

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER** Page 1 of 2  
**DOCKET NO.:** 2007-0886-PST-E **TCEQ ID:** RN105224919 **CASE NO.:** 33740  
**RESPONDENT NAME:** ATC Leasing Company LLC

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<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
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Active USA, 1518 North Interstate Highway 35 West, Denton, Denton County</p> <p><b>TYPE OF OPERATION:</b> Trucking terminal</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on October 15, 2007. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. Philip DeFrancesco, Enforcement Division, Enforcement Section 6, MC R-04, (817) 588-5933; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171  <b>Respondent:</b> Mr. Michael Testman, President, ATC Leasing Company LLC, 4316 39th Avenue, Kenosha, WI 53144  Mr. Frank J. Pacetti, Vice President, ATC Leasing Company LLC, 4316 39<sup>th</sup> Avenue, Kenosha, WI 53144  <b>Respondent's Attorney:</b> Frances E. Phillips, Gardere Wynne Sewell LLP &amp; Reinhart Boerner Van Dueren s.c., 3000 Thanksgiving Tower, 1601 Elm Street, Dallas, Texas 75201-4761</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <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> May 15, 2007</p> <p><b>Date of NOE Relating to this Case:</b> May 25, 2007 (NOE)</p> <p><b>Background Facts:</b> The Respondent reported a spill of diesel fuel on their property. The investigator visited the property and three violations were observed.</p> <p><b>WASTE</b></p> <p>1) Failure to provide a method of release detection capable of detecting a release from any portion of the underground storage tank (UST) system which contained regulated substances. Specifically, the automatic tank gauge was not being put into test mode at least once per month [30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)]</p> <p>2) Failure to notify the agency of any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition, as applicable. Specifically, the registration was not updated to reflect the current address, the point of contact for the current operator, and the environmental/representative contact [30 TEX. ADMIN. CODE § 334.7(d)(3)]</p> <p>3) Failure to prevent an unauthorized discharge of diesel fuel. Specifically, diesel fuel was observed in two observation wells, the soils around the UST, and the storm water ditch at the Facility [30 TEX. ADMIN. CODE § 334.48(a)]</p>	<p><b>Total Assessed:</b> \$11,250</p> <p><b>Total Deferred:</b> \$2,250  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$9,000</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input checked="" type="checkbox"/> Yes <input 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:</p> <p>a) As of June 15, 2007, the TCEQ Dallas/Fort Worth Regional Office received documentation verifying that the piping associated with the UST has been removed and the UST has been emptied of all regulated substances;</p> <p>b) As of June 15, 2007, the TCEQ Dallas/Fort Worth Regional Office received documentation verifying that an amended UST registration form was submitted reflecting the correct address, contact information, and current change in operational status of the UST; and</p> <p>c) As of June 15, 2007, the TCEQ Dallas/Fort Worth Regional Office received documentation verifying that the release from the UST system has been contained, mitigated, and remediated by a licensed petroleum storage tank contractor.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 25, 2007

<b>DATES</b>	Assigned	29-May-2007	Screening	5-Jun-2007	EPA Due	
	PCW	6-Jun-2007				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	ATC Leasing Company LLC		
Reg. Ent. Ref. No.	RN105224919		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Major

<b>CASE INFORMATION</b>				
Enf./Case ID No.	33740	No. of Violations	3	
Docket No.	2007-0886-PST-E	Order Type	1660	
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Philip DeFrancesco	
Multi-Media		EC's Team	EnforcementTeam 6	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** Subtotal 1 \$12,500

### 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

Notes: No adjustment due to compliance history.

**Culpability** No 0% Enhancement Subtotal 4 \$0

Notes: The respondent does not meet the culpability criteria.

**Good Faith Effort to Comply** 10% Reduction Subtotal 5 \$1,250

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

Notes: The respondent came into compliance on June 15, 2007.

**Good Faith Effort to Comply** 0% Enhancement\* Subtotal 6 \$0

Total EB Amounts	\$58
Approx. Cost of Compliance	\$12,000

\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** Final Subtotal \$11,250

**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** \$11,250

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty \$11,250

**DEFERRAL** 20% Reduction Adjustment -\$2,250

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

Notes: Deferral offered for expedited settlement.

**PAYABLE PENALTY** \$9,000

Screening Date 5-Jun-2007

Docket No. 2007-0886-PST-E

PCW

Respondent ATC Leasing Company LLC

Policy Revision 2 (September 2002)

Case ID No. 33740

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN105224919

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Philip DeFrancesco

### Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were 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) 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 adjustment due to compliance history.

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

<b>Screening Date</b> 5-Jun-2007	<b>Docket No.</b> 2007-0886-PST-E	<b>PCW</b>
<b>Respondent</b> ATC Leasing Company LLC	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 33740	<i>PCW Revision May 25, 2007</i>	
<b>Reg. Ent. Reference No.</b> RN105224919		
<b>Media [Statute]</b> Petroleum Storage Tank		
<b>Enf. Coordinator</b> Philip DeFrancesco		
<b>Violation Number</b>	1	
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 334.50(a)(1)(A) and Tex. Water Code § 26.3475(c)(1)	
<b>Violation Description</b>	Failed to provide a method of release detection capable of detecting a release from any portion of the UST system which contained regulated substances. Specifically, the automatic tank gauge was not being put into test mode at least once per month.	
<b>Base Penalty</b>		\$10,000

>> Environmental, Property and Human Health Matrix

OR	<b>Harm</b>					
	<b>Release</b>	Major	Moderate		Minor	
	<b>Actual</b>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	
	<b>Potential</b>	x	<input type="checkbox"/>	<input type="checkbox"/>	<b>Percent</b>	50%

>> Programmatic Matrix

	<b>Falsification</b>	Major	Moderate	Minor		
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
					<b>Percent</b>	0%
<b>Matrix Notes</b>	Failing to monitor the UST system for releases could expose human health or the environment to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.					

**Adjustment** \$5,000

\$5,000

Violation Events

Number of Violation Events   Number of violation days

<i>mark only one with an x</i>	daily	<input type="checkbox"/>
	monthly	x
	quarterly	<input type="checkbox"/>
	semiannual	<input type="checkbox"/>
	annual	<input type="checkbox"/>
	single event	<input type="checkbox"/>

**Violation Base Penalty** \$5,000

One monthly event is recommended based on documentation of the violation during the May 15, 2007 investigation to the June 5, 2007 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

**Estimated EB Amount**

**Violation Final Penalty Total**

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

## Economic Benefit Worksheet

Respondent: ATC Leasing Company LLC  
 Case ID No. 33740  
 Reg. Ent. Reference No. RN105224919  
 Media: Petroleum Storage Tank  
 Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

No commas or \$

### Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$1,500	15-May-2007	15-Jun-2007	0.1	\$6	n/a	\$6

**Notes for DELAYED costs**

The estimated cost to provide a method of release detection for the UST. Date required is the investigation date and the final date is the date of compliance.

### Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

**Notes for AVOIDED costs**

Approx. Cost of Compliance \$1,500

**TOTAL** \$6

<b>Screening Date</b>	5-Jun-2007	<b>Docket No.</b>	2007-0886-PST-E	<b>PCW</b>
<b>Respondent</b>	ATC Leasing Company LLC		Policy Revision 2 (September 2002)	
<b>Case ID No.</b>	33740	PCW Revision May 25, 2007		
<b>Reg. Ent. Reference No.</b>	RN105224919			
<b>Media [Statute]</b>	Petroleum Storage Tank			
<b>Enf. Coordinator</b>	Philip DeFrancesco			

**Violation Number**

**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="0%"/>
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="checkbox"/>	<input type="checkbox"/>	<input type="text" value="25%"/>

**Matrix Notes**

**Adjustment**

Violation Events

Number of Violation Events   Number of violation days

mark only one with an x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	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 ATC Leasing Company LLC  
 Case ID No. 33740  
 Reg. Ent. Reference No. RN105224919  
 Media 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
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

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)	\$500	15-May-2007	15-Jun-2007	0.1	\$2	n/a	\$2

Notes for DELAYED costs

Estimated cost to submit an amended UST registration form to the TCEQ. The date required is the investigation date and the final date is the date of compliance.

**Avoided Costs**

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$2



Screening Date 5-Jun-2007

Docket No. 2007-0886-PST-E

PCW

Respondent ATC Leasing Company LLC

Policy Revision 2 (September 2002)

Case ID No. 33740

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN105224919

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Philip DeFrancesco

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.48(a)

Violation Description Failed to prevent an unauthorized discharge of diesel fuel. Specifically, diesel fuel was observed in two observation wells, the soils around the UST, and the storm water ditch at the Facility.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		x	
Potential			

Percent 50%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 1

26 Number of violation days

mark only one with an x	daily	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$5,000

One monthly event is recommended from the release discovery date of May 10, 2007 to the June 5, 2007 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$49

Violation Final Penalty Total \$4,500

This violation Final Assessed Penalty (adjusted for limits) \$4,500

## Economic Benefit Worksheet

Respondent: ATC Leasing Company LLC  
 Case ID No. 33740  
 Reg. Ent. Reference No. RN105224919  
 Media: Petroleum Storage Tank  
 Violation No. 3

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
------------------	---	---------------	------------	-----	----------------	---------------	-----------

### 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)	\$10,000	10-May-2007	15-Jun-2007	0.1	\$49	n/a	\$49

Notes for DELAYED costs

Estimated cost to repair the UST system, mitigate explosive hazards, and to properly dispose of contaminated soils and groundwater. Date required is the date the release was discovered and the final date is the date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$49

# Compliance History

Customer/Respondent/Owner-Operator:	CN602633794	ATC Leasing Company LLC	Classification: Average by Default	Rating: 3.01
Regulated Entity:	RN105224919	ACTIVE USA	Classification: Average by Default	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	4170
Location:	1518 N I35 W, DENTON, TX, 76207			
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	June 27, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	June 27, 2002 to June 27, 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 05/25/2007 (561230)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- 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  
CONCERNING  
ATC LEASING COMPANY LLC  
RN105224919**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2007-0886-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 ATC Leasing Company LLC ("ATC Leasing") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and ATC Leasing, represented by Frances E. Phillips of the law firms of Gardere Wynne Sewell LLP & Reinhart Boerner Van Dueren *s.c.*, appear before the Commission and together stipulate that:

1. ATC Leasing owns a trucking terminal with an underground storage tank ("UST") at 1518 North Interstate Highway 35 West in Denton, Denton County, Texas (the "Facility").
2. ATC Leasing's one UST is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Commission and ATC Leasing agree that the Commission has jurisdiction to enter this Agreed Order, and that ATC Leasing is subject to the Commission's jurisdiction.
4. ATC Leasing received notice of the violations alleged in Section II ("Allegations") on or about May 30, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by ATC Leasing of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Eleven Thousand Two Hundred Fifty Dollars (\$11,250) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). ATC Leasing has paid Nine Thousand Dollars (\$9,000) of the administrative



penalty and Two Thousand Two Hundred Fifty Dollars (\$2,250) is deferred contingent upon ATC Leasing's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If ATC Leasing fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require ATC Leasing to pay all or part of the deferred penalty.

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 ATC Leasing have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that ATC Leasing has implemented the following corrective measures at the Facility:
  - a. As of June 15, 2007, the TCEQ Dallas/Fort Worth Regional Office received documentation verifying that the piping associated with the UST has been removed and the UST has been emptied of all regulated substances;
  - b. As of June 15, 2007, the TCEQ Dallas/Fort Worth Regional Office received documentation verifying that an amended UST registration form was submitted reflecting the correct address, contact information, and current change in operational status of the UST; and
  - c. As of June 15, 2007, the TCEQ Dallas/Fort Worth Regional Office received documentation verifying that the release from the UST system has been contained, mitigated, and remediated by a licensed PST contractor.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that ATC Leasing has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner of the Facility, ATC Leasing is alleged to have:

1. Failed to have a release detection method capable of detecting a release from any portion of the UST system which contained regulated substances, in violation of 30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation





conducted on May 15, 2007. Specifically, the automatic tank gauge was not being put into test mode at least once per month.

2. Failed to notify the agency of any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition, as applicable, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3), as documented during an investigation conducted on May 15, 2007. Specifically, the registration was not updated to reflect the current address, the point of contact for the current operator, and the environmental representative/contact.
3. Failed to prevent an unauthorized discharge of diesel fuel, in violation of 30 TEX. ADMIN. CODE § 334.48(a), as documented during an investigation conducted on May 15, 2007. Specifically, diesel fuel was observed in two observation wells, the soils around the UST, and the storm water ditch at the Facility.

### III. DENIALS

ATC Leasing generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that ATC Leasing pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and ATC Leasing's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: ATC Leasing Company LLC, Docket No. 2007-0886-PST-E" to:

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

2. The provisions of this Agreed Order shall apply to and be binding upon ATC Leasing. ATC Leasing is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against ATC Leasing 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.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.



5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to ATC Leasing, or three days after the date on which the Commission mails notice of the Order to ATC Leasing, 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

\_\_\_\_\_  
Date 10/18/07

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

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

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

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

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date 8/8/07

\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
ATC Leasing Company LLC

\_\_\_\_\_  
Title Vice President

**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.

