EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-0147-PST-E **TCEQ ID:** RN101431708 **CASE NO.:** 32433

RESPONDENT NAME: NDV Enterprises, Inc. dba Chubbys 3

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	X PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Chubbys 3, 11069 Highway 146 North, Liberty, Liberty County

TYPE OF OPERATION: Convenience store with retail sales of gasoline

SMALL BUSINESS: X **Yes** ____ **No**

OTHER SIGNIFICANT MATTERS: No complaints were received. 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 June 18, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Mr. Phillip Defrancesco, Enforcement Division, Enforcement Team 6, MC 128, R-04, (817) 588-5933; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896
Respondent: Ms. Deena Ali Virani, President, NDV Enterprises, Inc., 4310 North Main, Liberty, Texas 77575
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:** December 15, 2006 **Date of NOE Relating to this Case:** January 12, 2007 (NOE) **Background Facts:** This was a routine investigation. Two violations were documented. **WASTE** 1) Failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years [30 TEX. ADMIN. CODE § 334.49(c)(4)(C) and TEX. WATER CODE § 26.3475(d)]. 2) Failed to pay oustanding UST fees and associated late fees for TCEQ Financial Account No. 0064226U for Fiscal Year 2007 [30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702].	**Total Assessed:** $2,675 **Total Deferred:** $535 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid (Due) to General Revenue:** $140 (the remaining $2,000 to be paid in 20 monthly payments of $100 each) **Site Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Person Compliance History Classification** __ **High** _X_ **Average** __ **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 the Agreed Order: i. Inspect the impressed current cathodic protection system and conduct triennial testing of the cathodic protection system; and ii. Submit payment of all outstanding fees, including any associated penalties and interest. 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 Provisions a.i. and a.ii.

Penalty Calculation Worksheet (PCW)

TCEQ

Policy Revision 2 (September 2002) — *PCW Revision December 8, 2006*

DATES					
Assigned	23-Jan-2007				
PCW	2-Feb-2007	Screening	26-Jan-2007	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	NDV Enterprises, Inc. dba Chubbys 3		
Reg. Ent. Ref. No.	RN101431708		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	32433	No. of Violations	2
Docket No.	2007-0147-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Philip DeFrancesco
Multi-Media		EC's Team	EnforcementTeam 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 — 7% Enhancement — *Subtotals 2, 3, & 7* **$175**

Notes: Enhancement for one prior NOV with same or similar violations and one NOV without a same or similar violation.

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 x)

Notes: The respondent does not meet the good faith criteria.

0% Enhancement* — *Subtotal 6* **$0**

**Capped at the Total EB $ Amount*

Total EB Amounts	$1,196
Approx. Cost of Compliance	$1,000

SUM OF SUBTOTALS 1-7 — *Final Subtotal* **$2,675**

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 **$2,675**

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* **$2,675**

DEFERRAL — 20% Reduction — *Adjustment* **-$535**

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 **$2,140**

Screening Date 26-Jan-2007 **Docket No.** 2007-0147-PST-E **PCW**

Respondent NDV Enterprises, Inc. dba Chubbys 3

Case ID No. 32433

Reg. Ent. Reference No. RN101431708

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Philip DeFrancesco

Policy Revision 2 (September 2002)

PCW Revision December 8, 2006

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*)	1	5%
	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 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 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%

		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) 7%

>> 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 NOV with same or similar violations and one NOV without a same or similar violation.

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

Screening Date	26-Jan-2007	**Docket No.** 2007-0147-PST-E	**PCW**
Respondent	NDV Enterprises, Inc. dba Chubbys 3		*Policy Revision 2 (September 2002)*
Case ID No.	32433		*PCW Revision December 8, 2006*
Reg. Ent. Reference No.	RN101431708		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Philip DeFrancesco		

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.49(c)(4)(C) and Tex. Water Code § 26.3475(d)

Violation Description Failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years.

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 0%

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

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events 1

1095 Number of violation days

mark only one with an 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 December 15, 2006 investigation date.

Economic Benefit (EB) for this violation

Estimated EB Amount $1,196

Statutory Limit Test

Violation Final Penalty Total $2,675

This violation Final Assessed Penalty (adjusted for limits) $2,675

Economic Benefit Worksheet

Respondent NDV Enterprises, Inc. dba Chubbys 3
Case ID No. 32433
Reg. Ent. Reference No. RN101431708
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	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	15-Dec-2003	15-Dec-2006	3.9	$196	$1,000	$1,196
Notes for AVOIDED costs	Avoided cost for completing the triennial test. The date required is three years before the investigation date and the final date is the date of investigation.						

Approx. Cost of Compliance: $1,000

TOTAL: $1,196

Screening Date	26-Jan-2007	**Docket No.** 2007-0147-PST-E	**PCW**
Respondent	NDV Enterprises, Inc. dba Chubbys 3		*Policy Revision 2 (September 2002)*
Case ID No.	32433		*PCW Revision December 8, 2006*
Reg. Ent. Reference No.	RN101431708		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Philip DeFrancesco		

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.22(a) and Tex. Water Code § 5.702

Violation Description Failed to pay oustanding UST fees and associated late fees for TCEQ Financial Account No. 0064226U for Fiscal Year 2007, as documented during a record review conducted on January 24, 2007.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Adjustment $10,000

$0

Violation Events

Number of Violation Events

Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $0

No additional administrative penalty was calculated for this violation as penalties and interest will be assessed on the next fee billing.

Economic Benefit (EB) for this violation

Estimated EB Amount $0

Statutory Limit Test

Violation Final Penalty Total $0

This violation Final Assessed Penalty (adjusted for limits) $0

Economic Benefit Worksheet

Respondent NDV Enterprises, Inc. dba Chubbys 3
Case ID No. 32433
Reg. Ent. Reference No. RN101431708
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	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	n/a						
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: $0

TOTAL: $0

Compliance History

Customer/Respondent/Owner-Operator:	CN602841561	NDV Enterprises Inc.	Classification: AVERAGE	Rating: 3.33
Regulated Entity:	RN101431708	CHUBBYS 3	Classification: AVERAGE	Site Rating: 3.33
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	31561	
Location:	11069 HIGHWAY 146 N, LIBERTY, TX, 77575		Rating Date: September 01 06	Repeat Violator: NO
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	January 24, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	January 24, 2002 to January 24, 2007			

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 08/29/2006 (463616)
2 10/10/2006 (514622)
3 01/12/2007 (518398)
4 08/24/2006 (483226)

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

Date: 10/10/2006 (514622)

Self Report? NO Classification: Moderate

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

Description: 30 Tex. Admin. Code Section 334.49(c)(4)(C) - Failure to have cathodic protection system tested by a qualified corrosion specialist or corrosion technician in accordance within three to six months after installation and at a subsequent frequency of at least once every three years.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.51(b)(2)(C)[G]

Description: 30 Tex. Admin. Code Section 334.51(b)(2)(C) - Failure to provide proper overfill prevention equipment for UST systems.

Date: 08/24/2006 (483226)

Self Report? NO Classification: Moderate

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

Description: 30 Tex. Admin. Code Section 334.49(c)(4)(C) - Failure to have cathodic protection system tested by a qualified corrosion specialist or corrosion technician in accordance within three to six months after installation and at a subsequent frequency of at least once every three years.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.51(b)(2)(C)[G]

Description: 30 Tex. Admin. Code Section 334.51(b)(2)(C) - Failure to provide proper overfill prevention equipment for UST systems.

Date: 06/28/2006 (483226)

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(B)

Description: 30 TAC 115.242 (3)(B) - Failure to maintain hose in a manner that the hose is not crimped, kinked, or flattened such that the vapor passage is blocked, or the back-pressure through the vapor system exceeds the value as certified in the approved system=s CARB Executive Order(s).

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(C)

Description: 30 Tex. Admin. Code Section 334.8(c)(5)(C) - Failure of the owner or operator of the USTs regulated under this section for ensuring marking is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST at the facility.

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	§	**TEXAS COMMISSION ON**
NDV ENTERPRISES, INC. DBA	§	
CHUBBYS 3	§	**ENVIRONMENTAL QUALITY**
RN101431708		

AGREED ORDER
DOCKET NO. 2007-0147-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 NDV Enterprises, Inc. dba Chubbys 3 ("NDV Enterprises") under the authority of TEX. WATER CODE chs. 5, 7, and 26. The Executive Director of the TCEQ, through the Enforcement Division, and NDV Enterprises appear before the Commission and together stipulate that:

1. NDV Enterprises owns and operates a convenience store with retail sales of gasoline at 11069 Highway 146 North in Liberty, Liberty County, Texas (the "Facility").

2. NDV Enterprises' three 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 NDV Enterprises agree that the Commission has jurisdiction to enter this Agreed Order, and that NDV Enterprises is subject to the Commission's jurisdiction.

4. NDV Enterprises received notice of the violations alleged in Section II ("Allegations") on or about January 17, 2007.

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

6. An administrative penalty in the amount of Two Thousand Six Hundred Seventy-Five Dollars ($2,675) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). NDV Enterprises has paid One Hundred Forty Dollars ($140) of the administrative penalty and Five Hundred Thirty-Five Dollars ($535) is deferred contingent upon NDV Enterprises' 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 NDV Enterprises fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require NDV Enterprises to pay all or part of the deferred penalty.

The remaining amount of Two Thousand Dollars ($2,000) of the administrative penalty shall be payable in twenty monthly payments of One Hundred Dollars ($100) 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 NDV Enterprises 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 NDV Enterprises to meet the payment schedule of this Agreed Order constitutes the failure by NDV Enterprises 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 NDV Enterprises 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 NDV Enterprises 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, NDV Enterprises is alleged to have:

1. Failed to have the cathodic protection system inspected and tested 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)(C) and TEX. WATER CODE § 26.3475(d), as documented during an investigation conducted on December 15, 2006.

2. Failed to pay oustanding UST fees and associated late fees for TCEQ Financial Account No. 0064226U for Fiscal Year 2007, in violation of 30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702, as documented during a record review conducted on January 24, 2007.

III. DENIALS

NDV Enterprises generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that NDV Enterprises pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and NDV Enterprises' 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: NDV Enterprises, Inc. dba Chubbys 3, Docket No. 2007-0147-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 NDV Enterprises shall undertake the following technical requirements:

   a. Within 30 days after the effective date of the Agreed Order:

      i. Inspect the impressed current cathodic protection system and conduct triennial testing of the cathodic protection system, in accordance with 30 TEX. ADMIN. CODE § 334.49; and

      ii. Submit payment of all outstanding fees, including any associated penalties and interest and with the notation, "NDV Enterprises, Inc. dba Chubbys 3, TCEQ Financial Account No. 0064226U," to the address in Paragraph 1 of this Section.

   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 Nos. 2.a.i. and 2.a.ii. 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
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

3. The provisions of this Agreed Order shall apply to and be binding upon NDV Enterprises. NDV Enterprises 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 NDV Enterprises 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, NDV Enterprises' failure to comply is not a violation of this Agreed Order. NDV Enterprises shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. NDV Enterprises shall notify the Executive Director within seven days after NDV Enterprises 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 NDV Enterprises shall be made in writing to the Executive Director. Extensions are not effective until NDV Enterprises 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 NDV Enterprises 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 NDV Enterprises, or three days after the date on which the Commission mails notice of the Order to NDV Enterprises, 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

_____ 7/6/07
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.

Neena Virani 4/10/07
Signature Date

Neena Ali Virani President
Name (Printed or typed) Title
Authorized Representative of
NDV Enterprises, Inc. dba Chubbys 3

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.