

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 3
DOCKET NO.: 2004-0402-PST-E TCEQ ID: RN102429362 CASE NO.: 13950
RESPONDENT NAME: ESPERANZA CARRASCO DBA EL PABELLON

ORDER TYPE:		
<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	
CASE TYPE:		
<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>SITE WHERE VIOLATION(S) OCCURRED: Highway 67 and Harrington, Presidio, Presidio County</p> <p>TYPE OF OPERATION: Convenience store with retail sales gasoline</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on November 20, 2006. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Ms. Shontay Wilcher, Enforcement Division, MC 128, (512) 239-2136 TCEQ Regional Contact: Mr. Terry McMillan, El Paso Regional Office, MC R-6, (915) 834-4953 Respondent: Ms. Esperanza Carrasco, Owner, Esperanza Carrasco dba El Pabellon, P.O. Box 540, Presidio, Texas 79845 Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: October 22, 2003</p> <p>Date of NOE Relating to this Case: December 12, 2003 (NOE)</p> <p>Background Facts:</p> <p>On June 23, 2004, the Enforcement Division sent a request to the Respondent for financial information per Respondent's request regarding inability to pay. A financial analysis was performed by the Financial Division. An EDPRP was filed on September 30, 2005. The Respondent signed an Agreed Order on December 4, 2006.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>PST:</p> <p>1) Failed to have a release detection method capable of detecting a release from any portion of the USTs which contain regulated substances [30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and 30 TEX. WATER CODE 26.3475(c)(1)].</p> <p>2) Failed to permanently tag, label, or mark the USTs with an identification number listed on the UST registration and self-certification form [30 TEX. ADMIN. CODE § 334.8(c)(5)(C)].</p> <p>3) Failed to make available a valid, current TCEQ Fuel Delivery Certificate to a common carrier prior to receiving fuel deliveries from April 1, 2003 through October 22, 2003 [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(1)].</p>	<p>Total Assessed: \$ 56,500</p> <p>Total Deferred: \$ 29,320*</p> <p><input type="checkbox"/> Expedited Settlement <input checked="" type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid/Due to General Revenue: \$755/\$26,425</p> <p>The Respondent has paid \$755 of the undeferred administrative penalty. The remaining amount of \$26,425 shall be payable in 35 monthly payments of \$755 each.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>*Explanation: The TCEQ Financial Division conducted an inability to pay analysis and determined that \$27,180 was the amount which the Respondent could afford to pay.</p>	<p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <p>1) Immediately upon the effective date of this Order:</p> <p>a) Begin providing a release method; and b) Begin reconciling monthly inventory.</p> <p>2) Within 30 days:</p> <p>a) Number all tanks ; and b) Ensure that the Facility delivery certificate is posted and visible at all times.</p> <p>3) Within 45 days, submit written certifications and include detailed supporting documentation including photographs, receipts and/or other records.</p>

4) Failed to reconcile the inventory control records on a monthly basis which are sufficient 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(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1)].



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (09/02)

PCW Revision 2/10/2004

DATES

PCW 17-Aug-2007 Screening 25-Mar-2004 Priority Due 23-Jul-2004 EPA Due

RESPONDENT INFORMATION

Respondent Esperanza Carrasco dba El Pabellon

Respondent/Site ID No(s) Petroleum Storage Tank Facility ID No. 72780, RN102429362

Facility/Site Region 6 - El Paso Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No(s) Case ID No. 13950

Docket No. 2004-0402-PST-E

No. Violations 3

Case Priority 3

Order Type 1660 with deferral

Enf. Coordinator Shontay Wilcher

EC's Team Enforcement Team 6

Media Program(s) Petroleum Storage Tank

Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$57,400

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 change due to average performer classification.

Culpability 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		
None of the above	X	(mark with small x)

Notes: The respondent is not yet in compliance.

Economic Benefit 0% Enhancement* Subtotal 6 \$0

\$55	Total EB Amounts	*Capped at the Total EB \$ Amount
\$1,500	Approx. Cost of Compliance	=

SUM OF SUBTOTALS 1-7

Final Subtotal \$57,400

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 \$57,400

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$56,500

DEFERRAL

Deferral 0% Reduction

Adjustment \$0

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

Notes: The 20% deferral originally offered has been removed because the respondent did not agree to sign the order by the 60 day time limit.

PAYABLE PENALTY

\$56,500

Screening Date 25-Mar-2004 **Docket Number** 2004-0402-PST-E **PCW**
Respondent Esperanza Carrasco dba El Pabellon **Policy Revision 2 (09/02)**
Case ID No. Case ID No. 13950 **PCW Revision 2/10/2004**
Respondent/Site ID No. Petroleum Storage Tank Facility ID No. 72780, RN102429362
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Shontay Wilcher
Site Address Highway 67 and Harrington, Presidio, Texas

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (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 Select Yes/No

Adjustment Percentage (Subtotal 3) 0%

>> **Compliance History Person Classification (Subtotal 7)**

Average Performer Select High, Average or Poor

Adjustment Percentage (Subtotal 7) 0%

Compliance History Summary

Compliance History Notes

No change due to average performer classification.

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

Screening Date	25-Mar-04	Docket Number	2004-0402-PST-E	PCW
Respondent	Esperanza Carrasco dba El Pabellon			Policy Revision 2 (09/02)
Case ID No.	Case ID No. 13950			PCW Revision 2/10/2004
Respondent/Site ID No.	Petroleum Storage Tank Facility ID No. 72780, RN102429362			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Shontay Wilcher			
Violation Number	1			
Primary Rule Cite	30 Tex. Admin. Code §.334.50(a)(1)(A) and (d)(1)(B)(ii)			
Secondary Cite(s)	Tex. Water Code § 26.3475(c)(1)			
Violation Description	Failed to have a release detection method capable of detecting a release from any portion of the Underground Storage Tanks (USTs) which contain regulated substances. Failure to reconcile the inventory control records on a monthly basis which are 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.			

Base Penalty \$10,000

» Environmental, Property and Human Health Matrix

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

» Programmatic Matrix

		Falsification	Major	Moderate	Minor	
OR						Percent

Matrix Notes
 Failure to have a release detection method reconcile the inventory control records could allow an undetected release of petroleum products which would exceed levels that are protective of human health or environmental receptors.

Adjustment -\$7,500
Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 2

mark only one; use small x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$5,000

Events Notes
 Two quarterly events are recommended based on documentation of the violation during the October 23, 2003 investigation date to the March 23, 2004 screening date to make the penalty commensurate with the situation.

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

Estimated EB Amount (\$) \$49 **Violation Final Penalty total** \$5,000

This Violation Final Assessed Penalty (adjusted for limits) \$5,000

Economic Benefit Worksheet

Respondent Esperanza Carrasco dba El Pabellon
ID Number(s) Case ID No. 13950
Media [Statute] Petroleum Storage Tank
Violation Number 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
Delayed Costs							
Equipment	\$1,200	23-Oct-2003	11-May-2004	0.6	\$2	\$44	\$46
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	\$100	23-Oct-2003	11-May-2004	0.6	\$3	n/a	\$3
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

Estimated costs for a leak detection for the UST system and inventory control reconciliation. Date required is the date of investigation. Final date based on the projected compliance date.

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equip				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 \$1,300

TOTAL \$49

Screening Date 25-Mar-04	Docket Number 2004-0402-PST-E	PCW
Respondent Esperanza Carrasco dba El Pabellon		Policy Revision 2 (09/02)
Case ID No. Case ID No. 13950		PCW Revision 2/10/2004
Respondent/Site ID No. Petroleum Storage Tank Facility ID No. 72780, RN102429362		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Shontay Wilcher		
Violation Number <input type="text" value="2"/>		
Primary Rule Cite	<input type="text" value="30 Tex. Admin. Code § 334.8(c)(5)(C)"/>	
Secondary Cite(s)		
Violation Description	Failure to permanently tag, label, or mark the USTs with an identification number listed on the UST registration and self-certification form. Specifically, the tanks were not numbered according to the registration.	
	Base Penalty	<input type="text" value="\$10,000"/>
» Environmental, Property and Human Health Matrix		
	Harm	
	Release	Major Moderate Minor
OR	Actual	<input type="text"/> <input type="text"/> <input type="text"/>
	Potential	<input type="text"/> <input type="text"/> <input type="text"/>
		Percent <input type="text"/>
» Programmatic Matrix		
	Falsification	Major Moderate Minor
OR	<input type="text"/>	<input type="text" value="x"/> <input type="text"/> <input type="text"/>
		Percent <input type="text" value="10%"/>
Matrix Notes	<input type="text" value="100% of the rule was not met."/>	
	Adjustment	<input type="text" value="-9,000"/>
	Base Penalty Subtotal	<input type="text" value="\$1,000"/>
Violation Events		
	Number of Violation Events	<input type="text" value="1"/>
<i>mark only one; use small x</i>	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text" value="x"/>
		Violation Base Penalty <input type="text" value="\$1,000"/>
Events Notes	<input type="text" value="One single event is recommended based on the investigation date of October 23, 2003."/>	
Economic Benefit (EB) for this violation		Statutory Limit Test
	Estimated EB Amount (\$) <input type="text" value="\$1"/>	Violation Final Penalty total <input type="text" value="\$1,000"/>
	This Violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,000"/>	

Economic Benefit Worksheet

Respondent Esperanza Carrasco dba El Pabellon
ID Number(s) Case ID No. 13950
Media [Statute] Petroleum Storage Tank
Violation Number 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Overtime 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)	\$50	23-Oct-2003	11-May-2004	0.6	\$1	n/a	\$1

Notes for DELAYED costs

The estimated cost to tag, label, or mark a UST system. Date required is the date of investigation. Final date based on the projected compliance date.

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equip				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

TOTAL

Screening Date 25-Mar-04 **Docket Number** 2004-0402-PST-E **PCW**
Respondent Esperanza Carrasco dba El Pabellon **Policy Revision 2 (09/02)**
Case ID No. Case ID No. 13950 **PCW Revision 2/10/2004**
Respondent/Site ID No. Petroleum Storage Tank Facility ID No. 72780, RN102429362
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Shontay Wilcher
Violation Number
Primary Rule Cite
Secondary Cite(s)
Violation Description
Base Penalty

» Environmental, Property and Human Health Matrix

		Harm			
Release		Major	Moderate	Minor	
OR	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input checked="" type="text" value="x"/>	Percent <input type="text" value="5%"/>

» Programmatic Matrix

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

Matrix Notes

Adjustment
Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one; use small x

daily	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="text" value="x"/>

Violation Base Penalty

Events Notes

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 Esperanza Carrasco dba El Pabellon
ID Number(s) Case ID No. 13950
Media [Statute] Petroleum Storage Tank
Violation Number 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	Overtime Costs	EB Amount
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Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (As needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (As Needed)	\$150	1-Apr-2003	22-Oct-2003	0.6	\$4	n/a	\$4

Notes for DELAYED costs

The estimated cost to ensure that a valid, current TCEQ Fuel Delivery Certificate is presented to a common carrier before delivery of fuel is accepted. Date required is based on the first day of fuel delivery. Final date is the day the last fuel delivery.

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/equip				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

TOTAL

Compliance History

Customer/Respondent/Owner-Operator:	CN601255011 CARRASCO, ESPERANZA	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN102429362 EL PABELLON	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	72780
Location:	HWY 67 AND HARRINGTON, PRESIDIO, TX, 79845		Rating Date: September 01 03 Repeat Violator: NO
TCEQ Region:	REGION 06 - EL PASO		
Date Compliance History Prepared:	August 28, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	March 23, 1999 to March 25, 2004		

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

Name: Shontay Wilcher Phone: (512) 239-2136

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	06/24/2003	(288672)
2	12/10/2003	(249669)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	06/24/2003	(288672)
Self Report?	NO	
Citation:	30 TAC Chapter 37, SubChapter I 37.815(a)[G] 30 TAC Chapter 37, SubChapter I 37.815(b)[G]	
Description:	FAILURE TO PROVIDE ACCEPTABLE FINANCIAL ASSURANCE.	

Classification: Moderate
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF
AN ENFORCEMENT ACTION
AGAINST ESPERANZA
CARRASCO DBA EL PABELLON;
RN102429362

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2004-0402-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Esperanza Carrasco dba El Pabellon ("Ms. Carrasco") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Ms. Carrasco, appear before the Commission and together stipulate that:

1. Ms. Carrasco owns and operates a convenience store with retail sales of gasoline at Highway 67 and Harrington in Presidio, Presidio County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and Ms. Carrasco agree that the Commission has jurisdiction to enter this Agreed Order, and that Ms. Carrasco is subject to the Commission's jurisdiction.
4. Ms. Carrasco received notice of the violations alleged in Section II ("Allegations") on or about December 17, 2003.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Ms. Carrasco of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of fifty-six thousand five hundred dollars (\$56,500.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Financial Assurance Section of the Commission's Financial Administration Division reviewed the financial documentation submitted by Ms. Carrasco and determined that Ms. Carrasco is unable to pay part of the administrative penalty.

Esperanza Carrasco dba El Pabellon

DOCKET NO. 2004-0402-PST-E

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Therefore, twenty-nine thousand three hundred twenty dollars (\$29,320.00) of the penalty is deferred contingent upon Ms. Carrasco'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 Ms. Carrasco fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require Ms. Carrasco to pay all or part of the deferred penalty.

Ms. Carrasco has paid seven hundred fifty-five dollars (\$755.00) of the undeferred administrative penalty. The remaining amount of twenty-six thousand four hundred twenty-five dollars (\$26,425.00) shall be payable in thirty-five monthly payments of seven hundred fifty-five dollars (\$755.00) each. The first 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 Ms. Carrasco fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the acceleration of any remaining balance constitutes the failure by Ms. Carrasco to timely and satisfactorily comply with all the terms of this Agreed Order and the Executive Director may demand payment of any deferred penalty amount.

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 Ms. Carrasco 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 Ms. Carrasco 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

Ms. Carrasco is alleged to have violated:

1. 30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475(c)(1) by failing to have a release detection method capable of detecting a release from any portion of the USTs which contain regulated substances as documented during an inspection conducted on October 22, 2003.
2. 30 TEX. ADMIN. CODE § 334.8(c)(5)(C) by failing to permanently tag, label, or mark the USTs with an identification number listed on the UST registration and self-certification form as documented during an inspection conducted on October 22, 2003.
3. 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a) by failing to make available a valid, current TCEQ Fuel Delivery Certificate to a common carrier prior to receiving fuel deliveries from April 1, 2003 through October 22, 2003 as documented during an inspection conducted on October 22, 2003.
4. 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii), and TEX. WATER CODE § 26.3475(c)(1) by failing to reconcile the inventory control records on a monthly basis which are 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 as documented during an inspection conducted on October 22, 2003.

III. DENIALS

Ms. Carrasco generally denies each allegation in Section II ("Allegations").

IV. ORDER

1. It is, therefore, ordered by the TCEQ that Ms. Carrasco pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Ms. Carrasco's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Esperanza Carrasco dba El Pabellon, Docket No. 2004-0402-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. Ms. Carrasco shall undertake the following technical requirements:

- a. Immediately upon the effective date of this Agreed Order, Ms. Carrasco shall:
 - i. Begin providing a release detection method, in accordance with 30 TEX. ADMIN. CODE § 334.50(a)(1)(A); and
 - ii. Begin reconciling monthly inventory, in accordance with 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) (relating to Release Detection).
- b. Within 30 days after the effective date of this Agreed Order, Ms. Carrasco shall:
 - i. Number all tanks, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(C) (relating to Registration); and
 - ii. Ensure that the Facility's delivery certificate is posted and visible at all times, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) (relating to Registration).
- c. Within 45 days after the effective date of the Commission Order, submit written certifications as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions 2.a. and 2.b.

The certification language 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:

Mr. Terry McMillan, Manager, Waste Section
Texas Commission on Environmental Quality
El Paso Regional Office
401 E. Franklin Ave., Ste. 560
El Paso, Texas 79901-1206

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

Esperanza Carrasco dba El Pabellon

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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) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Ms. Carrasco, or three days after the date on which the Commission mails notice of the Order to Ms. Carrasco, 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

B. Brannon Pendue

For the Executive Director

1/4/2008

Date

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

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

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

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

[Signature]
Signature

12-4-06
Date

Esperanza Carrasco
Name (Printed or typed)

owner
Title

Authorized representative of
Esperanza Carrasco dba El Pabellon