

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: July 27, 2004</p> <p>Dates of NOV(s)/NOE(s) Relating to this Case: September 2, 2004 (NOV), November 23, 2004 (NOE)</p> <p>Background Facts:</p> <p>The Agreed Order was signed on August 19, 2006.</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>1) Failed to have installed a method of corrosion protection for the tank system (4 underground storage tanks "USTs") [30 TEX. ADMIN. CODE § 334.49(a)(2) and TEX. WATER CODE § 26.3475(d)].</p> <p>2) Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].</p> <p>3) Failed to provide a method or proper combination of methods of release detection for tank No. 4 which is capable of detecting a release from any portion of a UST system that contains regulated substances, including the tanks, piping, and other underground ancillary equipment [30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475(e)].</p> <p>4) Failed to properly register tank No. 4 UST with the Commission [30 TEX. ADMIN. CODE § 334.7(a)(1) and TEX. WATER CODE § 26.346(a)].</p>	<p>Total Assessed: \$9,500</p> <p>Total Deferred: \$0</p> <p>Total Paid/Due to General Revenue: \$330/\$9,170</p> <p>The Respondent has paid \$330 of the administrative penalty. The remaining amount of \$9,170 of the administrative penalty shall be payable in 35 monthly payments of \$262 each.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <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>Corrective Action(s) Taken</p> <p>The Executive Director recognizes that the Respondent submitted a UST registration and self-certification form and received a notice of storage tank registration on September 16, 2004 and removed from service tank No. 4 on August 19, 2004.</p> <p>Ordering Provisions</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1) Permanently remove the USTs from service or 2) Install and implement a corrosion protection system for the USTs. 3) Submit written certification of compliance with Ordering Provision Nos. 1 or 2.



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 17, 2004

DATES	PCW	23-Aug-2005	Screening	08-Sep-2004	Priority Due	07-Dec-2004	EPA Due	
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RESPONDENT/FACILITY INFORMATION	
Respondent	Rafael Padilla dba Ralphs Auto Service
Reg. Ent. Ref. No.	RN101654739
Additional ID No(s).	Petroleum Storage Tank Facility ID No. 55944
Facility/Site Region	6-El Paso <input type="checkbox"/> Major/Minor Source <input type="checkbox"/> Minor Source <input type="checkbox"/>

CASE INFORMATION			
Enf./Case ID No.	19476	No. of Violations	4
Docket No.	2004-1416-PST-E	Order Type	1660 without deferral <input type="checkbox"/>
Case Priority	3 <input type="checkbox"/>	Enf. Coordinator	Jorge Ibarra, P.E.
Media Program(s)	Petroleum Storage Tank <input type="checkbox"/>	EC's Team	Enforcement Team 4 <input type="checkbox"/>
Multi-Media			
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$9,500
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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% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No change due to average performer classification.

Culpability	No <input type="checkbox"/>	0% Enhancement	Subtotal 4	\$0
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Notes: The respondent does not meet the culpability criteria.

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with a small x)

Notes: The respondent is not yet in compliance.

Economic Benefit	0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$911	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$5,750	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$9,500
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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	\$9,500
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$9,500
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DEFERRAL	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: No deferral is recommended because the respondent did not settle in a timely manner.

PAYABLE PENALTY	\$9,500
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Screening Date 08-Sep-2004

Docket No. 2004-1416-PST-E

PCW

Respondent Rafael Padilla dba Ralphs Auto Service

Policy Revision 2 (September 2002)

Case ID No. 19476

PCW Revision May 17, 2004

Reg. Ent. Reference No. RN101654739

Additional ID No(s) Petroleum Storage Tank Facility ID No. 55944

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jorge Ibarra, P.E.

Site Address 2301 North Piedras Street, El Paso, El Paso County, Texas

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 (<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 judgements 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</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%

Please Enter Yes or No

Adjustment Percentage (Subtotal 2) 0%

>> **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

No change due to average performer classification.

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

Screening Date	08-Sep-2004	Docket No.	2004-1416-PST-E	PCW
Respondent	Rafael Padilla dba Ralphs Auto Service			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	19476			<i>PCW Revision May 17, 2004</i>
Reg. Ent. Reference No.	RN101654739			
Additional ID No(s)	Petroleum Storage Tank Facility ID No. 55944			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Jorge Ibarra, P.E.			
Violation Number	1			
Primary Rule Cite(s)	30 Tex. Admin. Code § 334.49(a)(2)			
Secondary Rule Cite(s)	Tex. Water Code § 26.3475(d)			
Violation Description	Failure to have installed a method of corrosion protection for the tank system (4 underground storage tanks (USTs)).			
Base Penalty	\$10,000			

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

OR	Harm				Percent
	Release	Major	Moderate	Minor	
	Actual				
	Potential	X			25%

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent

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

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events: 2

mark only one use a small x	daily	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$5,000

The penalty was calculated from the inspection date (July 27, 2004) to the end of the settlement period (January 22, 2005).

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount: \$220	Violation Final Penalty Total: \$5,000
This violation Final Assessed Penalty (adjusted for limits): \$5,000	

Economic Benefit Worksheet

Respondent: Rafael Padilla dba Ralphs Auto Service
Case ID No.: 19476
Reg. Ent. Reference No.: RN101654739
Additional ID No(s): Petroleum Storage Tank Facility ID No. 55944
Media [Statute]: 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
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)	\$2,500	27-Jul-2004	01-May-2006	1.8	\$220	n/a	\$220

Notes for DELAYED costs

Estimated cost to install a corrosion protection system. Date required based on the investigation date. Final date based on the projected compliance date.

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 \$2,500

TOTAL \$220

Screening Date 08-Sep-2004 **Docket No.** 2004-1416-PST-E **PCW**

Respondent Rafael Padilla dba Ralphs Auto Service *Policy Revision 2 (September 2002)*

Case ID No. 19476 *PCW Revision May 17, 2004*

Reg. Ent. Reference No. RN101654739

Additional ID No(s). Petroleum Storage Tank Facility ID No. 55944

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 2

Primary Rule Cite(s) 30 Tex. Admin. Code § 37.815(a) and (b)

Secondary Rule Cite(s)

Violation Description
 Failure to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs. Specifically, financial assurance was not provided for the used oil tank ("tank No. 4").

Base Penalty \$10,000

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

		Harm			
Release		Major	Moderate	Minor	
OR	Actual				Percent
	Potential				

>> **Programmatic Matrix**

		Falsification	Major	Moderate	Minor	
			X			Percent 10%
Matrix Notes		100% of the rule was not met.				

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

Violation Events

Number of Violation Events 1

<i>mark only one use a small x</i>	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
single event	X	

Violation Base Penalty \$1,000

One single event is recommended based upon the violation documented during the investigation conducted on July 27, 2004.

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

Estimated EB Amount \$683

Violation Final Penalty Total \$1,000

This violation Final Assessed Penalty (adjusted for limits) \$1,000

Economic Benefit Worksheet

Respondent: Rafael Padilla dba Ralphs Auto Service
Case ID No.: 19476
Reg. Ent. Reference No.: RN101654739
Additional ID No(s): Petroleum Storage Tank Facility ID No. 55944
Media [Statute]: 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	Onetime Costs	EB Amount
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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]	\$650	27-Jul-2003	27-Jul-2004	1.0	\$33	\$650	\$683
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to provide financial assurance for the petroleum USTs for the 12 months preceding the date of the investigation.

Approx. Cost of Compliance \$650

TOTAL \$683

Screening Date 08-Sep-2004

Docket No. 2004-1416-PST-E

PCW

Respondent Rafael Padilla dba Ralphs Auto Service

Policy Revision 2 (September 2002)

Case ID No. 19476

PCW Revision May 17, 2004

Reg. Ent. Reference No. RN101654739

Additional ID No(s) Petroleum Storage Tank Facility ID No. 55944

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

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="25%"/>
Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>				

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one use a small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input checked="" type="checkbox"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

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: Rafael Padilla dba Ralphs Auto Service
Case ID No.: 19476
Reg. Ent. Reference No.: RN101654739
Additional ID No(s): Petroleum Storage Tank Facility ID No. 55944
Media [Statute]: 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	Onetime Costs	EB Amount
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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)	\$2,500	27-Jul-2004	19-Aug-2004	0.1	\$8	n/a	\$8

Notes for DELAYED costs

Estimated cost for a release detection system. Date required based on the investigation date.
 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 \$2,500

TOTAL \$8

Screening Date 08-Sep-2004 **Docket No.** 2004-1416-PST-E

PCW

Respondent Rafael Padilla dba Ralphs Auto Service

Policy Revision 2 (September 2002)

Case ID No. 19476

PCW Revision May 17, 2004

Reg. Ent. Reference No. RN101654739

Additional ID No(s). Petroleum Storage Tank Facility ID No. 55944

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

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"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one use a small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="checkbox"/>

Violation Base Penalty

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: Rafael Padilla dba Ralphs Auto Service
Case ID No.: 19476
Reg. Ent. Reference No.: RN101654739
Additional ID No(s): Petroleum Storage Tank Facility ID No. 55944
Media [Statute]: Petroleum Storage Tank
Violation No.: 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	\$100	27-Jul-2004	16-Sep-2004	0.1	\$1	n/a	\$1

Notes for DELAYED costs

Estimated cost to register the UST with the commission. Date required is the date of investigation. 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 \$100

TOTAL \$1

Compliance History

Customer/Respondent/Owner-Operator:	CN600891782 Padilla, Rafael	Classification: AVERAGE BY DEFAULT	Rating: 3.010
Regulated Entity:	RN101654739 RALPHS AUTO SERVICE	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	55944
Location:	2301 N PIEDRAS ST, EL PASO, TX, 79930	Rating Date: 9/1/04 Repeat Violator: NO	
TCEQ Region:	REGION 06 - EL PASO		
Date Compliance History Prepared:	September 08, 2004		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	September 07, 1999 to September 07, 2004		

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

Name: Mauricio Olaya Phone: (915) 834-4967

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? | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>N/A</u> |
| 5. When did the change(s) in ownership occur? | <u>N/A</u> |

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 09/02/2004 (292413)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
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
AGAINST RAFAEL PADILLA DBA
RALPHS AUTO SERVICE;
RN101654739

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2004-1416-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Rafael Padilla dba Ralphs Auto Service ("Mr. Padilla") under the authority of TEX. WATER CODE chs. 7 and 26, and 30 TEX. ADMIN. CODE chs. 37, 70 and 334. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Padilla, appear before the Commission and together stipulate that:

1. Mr. Padilla owns and operates an automotive repair shop at 2301 North Piedras Street in El Paso, El Paso County, Texas (the "Facility").
2. Mr. Padilla's four underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Padilla's four USTs contains a regulated petroleum substance as defined in the rules of the Commission.
3. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26.
4. The Commission and Mr. Padilla agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Padilla is subject to the Commission's jurisdiction.
5. Mr. Padilla received notice of the violations alleged in Section II ("Allegations") on or about September 6, 2004.

6. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Padilla of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
7. An administrative penalty in the amount of nine thousand five hundred dollars (\$9,500.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Padilla has paid three hundred thirty dollars (\$330.00) of the administrative penalty. The remaining amount of nine thousand one hundred seventy dollars (\$9,170.00) of the administrative penalty shall be payable in 35 monthly payments of two hundred sixty-two dollars (\$262.00) 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 Mr. Padilla 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 Mr. Padilla to meet the payment schedule of this Agreed Order constitutes the failure by Mr. Padilla to timely and satisfactorily comply with all of the terms of this Agreed Order.
8. 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.
9. The Executive Director of the TCEQ and Mr. Padilla have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
10. The Executive Director recognizes that Mr. Padilla submitted a UST registration and self-certification form and received a notice of storage tank registration on September 16, 2004 and removed from service tank No. 4 on August 19, 2004.
11. 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. Padilla has not complied with one or more of the terms or conditions in this Agreed Order.
12. 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.
13. 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

Mr. Padilla, owner and operator of the Facility, is alleged to have violated the following requirements:

- a. 30 TEX. ADMIN. CODE § 334.49(a)(2) and TEX. WATER CODE § 26.3475(d), by failing to have installed a method of corrosion protection for the tank system as documented during an investigation conducted on July 27, 2004.
- b. 30 TEX. ADMIN. CODE § 37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by the accidental releases arising from the operation of petroleum USTs during a record review conducted on July 27, 2004. Specifically, financial assurance was not provided for the used oil tank ("tank No. 4").
- c. 30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475(c)(1) by failing to provide proper release detection for tank No. 4 as documented during an investigation conducted on July 27, 2004; and
- d. 30 TEX. ADMIN. CODE § 334.7(a)(1) and TEX. WATER CODE § 26.346(a) by failing to register tank No. 4 with the Commission, as documented during an investigation conducted on July 27, 2004.

III. DENIALS

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

IV. ORDER

1. It is, therefore, ordered by the TCEQ that Mr. Padilla pay an administrative penalty as set forth in Section I, Paragraph 7 above. The payment of this administrative penalty and Mr. Padilla'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 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: Rafael Padilla dba Ralphs Auto Service, Docket No. 2004-1416-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. Padilla shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order:
 - i. Mr. Padilla shall permanently remove the USTs from service in accordance with 30 TEX. ADMIN. CODE § 334.47(a) or
 - ii. Mr. Padilla shall install and implement a corrosion protection system for the USTs in accordance with 30 TEX. ADMIN. CODE § 334.49(a);
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.a.i. or 2.a.ii. to:

Order Compliance Team

Team 7, Section IV
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 7811-3087

with a copy to:

Mr. Terry McMillan, Manager
Waste Section
El Paso Regional Office
Texas Commission on Environmental Quality
401 E. Franklin Avenue, Suite 560
El Paso, Texas 79901

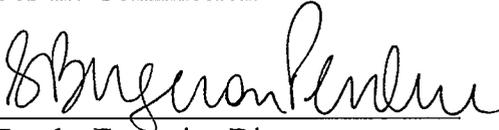
3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Padilla. Mr. Padilla is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

4. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Padilla 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.
5. 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.
6. 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 Mr. Padilla, or three days after the date on which the Commission mails notice of the Order to Mr. Padilla, 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



For the Executive Director

5/4/07

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

8/19/06
Date

Rafael Padilla
Name (Printed or typed)

owner
Title

Authorized representative of Rafael Padilla dba Ralphs Auto Service