

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2006-0306-PST-E TCEQ ID: RN102438389 CASE NO.: 29027**  
**RESPONDENT NAME: A & B, INC. DBA THE CORNER STOP 3**

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" 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	

<b>CASE TYPE:</b>		
<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

**SITE WHERE VIOLATION(S) OCCURRED:** 1536 Pulliam Street, San Angelo, Tom Green County

**TYPE OF OPERATION:** Convenience store with retail sales of gasoline

**SMALL BUSINESS:**  Yes  No

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

**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 April 23, 2007. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Mr. Robert R. Mosley, Litigation Division, MC 175, (512) 239-0627;  
 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873

**TCEQ Enforcement Coordinator:** Ms. Deana Holland, Enforcement Division, Section IV, MC 219, (512) 239-2504

**TCEQ Regional Contact:** Mr. Mark Newman, San Angelo Regional Office, MC R-8, (325) 655-9479

**Respondent:** Ms. Eugenia Garcia, Registered Agent, A & B, Inc. dba The Corner Stop 3, 2901 Pruitt Drive, San Angelo, Texas 76903

**Respondent's Attorney:** Not represented by counsel.

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b>                      None</p> <p><b>Date of Investigation Relating to this Case:</b>                      March 8, 2006 and September 11, 2006</p> <p><b>Date of NOV/NOE Relating to this Case:</b>                      March 14, 2006 (NOV)</p> <p><b>Background Facts:</b> An EDRP was filed on September 14, 2006. An EDFARP was filed on November 21, 2006. The Respondent has not filed an answer, requested a hearing or scheduled a settlement conference.</p> <p><b>PST:</b></p> <p>1. Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components were operating properly [30 TEX. ADMIN. CODE § 334.49(c)(2)(C) and TEX. WATER CODE § 26.3475(d)].</p> <p>2. Failed to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring) and failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and (d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>3. Failed to timely renew a previously issued TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date of the delivery certificate. Specifically, the delivery certificate expired on January 31, 2006 [30 TEX. ADMIN. CODE § 334.8(c)(5)(B)(ii)].</p>	<p><b>Total Assessed:</b> \$6,240</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>Total Due to General Revenue:</b> \$6,240</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p><b>Site Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Avg. <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b> N/A</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken</b></p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility in response to this enforcement action:</p> <ol style="list-style-type: none"> <li>1. Conducted a bimonthly inspection of the rectifier and other components of the cathodic protection system on March 27, 2006.</li> <li>2. Began performing proper inventory control procedures and implemented a release detection method on March 15, 2006.</li> <li>3. Obtained a current, valid TCEQ delivery certificate on March 9, 2006.</li> </ol>



Policy Revision 2 (September 2002)

# Penalty Calculation Worksheet (PCW)

PCW Revision May 19, 2005

<b>DATES</b>	Assigned PCW	20-Mar-2006 28-May-2007	Screening	28-Mar-2006	EPA Due	
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<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	A & B, Inc. dba The Corner Stop 3
Reg. Ent. Ref. No.	RN102438389
Facility/Site Region	8-San Angelo <input checked="" type="checkbox"/> Major/Minor Source <input type="checkbox"/> Minor Source <input checked="" type="checkbox"/>

<b>CASE INFORMATION</b>			
Enf./Case ID No.	29027	No. of Violations	3
Docket No.	2006-0306-PST-E	Order Type	1660 <input checked="" type="checkbox"/>
Media Program(s)	Petroleum Storage Tank <input checked="" type="checkbox"/>	Enf. Coordinator	Deana Holland
Multi-Media		EC's Team	Enforcement Team 7 <input checked="" type="checkbox"/>
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** Subtotal 1

**ADJUSTMENTS (+/-) TO SUBTOTAL 1**

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

**Compliance History** 4% Enhancement Subtotals 2, 3, & 7

Notes

**Culpability**   0% Enhancement Subtotal 4

Notes

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

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

Notes

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

Total EB Amounts	<input type="text" value="\$3"/>	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	<input type="text" value="\$1,700"/>	

**SUM OF SUBTOTALS 1-7** Final Subtotal

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  Adjustment

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

Notes

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty

**DEFERRAL**  Reduction Adjustment

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

Notes

**PAYABLE PENALTY**

Screening Date 28-Mar-2006

Docket No. 2006-0306-PST-E

PCW

Respondent A &amp; B, Inc. dba The Corner Stop 3

Policy Revision 2 (September 2002)

Case ID No. 29027

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN102438389

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Deana Holland

## Compliance History Worksheet

## &gt;&gt; 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	2	4%
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) 4%

## &gt;&gt; Repeat Violator (Subtotal 3)

No 

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

N/A 

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance History Notes

Enhancement for two NOVs without same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 4%

<b>Screening Date</b> 28-Mar-2006	<b>Docket No.</b> 2006-0306-PST-E	<b>PCW</b>
<b>Respondent</b> A & B, Inc. dba The Corner Stop 3	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 29027	<i>PCW Revision May 19, 2005</i>	
<b>Reg. Ent. Reference No.</b> RN102438389		
<b>Media [Statute]</b> Petroleum Storage Tank		
<b>Enf. Coordinator</b> Deana Holland		
<b>Violation Number</b>	1	
<b>Primary Rule Cite(s)</b>	30 Tex. Admin. Code § 334.49(c)(2)(C)	
<b>Secondary Rule Cite(s)</b>	Tex. Water Code § 26.3475(d)	
<b>Violation Description</b>	Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components were operating properly.	
<b>Base Penalty</b>		\$10,000

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

<b>Harm</b>				
<b>Release</b>	Major	Moderate	Minor	
Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Percent</b> <input type="text" value="25%"/>
Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

>> **Programmatic Matrix**

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

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**   
**Base Penalty Subtotal**

**Violation Events**

Number of Violation Events

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

**Violation Base Penalty**

One monthly event is recommended from the March 8, 2006 investigation date to the March 27, 2006 compliance date.

**Economic Benefit (EB) for this violation**

Estimated EB Amount

**Statutory Limit Test**

Violation Final Penalty Total

**This violation Final Assessed Penalty (adjusted for limits)**

### Economic Benefit Worksheet

Respondent A & B, Inc. dba The Corner Stop 3  
 Case ID No. 29027  
 Reg. Ent. Reference No. RN102438389  
 Media [Statute] Petroleum Storage Tank  
 Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
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)	\$400	08-Mar-2006	27-Mar-2006	0.1	\$1	n/a	\$1

Notes for DELAYED costs: Estimated cost to inspect the rectifier and other components of the impressed current cathodic protection system. The Date Required is the investigation date and 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: n/a

Approx. Cost of Compliance \$400

TOTAL \$1

<b>Screening Date</b> 28-Mar-2006	<b>Docket No.</b> 2006-0306-PST-E	<b>PCW</b>
<b>Respondent</b> A & B, Inc. dba The Corner Stop 3		<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b> 29027		<i>PCW Revision May 19, 2005</i>
<b>Reg. Ent. Reference No.</b> RN102438389		
<b>Media [Statute]</b> Petroleum Storage Tank		
<b>Enf. Coordinator</b> Deana Holland		
<b>Violation Number</b> 2		
<b>Primary Rule Cite(s)</b>	30 Tex. Admin. Code § 334.50(b)(1)(A) and 334.50(d)(1)(B)(ii)	
<b>Secondary Rule Cite(s)</b>	Tex. Water Code § 26.3475(c)(1)	
<b>Violation Description</b>	Failure to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring). In addition, the respondent failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0% if the total substance flow-through for the month plus 130 gallons.	

**Base Penalty**

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

		<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor	
OR	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="25%"/>
	Potential	<b>x</b>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

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

**Matrix Notes**

**Adjustment**

**Base Penalty Subtotal**

**Violation Events**

Number of Violation Events

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

**Violation Base Penalty**

One monthly event is recommended from the March 8, 2006 investigation date to the March 15, 2006 compliance date.

**Economic Benefit (EB) for this violation**

Estimated EB Amount

**Statutory Limit Test**

**Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

### Economic Benefit Worksheet

Respondent A & B, Inc. dba The Corner Stop 3  
 Case ID No. 29027  
 Reg. Ent. Reference No. RN102438389  
 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
<b>Delayed Costs</b>							
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)	\$1,200	08-Mar-2006	15-Mar-2006	0.0	\$1	n/a	\$1

Notes for DELAYED costs: Estimated cost to monitor USTs for releases. The Date Required is the date of the investigation and the Final Date is the date of compliance.

<b>Avoided Costs</b>							
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: n/a

Approx. Cost of Compliance **\$1,200**

**TOTAL \$1**

<b>Screening Date</b> 28-Mar-2006	<b>Docket No.</b> 2006-0306-PST-E	<b>PCW</b>
<b>Respondent</b> A & B, Inc. dba The Corner Stop 3	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 29027	<i>PCW Revision May 19, 2005</i>	
<b>Reg. Ent. Reference No.</b> RN102438389		
<b>Media [Statute]</b> Petroleum Storage Tank		
<b>Enf. Coordinator</b> Deana Holland		
<b>Violation Number</b>	3	
<b>Primary Rule Cite(s)</b>	30 Texas Admin Code § 334.8(c)(5)(B)(ii)	
<b>Secondary Rule Cite(s)</b>		
<b>Violation Description</b>	Failure to timely renew a previously issued TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date of the delivery certificate. Specifically, the delivery certificate expired on January 31, 2006.	

**Base Penalty** \$10,000

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

	<b>Harm</b>				
	Release	Major	Moderate	Minor	
OR	Actual				<b>Percent</b> <span style="border: 1px solid black; padding: 2px;"> </span>
	Potential				

>> **Programmatic Matrix**

	<b>Falsification</b>				
	Major	Moderate	Minor		
		X			<b>Percent</b> <span style="border: 1px solid black; padding: 2px;">10%</span>

**Matrix Notes** 100% of the rule requirement was not met.

**Adjustment** -\$9,000

**Base Penalty Subtotal** \$1,000

**Violation Events**

**Number of Violation Events** 1

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

**Violation Base Penalty** \$1,000

One single event is recommended based on the March 8, 2006 investigation date.

**Economic Benefit (EB) for this violation**

**Estimated EB Amount** \$1

**Statutory Limit Test**

**Violation Final Penalty Total** \$1,040

**This violation Final Assessed Penalty (adjusted for limits)** \$1,040

### Economic Benefit Worksheet

Respondent A & B, Inc. dba The Corner Stop 3  
 Case ID No. 29027  
 Reg. Ent. Reference No. RN102438389  
 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
<b>Delayed Costs</b>							
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	01-Jan-2006	09-Mar-2006	0.2	\$1	n/a	\$1

Notes for DELAYED costs

The estimated cost to complete and submit the UST registration and self-certification form. The Date Required is 30 days prior to the expiration date of the delivery certificate 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

n/a

Approx. Cost of Compliance

TOTAL



J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF  
AN ENFORCEMENT ACTION  
AGAINST A & B, INC. DBA THE  
CORNER STOP 3;  
RN102438389

§  
§  
§  
§  
§

BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

**DEFAULT ORDER**  
**DOCKET NO. 2006-0306-PST-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty. The respondent made the subject of this Order is A & B, Inc. dba The Corner Stop 3 ("A&B").

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

**FINDINGS OF FACT**

1. A&B operates a convenience store with retail sales of gasoline located at 1536 Pulliam Street, San Angelo, Tom Green County, Texas (the "Facility").
2. A&B's 7 underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. A&B's USTs contain a regulated petroleum substance as defined in the rules of the Commission.
3. During an inspection conducted on March 8, 2006, a TCEQ San Angelo Regional Office investigator documented that A&B:
  - a. failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components were operating properly;
  - b. failed to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring) and failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to

detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; and

- c. failed to timely renew a previously issued TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date of the delivery certificate. Specifically, the delivery certificate expired on January 31, 2006.
4. A&B received notice of the violations on or about March 14, 2006.
5. The Executive Director recognizes that A&B has implemented the following corrective measures at the Facility in response to this enforcement action:
  - a. conducted a bimonthly inspection of the rectifier and other components of the cathodic protection system on March 27, 2006;
  - b. began performing proper inventory control procedures and implemented a release detection method on March 15, 2006; and
  - c. obtained a current, valid TCEQ delivery certificate on March 9, 2006.
6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of A & B, Inc. dba The Corner Stop 3" (the "EDPRP") in the TCEQ Chief Clerk's office on September 14, 2006.
7. By letter dated September 14, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served A&B with notice of the EDPRP. According to the return receipt "green card", A&B received notice of the EDPRP on September 16, 2006, as evidenced by the signature on the card.
8. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of A & B, Inc. dba The Corner Stop 3" (the "EDFARP") in the TCEQ Chief Clerk's office on November 21, 2006.
9. By letter dated November 21, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served A&B with notice of the

EDFARP. According to the return receipt "green card", A&B received notice of the EDPRP on November 24, 2006, as evidenced by the signature on the card.

10. More than 20 days have elapsed since A&B received notice of either the EDPRP or EDFARP, provided by the Executive Director. A&B failed to file an answer to either the EDPRP or EDFARP, failed to request a hearing, and failed to schedule a settlement conference.

### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, A&B is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., A&B failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components were operating properly, in violation of 30 TEX. ADMIN. CODE § 334.49(c)(2)(C) and TEX. WATER CODE § 26.3475(d).
3. As evidenced by Finding of Fact No. 3.b., A&B failed to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring) and failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and (d)(1)(B)(ii), and TEX. WATER CODE § 26.3475(c)(1).
4. As evidenced by Finding of Fact No. 3.c., A&B failed to timely renew a previously issued TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date of the delivery certificate. Specifically, the delivery certificate expired on January 31, 2006, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(B)(ii).
5. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director has timely served A&B with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
6. As evidenced by Finding of Fact Nos. 8 and 9, the Executive Director has timely served A&B with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).

7. As evidenced by Finding of Fact No. 8, A&B has failed to file a timely answer to either the EDPRP or EDFARP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against A&B and assess the penalty recommended by the Executive Director.
8. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against A&B for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
9. An administrative penalty in the amount of six thousand two hundred forty dollars (\$6,240.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
10. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

### **ORDERING PROVISIONS**

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

1. A&B is assessed an administrative penalty in the amount of six thousand two hundred forty dollars (\$6,240.00) for violations of TEX. WATER CODE ch. 26 and rules of the TCEQ. The payment of this administrative penalty and A&B's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: A & B, Inc. dba The Corner Stop 3; Docket No. 2006-0306-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. All relief not expressly granted in this Order is denied.
3. The provisions of this Order shall apply to and be binding upon A&B. A&B is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
4. If A&B fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, A&B's failure to comply is not a violation of this Order. A&B shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. A&B shall notify the Executive Director within seven days after A&B 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 Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by A&B shall be made in writing to the Executive Director. Extensions are not effective until A&B receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to A&B if the Executive Director determines that A&B has not complied with one or more of the terms or conditions in this Order.
7. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
8. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF ROBERT R. MOSLEY**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Robert R. Mosley. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of A & B, Inc. dba The Corner Stop 3” (the “EDPRP”) with the Office of the Chief Clerk on September 14, 2006.

I sent the EDPRP to A&B at its last known address on September 14, 2006 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card”, A&B received notice of the EDPRP on September 16, 2006, as evidenced by the signature on the card.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the “Executive Director’s First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of A & B, Inc. dba The Corner Stop 3” (the “EDFARP”) with the Office of the Chief Clerk on November 21, 2006.

I sent the EDFARP to A&B at its last known address on November 21, 2006 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card”, A&B received notice of the EDFARP on November 24, 2006 as evidenced by the signature on the card.

More than 20 days have elapsed since A&B received notice of either the EDPRP or the EDFARP. A&B failed to file an answer to either the EDPRP or EDFARP, failed to request a hearing, and failed to schedule a settlement conference”.



\_\_\_\_\_  
Robert R. Mosley  
Attorney  
Texas Commission on Environmental Quality