Commission's jurisdiction.

4. Mr. Lumbley received notice of the violations alleged in Section II ("Allegations") on or about April 25, 2006.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Lumbley of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Two Thousand Seven Hundred Fifty Dollars ($2,750) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Lumbley has paid Three Hundred Seventy Dollars ($370) of the administrative penalty and Five Hundred Fifty Dollars ($550) is deferred contingent upon Mr. Lumbley's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Mr. Lumbley fails to timely and satisfactorily

comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require Mr. Lumbley to pay all or part of the deferred penalty.

The remaining amount of One Thousand Eight Hundred Thirty Dollars ($1,830) of the administrative penalty shall be payable in five monthly payments of Three Hundred Sixty-Six Dollars ($366) 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 Mr. Lumbley fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's 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 Mr. Lumbley to meet the payment schedule of this Agreed Order constitutes the failure by Mr. Lumbley to timely and satisfactorily comply with all 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 Mr. Lumbley have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. 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 Mr. Lumbley has not complied with one or more of the terms or conditions in this Agreed Order.

10. 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.

11. 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.

II. ALLEGATIONS

As owner and operator of the Facility, Mr. Lumbley is alleged to have failed to inspect and test the cathodic protection system for operability and adequacy of protection at a frequency of at least once every three years, in violation of 30 TEX. ADMIN. CODE § 334.49(c)(4) and TEX. WATER CODE § 26.3475(d), as documented during an investigation conducted on April 17, 2006. Specifically, Mr. Lumbley did not conduct the triennial test.

III. DENIALS

Mr. Lumbley generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Lumbley pay an administrative penalty as set forth in Section I, Paragraph 6 above. The imposition of this administrative penalty and Mr. Lumbley'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 requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Rick Lumbley dba Lum's Country Store , Docket No. 2006-0462-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. It is further ordered that Mr. Lumbley shall undertake the following technical requirements:

   a. Within 30 days after the effective date of this Agreed Order, conduct triennial testing of the cathodic protection system at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.49; and

   b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.

   The certification shall be notarized by a State of Texas Notary Public and 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 certification shall be submitted to:

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

   with a copy to:

Waste Section Manager
San Angelo Regional Office
Texas Commission on Environmental Quality
622 South Oakes, Suite K
San Angelo, Texas 76903-7035

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Lumbley. Mr. Lumbley 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.

4. If Mr. Lumbley fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Lumbley's failure to comply is not a violation of this Agreed Order. Mr. Lumbley shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Lumbley shall notify the Executive Director within seven days after Mr. Lumbley becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Lumbley shall be made in writing to the Executive Director. Extensions are not effective until Mr. Lumbley receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Lumbley 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.

7. 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.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Mr. Lumbley, or three days after the date on which the Commission mails notice of the Order to Mr. Lumbley, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

_____ 3/2/07
For the Executive Director Date

I, the undersigned, have read and understand the attached Agreed Order. 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 _____ Date 6/13/6 *

* Name (Printed or typed) Rick Lumbley Title Manager *
Authorized Representative of
Rick Lumbley dba Lum's Country Store

Instructions Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.