

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 3
DOCKET NO.: 2004-0515-PST-E TCEQ ID: RN101435410 CASE NO.: 14729
RESPONDENT NAME: MARIA E. WARREN DBA PEPPERS PIT STOP

ORDER TYPE:		
<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	
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: Northwest corner of Highway 175 and Highway 59 in Montague, Montague County</p> <p>TYPE OF OPERATION: Convenience store and service station</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 August 13, 2007. 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. Pam Campbell, Waste Enforcement Section, MC 169, (512) 239-4493 TCEQ Regional Contact: Mr. Mike Burch, Abilene Regional Office, MC R-3, (325) 698-9674 Respondent: Ms. Maria E. Warren, Owner, Maria E. Warren dba Peppers Pit Stop, 1919 Joe Ramsey Blvd. N., Apt. B3, Greenville, Texas 75401-2889 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 checked="" type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: None</p> <p>Dates of Investigations Relating to this Case: September 5, 2003; April 14, 2004</p> <p>Date of NOE Relating to this Case: October 27, 2003</p> <p>Background Facts:</p> <p>An EDRP, EDFARP, EDSARP, EDTARP EDFOARP and an EDFIARP were filed in this case. The Respondent received notice of all petitions except for the EDSARP. The Respondent has not filed an answer. The tanks are out-of-service and the Respondent does not have a current delivery certificate. Therefore, no revocation or shutdown language has been included in the default order.</p> <p>PST:</p> <p>1) Failed to inspect and test the cathodic protection system for operability and adequacy of protection at least once every three years and failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly [30 TEX. ADMIN. CODE §§ 334.49(c)(4) and 334.49(c)(2)(C), and TEX. WATER CODE §26.3475].</p> <p>2) Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].</p>	<p>Total Assessed: \$19,000</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Settlement</p> <p><input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$0</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 proposed Order.</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>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <p>1) Immediately, upon the effective date of the Order:</p> <p>a. Begin conducting proper release detection at least once per month;</p> <p>b. Begin conducting effective inventory control procedures for all UST systems; and</p> <p>c. Begin conducting rectifier inspection checks at least once every 60 days.</p> <p>2) Within 10 days of the effective date of the Order, affix a tag, label, or marking permanently to the top of the fill tubes or to a non-removable point near the fill tubes that corresponds to each of the UST's identification numbers listed on the registration and Self-Certification Form.</p> <p>3) Within 30 days of the effective date of the Order:</p> <p>a. Inspect and test the cathodic protection systems for operability and adequacy of protection;</p> <p>b. Submit documentation that demonstrates acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental release arising from the operation of petroleum USTs; and</p> <p>c. Submit payment for all outstanding fees.</p> <p>4) In the alternative to Ordering Provisions 1, 2 and 3.a., within 30 days of the effective date of the Order:</p> <p>a. Permanently remove the USTs from service; and</p> <p>b. Submit the UST registration required.</p> <p>5) Within 60 days of the effective date of the Order, Ms. Warren shall submit written certification of compliance with Ordering Provisions 1, 2 and 3.a. or, in the alternative, 4.</p>

3) Failed to monitor for releases from the Facility's UST system at least once per month (not to exceed 35 days between each monitoring) by using one or more of the release detection methods [30 TEX. ADMIN. CODE 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].

4) Failed to ensure that a legible tag, label, or marking is permanently applied upon or affixed to either the top of the fill tube or to a noremovable point near the fill tube that corresponds to the UST identification number listed on the registration and self-certification form [30 TEX. ADMIN. CODE § 334.8(c)(5)(C)].

5) Failed to conduct effective inventory control procedures for all UST systems at a retail service station [30 TEX. ADMIN. CODE §§ 334.50(d)(1)(B)(ii) and 334.48(c)].

6) Failed to pay a late fee of 7.50 for UST annual facility fee, TCEQ FA account no. 0058667U [30 TEX. ADMIN. CODE § 334.22(a) and (b), and TEX. WATER CODE § 5.702].



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (09/02)

PCW Revision 2/10/2004

DATES		PCW 29-Jun-2004	Screening 14-Apr-2004	Priority Due 12-Aug-2004	EPA Due
RESPONDENT INFORMATION					
Respondent	Maria E. Warren dba Peppers Pit Stop				
Respondent/Site ID No(s)	PST Facility ID No. 31331				
Facility/Site Region	3 - Abilene	Major/Minor Source			Minor
CASE INFORMATION					
Enf./Case ID No(s)	14729	Docket No.			2004-0515-PST-E
Case Priority	3	No. Violations			6
Enf. Coordinator	Shontay Wilcher	Order Type			1660 without deferral
Media Program(s)	Petroleum Storage Tank	EC's Team			Enforcement Team 6
Admin. Penalty \$ Limit	Minimum \$0	Maximum	\$10,000		

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** \$19,000

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 enhancements due to respondent's Average Performer Person classification and no compliance history site adjustments. **+**

Culpability 0% Enhancement **Subtotal 4** \$0

Notes: Respondent does not meet 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: Respondent is not yet in compliance.

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

\$2,523	Total EB Amounts	*Capped at the Total EB \$ Amount	
\$2,550	Approx. Cost of Compliance		=

SUM OF SUBTOTALS 1-7 **Final Subtotal** \$19,000

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 \$19,000

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$19,000

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: No deferral because the expedited settlement offer was not completed. **=**

PAYABLE PENALTY \$19,000

Screening Date 14-Apr-2004

Docket Number 2004-0515-PST-E

PCW

Respondent Maria E. Warren dba Peppers Pit Stop

Policy Revision 2 (09/02)

Case ID No. 14729

PCW Revision 2/10/2004

Respondent/Site ID No. PST Facility ID No. 31331

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Shontay Wilcher

Site Address Northwest corner of Highway 175 and Highway 59, Montague, Montague County

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 judgments 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%
<i>Please enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	n	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	n	0%
	Participation in a voluntary pollution reduction program	n	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	n	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 enhancements due to respondent's Average Performer Person classification and no compliance history site adjustments.

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

Screening Date 14-Apr-04	Docket Number 2004-0515-PST-E	PCW
Respondent Maria E. Warren dba Peppers Pit Stop		Policy Revision 2 (09/02)
Case ID No. 14729		PCW Revision 2/10/2004
Respondent/Site ID No. PST Facility ID No. 31331		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Shontay Wilcher		
Violation Number <input type="text" value="1"/>		
Primary Rule Cite	30 Tex. Admin. Code §§ 334.49(c)(4) and 334.49(c)(2)(C)	
Secondary Cite(s)	Tex. Water Code § 26.3475	
Violation Description	Failure to inspect and test the cathodic protection system for operability and adequacy of protection at least once every three years. In addition, the respondent failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly.	

Base Penalty

»	Environmental, Property and Human Health Matrix													
	Harm													
	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:10%;">Release</td> <td style="width:30%; text-align: center;">Major</td> <td style="width:30%; text-align: center;">Moderate</td> <td style="width:30%; text-align: center;">Minor</td> </tr> <tr> <td>Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> <tr> <td>Potential</td> <td style="text-align: center;">x</td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>	Release	Major	Moderate	Minor	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Potential	x	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="25%"/>
Release	Major	Moderate	Minor											
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>											
Potential	x	<input type="text"/>	<input type="text"/>											
OR														
	Programmatic Matrix													
	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:10%;">Falsification</td> <td style="width:30%; text-align: center;">Major</td> <td style="width:30%; text-align: center;">Moderate</td> <td style="width:30%; text-align: center;">Minor</td> </tr> <tr> <td></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>	Falsification	Major	Moderate	Minor		<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text"/>				
Falsification	Major	Moderate	Minor											
	<input type="text"/>	<input type="text"/>	<input type="text"/>											
OR														
Matrix Notes	Failure to test and inspect the cathodic protection system could result in improper corrosion protection and a release of petroleum products or exposure of pollutants which would exceed levels that are protective of human health and environmental receptors.													
	Adjustment	<input type="text" value="-\$7,500"/>												
	Base Penalty Subtotal	<input type="text" value="\$2,500"/>												

Violation Events															
	Number of Violation Events	<input type="text" value="2"/>													
<i>mark only one; use small x</i>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr><td style="text-align: center;">daily</td><td><input type="text"/></td></tr> <tr><td style="text-align: center;">monthly</td><td><input type="text"/></td></tr> <tr><td style="text-align: center;">quarterly</td><td><input type="text"/></td></tr> <tr><td style="text-align: center;">semiannual</td><td style="text-align: center;">x</td></tr> <tr><td style="text-align: center;">annual</td><td><input type="text"/></td></tr> <tr><td style="text-align: center;">single event</td><td><input type="text"/></td></tr> </table>	daily	<input type="text"/>	monthly	<input type="text"/>	quarterly	<input type="text"/>	semiannual	x	annual	<input type="text"/>	single event	<input type="text"/>		Violation Base Penalty <input type="text" value="\$5,000"/>
daily	<input type="text"/>														
monthly	<input type="text"/>														
quarterly	<input type="text"/>														
semiannual	x														
annual	<input type="text"/>														
single event	<input type="text"/>														
Events Notes	Two semiannual events are recommended from the investigation date of September 5, 2003 to the end of the expedited settlement offer on June 22, 2004. Semiannual events are recommended to make the penalty commensurate with the situation.														

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount (\$) <input type="text" value="\$373"/>	Violation Final Penalty total <input type="text" value="\$5,000"/>
This Violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$5,000"/>	

Economic Benefit Worksheet

Respondent Maria E. Warren dba Peppers Pit Stop
ID Number(s) 14729
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	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)	\$400	5-Sep-2003	15-Oct-2004	1.1	\$22	n/a	\$22

Notes for DELAYED costs

Estimated cost to inspect and test the cathodic protection system for operability and adequacy at least once every three years. Date required is the investigation date and final date is the estimated 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	\$300	5-Sep-2003	15-Oct-2004	1.1	\$17	\$334	\$350
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

Estimated cost to perform inspections every 60 days to ensure that the rectifier and other system components are operating properly. Date required is the investigation date and final date is the estimated date of compliance.

Approx Cost of Compliance

TOTAL

Screening Date: 14-Apr-04	Docket Number: 2004-0515-PST-E	PCW
Respondent: Maria E. Warren dba Peppers Pit Stop		Policy Revision 2 (09/02)
Case ID No.: 14729		PCW Revision 2/10/2004
Respondent/Site ID No.: PST Facility ID No. 31331		
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 §37.815(a) & (b)"/>		
Secondary Cite(s): <input type="text"/>		
Violation Description:	<input type="text" value="Failure to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs."/>	
	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 checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
		Percent <input type="text" value="10%"/>
Matrix Notes	<input type="text" value="100% of the rule requirement 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="3"/>
<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 checked="" type="checkbox"/>
		Violation Base Penalty <input type="text" value="\$3,000"/>
Events Notes	<input type="text" value="Three events are recommended for three tanks based upon the inspection conducted on September 5, 2003."/>	
Economic Benefit (EB) for this violation Statutory Limit Test		
	Estimated EB Amount (\$) <input type="text" value="\$2,048"/>	Violation Final Penalty total <input type="text" value="\$3,000"/>
	This Violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$3,000"/>	

Economic Benefit Worksheet

Respondent Maria E. Warren dba Peppers Pit Stop
ID Number(s) 14729
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
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Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (As needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (As Needed)				0.0	\$0	n/a	\$0
Notes for DELAYED costs							

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equip				0.0	\$0	\$0	\$0
Financial Assurance [2]	\$1,950	5-Sep-2003	5-Sep-2004	1.0	\$98	\$1,950	\$2,048
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Notes for AVOIDED costs	Estimated cost to provide annual financial assurance for the three petroleum USTs at this facility.						

Approx Cost of Compliance

TOTAL **\$2,048**

Screening Date	14-Apr-04	Docket Number	2004-0515-PST-E	PCW
Respondent	Maria E. Warren dba Peppers Pit Stop	Policy Revision 2 (09/02)		
Case ID No.	14729	PCW Revision 2/10/2004		
Respondent/Site ID No.	PST Facility ID No. 31331			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Shontay Wilcher			
Violation Number	3			
Primary Rule Cite	30 Tex. Admin. Code § 334.50(b)(1)(A)			
Secondary Cite(s)	Tex. Water Code § 26.3475(c)(1)			
Violation Description	Failure to monitor for releases from the facility's UST system at least once per month (not to exceed 35 days between each monitoring) by using one or more of the release detection method described in 30 Tex. Admin. Code § 334.50.			
Base Penalty			\$10,000	

» Environmental, Property and Human Health Matrix					
Harm					
	Release	Major	Moderate	Minor	
OR	Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Percent <input type="text" value="25%"/>
» Programmatic Matrix					
	Falsification	Major	Moderate	Minor	
OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Percent <input type="text"/>
Matrix Notes	Failure to perform monthly release detection on the USTs could result in exposure to pollutants which would exceed levels that are protective of human health and environmental receptors.				
Adjustment			-\$7,500		
Base Penalty Subtotal			\$2,500		

Violation Events				
Number of Violation Events		<input type="text" value="2"/>		
<i>mark only one; use small x</i>	daily	<input type="checkbox"/>		
	monthly	<input type="checkbox"/>		
	quarterly	<input type="checkbox"/>		
	semiannual	<input checked="" type="checkbox"/>		Violation Base Penalty <input type="text" value="\$5,000"/>
	annual	<input type="checkbox"/>		
	single event	<input type="checkbox"/>		
Events Notes	Two semiannual events are recommended from the investigation date of September 5, 2003 to the end of the expedited settlement offer on June 22, 2004. Semiannual events are recommended to make the penalty commensurate with the situation.			
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount (\$) <input type="text" value="\$67"/>		Violation Final Penalty total <input type="text" value="\$5,000"/>		
		This Violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$5,000"/>		

Economic Benefit Worksheet

Respondent Maria E. Warren dba Peppers Pit Stop
ID Number(s) 14729
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	Onetime Costs	EB Amount
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Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (As needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (As Needed)	\$1,200	5-Sep-2003	15-Oct-2004	1.1	\$67	n/a	\$67

Notes for DELAYED costs

Estimated costs to set up and run a monthly leak detection system for the USTs. Date required is the inspection date and the final date is the estimated 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/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 \$1,200

TOTAL \$67

Screening Date 14-Apr-04	Docket Number 2004-0515-PST-E	PCW
Respondent Maria E. Warren dba Peppers Pit Stop		Policy Revision 2 (09/02)
Case ID No. 14729		PCW Revision 2/10/2004
Respondent/Site ID No. PST Facility ID No. 31331		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Shontay Wilcher		
Violation Number 4		
Primary Rule Cite	30 Tex. Admin. Code § 334.8(c)(5)(C)	
Secondary Cite(s)		
Violation Description	Failure to ensure that a legible tag, label, or marking is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point near the fill tube which corresponds to the UST identification number listed on the registration and self-certification form.	
	Base Penalty	\$10,000

» Environmental, Property and Human Health Matrix						
	Harm					
	Release	Major Moderate Minor				
OR	Actual	<table border="1" style="width:100%;"><tr><td style="width:33%;"></td><td style="width:33%;"></td><td style="width:33%;"></td></tr></table>				
	Potential	<table border="1" style="width:100%;"><tr><td style="width:33%;"></td><td style="width:33%;"></td><td style="width:33%;"></td></tr></table>				Percent <input type="text"/>
» Programmatic Matrix						
	Falsification	Major Moderate Minor				
OR	<table border="1" style="width:100%;"><tr><td style="width:33%;"></td><td style="width:33%; text-align: center;">x</td><td style="width:33%;"></td></tr></table>		x		Percent 10%	
	x					
Matrix Notes	100% of the rule requirement was not met.					
	Adjustment	-\$9,000				
	Base Penalty Subtotal	\$1,000				

Violation Events														
Number of Violation Events	<input type="text" value="1"/>													
mark only one; use small x	<table border="1" style="width:100%;"> <tr><td style="text-align: center;">daily</td><td style="width: 50px;"></td></tr> <tr><td style="text-align: center;">monthly</td><td></td></tr> <tr><td style="text-align: center;">quarterly</td><td></td></tr> <tr><td style="text-align: center;">semiannual</td><td></td></tr> <tr><td style="text-align: center;">annual</td><td></td></tr> <tr><td style="text-align: center;">single event</td><td style="text-align: center;">x</td></tr> </table>	daily		monthly		quarterly		semiannual		annual		single event	x	Violation Base Penalty <input type="text" value="\$1,000"/>
daily														
monthly														
quarterly														
semiannual														
annual														
single event	x													
Events Notes	One event is recommended based on the inspection of September 5, 2003.													

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount (\$) <input type="text" value="\$8"/>	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: Maria E. Warren dba Peppers Pit Stop
 ID Number(s): 14729
 Media [Statute]: Petroleum Storage Tank
 Violation Number: 4

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
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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	5-Sep-2003	15-Oct-2004	1.1	\$8	n/a	\$8

Notes for DELAYED costs

Estimated cost to label the tanks with the tank registration and self-certification identification number. Date required is the date of the investigation and final date is the estimated 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/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 \$150

TOTAL \$8

Screening Date	14-Apr-04	Docket Number	2004-0515-PST-E	PCW
Respondent	Maria E. Warren dba Peppers Pit Stop			Policy Revision 2 (09/02)
Case ID No.	14729			PCW Revision 2/10/2004
Respondent/Site ID No.	PST Facility ID No. 31331			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Shontay Wilcher			
Violation Number	5			
Primary Rule Cite	30 Tex. Admin. Code §§ 334.50(d)(1)(B)(ii) and 334.48(c)			
Secondary Cite(s)				
Violation Description	Failure to conduct effective inventory control procedures for all UST systems at a retail service station. Specifically, the respondent failed to complete a monthly reconciliation of inventory control records to detect a release which equals or exceeds the sum of 1% of flow-through 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 perform monthly inventory reconciliation on the USTs could result in exposure to pollutants which would exceed levels that are protective of human health and environmental receptors.			
		Adjustment	-\$7,500	
		Base Penalty Subtotal	\$2,500	

Violation Events				
	Number of Violation Events	2		
<i>mark only one; use small x</i>	daily			
	monthly			
	quarterly			
	semiannual	x		
	annual			
	single event			
			Violation Base Penalty	\$5,000
Events Notes	Two semiannual events are recommended from the investigation date of September 5, 2003 to the end of the expedited settlement offer on June 22, 2004. Semiannual events are recommended to make the penalty commensurate with the situation.			

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount (\$) \$28	Violation Final Penalty total \$5,000
This Violation Final Assessed Penalty (adjusted for limits) \$5,000	

Economic Benefit Worksheet

Respondent Maria E. Warren dba Peppers Pit Stop
ID Number(s) 14729
Media [Statute] Petroleum Storage Tank
Violation Number 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	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	\$500	5-Sep-2003	15-Oct-2004	1.1	\$28	n/a	\$28
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 cost to complete proper monthly reconciliations of inventory control records. Date required is the date of the investigation and the final date is the estimated 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/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	14-Apr-04	Docket Number	2004-0515-PST-E	PCW
Respondent	Maria E. Warren dba Peppers Pit Stop			Policy Revision 2 (09/02)
Case ID No.	14729	PCW Revision 2/10/2004		
Respondent/Site ID No.	PST Facility ID No. 31331			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Shontay Wilcher			
Violation Number	6			
Primary Rule Cite	30 Tex. Admin. Code § 334.22(a) and (b)			
Secondary Cite(s)	Tex. Water Code § 5.702			
Violation Description	Failure to pay late fee of \$7.50 for UST annual facility fee for TCEQ FA account no. 0058667U.			
Base Penalty				\$10,000

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

		Harm			
		Major	Moderate	Minor	
OR	Release				Percent <input type="text"/>
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

» **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"/>	Violation Base Penalty <input type="text" value="\$0"/>
monthly	<input type="text"/>	
quarterly	<input type="text"/>	
semiannual	<input type="text"/>	
annual	<input type="text"/>	
single event	<input type="text"/>	

Events Notes

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount (\$) <input type="text" value="\$0"/>	Violation Final Penalty total <input type="text" value="\$0"/>
This Violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$0"/>	

Economic Benefit Worksheet

Respondent Maria E. Warren dba Peppers Pit Stop
 ID Number(s) 14729
 Media [Statute] Petroleum Storage Tank
 Violation Number 6

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)				0.0	\$0	n/a	\$0
Notes for DELAYED costs	N/A						

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/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	N/A						

Approx Cost of Compliance

TOTAL

Compliance History

Customer/Respondent/Owner-Operator:	CN600746184 WARREN, MARIA E	Classification: AVERAGE BY DEFAULT	Rating: 3.010
Regulated Entity:	RN101435410 PEPPERS PIT STOP	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	31331
Location:	CORNER HWY 175&HWY 59		Rating Date: 9/1/03 Repeat Violator: NO
TCEQ Region:	REGION 03 - ABILENE		
Date Compliance History Prepared:	January 10, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	April 14, 1999 to April 14, 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 10/27/2003 (249555)
 - 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
MARIA E. WARREN DBA
PEPPERS PIT STOP;
RN101435410**

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER
DOCKET NO. 2004-0515-PST-E**

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Fifth Amended Report and Petition filed pursuant to TEX. WATER CODE chs. 5, 7, and 26, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Maria E. Warren dba Peppers Pit Stop ("Ms. Warren").

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

FINDINGS OF FACT

1. Ms. Warren owns and operated a convenience store with retail sales of gasoline located at the northwest corner of Highway 175 and Highway 59 in Montague, Montague County, Texas (the "Facility").
2. Ms. Warren's three underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Ms. Warren's USTs contain a regulated substance as defined in the rules of the Commission.
3. During an inspection conducted on September 5, 2003, a TCEQ Abilene Regional Office investigator documented that Ms. Warren:
 - a. Failed to inspect and test the cathodic protection system for operability and adequacy of protection at least once every three years and failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly.

- b. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.
 - c. Failed to monitor for releases from the Facility's UST system at least once per month (not to exceed 35 days between each monitoring) by using one or more of the release detection methods described in 30 TEX. ADMIN. CODE § 334.50.
 - d. Failed to ensure that a legible tag, label, or marking is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point near the fill tube that corresponds to the UST identification number listed on the registration and self-certification form.
 - e. Failed to conduct effective inventory control procedures for all UST systems at a retail service station. Specifically, the Respondent failed to complete a monthly reconciliation of inventory control records to detect a release as small as the sum of 1% of total substance flow-through for the month plus 130 gallons.
4. During a record review conducted on or about April 14, 2004, TCEQ Central Office staff documented that Ms. Warren failed to pay a late fee of \$7.50 for UST annual facility fee, TCEQ FA Account No. 0058667U.
 5. Ms. Warren received notice of violations 3.a. through 3.e. on or about November 1, 2003.
 6. The Executive Director recognizes that the Facility is currently not in operation and was boarded up as of August 2005.
 7. 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 Maria Warren dba Pepper's Pit Stop" (the "EDPRP") in the TCEQ Chief Clerk's office on September 23, 2004.
 8. By letter dated September 23, 2004, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Ms. Warren with notice of the EDPRP. According to the return receipt "green cards," Ms. Warren received notice of the EDPRP on October 6, 2004, as evidenced by the signature on the cards.
 9. 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 Maria E. Warren dba Peppers Pit Stop" (the "EDFARP") in the TCEQ Chief Clerk's office on January 26, 2005.

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Maria E. Warren dba Peppers Pit Stop

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10. By letter dated January 26, 2005, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Ms. Warren with notice of the EDFARP. According to the return receipt "green cards," Ms. Warren received notice of the EDFARP on February 4, 2005, as evidenced by the signature on the cards.
11. The Executive Director filed the "Executive Director's Second Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Maria E. Warren dba Peppers Pit Stop" (the "EDSARP") in the TCEQ Chief Clerk's office on January 20, 2006.
12. By letter dated January 20, 2006, sent via certified mail, return receipt requested, and via first class mail, postage pre-paid, the Executive Director served Ms. Warren with notice of the EDSARP. The Respondent did not receive notice of the EDSARP due to attempted service at addresses which the Respondent no longer resided and both the certified mail and the first class mail were returned. However, the correct forwarding address was provided by the U.S. Post Office on one of the returned envelopes.
13. The Executive Director filed the "Executive Director's Third Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Maria E. Warren dba Peppers Pit Stop" (the "EDTARP") in the TCEQ Chief Clerk's office on February 3, 2006.
14. By letter dated February 3, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Ms. Warren with notice of the EDTARP. According to the return receipt "green card," Ms. Warren received notice of the EDTARP prior to February 10, 2006, as evidenced by the signature on the card which was returned to TCEQ on February 10, 2006. The green card was signed by the Respondent, but was not dated.
15. The Executive Director filed the "Executive Director's Fourth 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 Maria E. Warren dba Peppers Pit Stop" (the "EDFOARP") in the TCEQ Chief Clerk's office on March 17, 2006.
16. By letter dated March 17, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Ms. Warren with notice of the EDFOARP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Ms. Warren received notice of the EDFOARP.

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Maria E. Warren dba Peppers Pit Stop

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17. The Executive Director filed the "Executive Director's Fifth 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 Maria E. Warren dba Peppers Pit Stop" (the "EDFIARP") in the TCEQ Chief Clerk's office on February 15, 2007.
18. By letter dated February 15, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Ms. Warren with notice of the EDFIARP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Ms. Warren received notice of the EDFIARP.
19. More than 20 days have elapsed since Ms. Warren received notice of the EDPRP, the EDFARP, the EDTARP, the EDFOARP, and the EDFIARP provided by the Executive Director. Ms. Warren failed to file an answer to either the EDPRP, the EDFARP, the EDTARP, the EDFOARP, or the EDFIARP, 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, Ms. Warren is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 5, 7, and 26, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Ms. Warren failed to inspect and test the cathodic protection system for operability and adequacy of protection at least once every three years and failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly, in violation of 30 TEX. ADMIN. CODE §§ 334.49(c)(4) and 334.49(c)(2)(C), and TEX. WATER CODE § 26.3475.
3. As evidenced by Finding of Fact No. 3.b., Ms. Warren failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b).
4. As evidenced by Finding of Fact No. 3.c., Ms. Warren failed to monitor for releases from the Facility's UST system at least once per month (not to exceed 35 days between each monitoring) by using one or more of the release detection methods described in 30 TEX. ADMIN. CODE § 334.50, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1).

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Maria E. Warren dba Peppers Pit Stop

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5. As evidenced by Finding of Fact No. 3.d., Ms. Warren failed to ensure that a legible tag, label, or marking is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point near the fill tube that corresponds to the UST identification number listed on the registration and self-certification form, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(C).
6. As evidenced by Finding of Fact No. 3.e., Ms. Warren failed to conduct effective inventory control procedures for all UST systems at a retail service station. Specifically, the Respondent failed to complete a monthly reconciliation of inventory control records to detect a release as small as the sum of 1% of total substance flow-through for the month plus 130 gallons, in violation of 30 TEX. ADMIN. CODE §§ 334.50(d)(1)(B)(ii) and 334.48(c).
7. As evidenced by Finding of Fact No. 4, Ms. Warren failed to pay a late fee of \$7.50 for UST annual facility fee, TCEQ FA Account No. 0058667U, in violation of 30 TEX. ADMIN. CODE § 334.22(a) and (b), and TEX. WATER CODE § 5.702.
8. As evidenced by Finding of Fact Nos. 7 through 10 and 13 and 14, the Executive Director has timely served Ms. Warren with proper notice of the EDPRP, the EDFARP, and the EDTARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
9. As evidenced by Finding of Fact Nos. 15 through 18, the Executive Director has timely served Ms. Warren with proper notice of the EDFOARP and EDFIARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
10. As evidenced by Finding of Fact No. 19, Ms. Warren has failed to file a timely answer to either the EDPRP, the EDFARP, the EDTARP, the EDFOARP, or the EDFIARP, 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 Ms. Warren and assess the penalty recommended by the Executive Director.
11. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Ms. Warren 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.
12. An administrative penalty in the amount of nineteen thousand dollars (\$19,000.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

13. 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. Ms. Warren is assessed an administrative penalty in the amount of nineteen thousand dollars (\$19,000.00) for violations of TEX. WATER CODE ch. 26 and rules of the TCEQ. The payment of this administrative penalty and Ms. Warren'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: Maria E. Warren dba Peppers Pit Stop; Docket No. 2004-0515-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. Warren shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Ms. Warren shall:
 - i. Begin conducting proper release detection at least once per month by using one or more of the release detection methods specified by 30 TEX. ADMIN. CODE § 334.50;
 - ii. Begin conducting effective inventory control procedures for all UST systems, including a monthly reconciliation of inventory control records to detect a release as small as the sum of 1% of total substance flow-through for the month plus 130 gallons, in accordance with 30 TEX. ADMIN. CODE §§ 334.48(c) and 334.50(d)(1)(B); and

- iii. Begin conducting rectifier inspection checks at least once every 60 days, in accordance with 30 TEX. ADMIN. CODE § 334.49(c).
- b. Within 10 days after the effective date of this Order, Ms. Warren shall affix a tag, label, or marking permanently to the top of each of the fill tubes or to a nonremovable point near the fill tubes that corresponds to each of the UST's identification numbers listed on the registration and self-certification form, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(C).
- c. Within 30 days after the effective date of this Order, Ms. Warren shall inspect and test the cathodic protection systems for operability and adequacy of protection, in accordance with 30 TEX. ADMIN. CODE § 334.49(c)(4).
- d. Within 30 days after the effective date of this Order, Ms. Warren shall submit documentation that demonstrates acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in accordance with 30 TEX. ADMIN. CODE § 37.815(a) and 37.815(b) 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:

Mike Taylor, Waste Section Manager
Abilene Regional Office
Texas Commission on Environmental Quality
1977 Industrial Boulevard
Abilene, Texas 79602-7833

- e. In the alternative to Ordering Provisions 2.a. through 2.d., above, within 30 days after the effective date of this Order, Ms. Warren shall:
 - i. Permanently remove the USTs from service in accordance with the applicable provisions of 30 TEX. ADMIN. CODE § 334.55 (relating to Permanent Removal from Service); and

- ii. Submit the UST registration information required under 30 TEX. ADMIN. CODE § 334.7 (relating to Registration).

- f. Within 30 days after the effective date of this Order, Ms. Warren shall submit payment for all outstanding fees, including any associated penalties and interest, and with the notation, "Maria E. Warren, TCEQ Financial Assurance Account No. 0058667U," to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- g. Within 60 days after the effective date of this Order, Ms. Warren shall submit written certification of compliance with Ordering Provisions 2.a. through 2.d. or, in the alternative, 2.f. as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance.

The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Mike Taylor, Waste Section Manager
Abilene Regional Office
Texas Commission on Environmental Quality
1977 Industrial Boulevard
Abilene, Texas 79602-7833

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Ms. Warren. Ms. Warren is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. If Ms. Warren 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, Ms. Warren's failure to comply is not a violation of this Order. Ms. Warren shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Ms. Warren shall notify the Executive Director within seven days after Ms. Warren becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. 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 Ms. Warren shall be made in writing to the Executive Director. Extensions are not effective until Ms. Warren receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. 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 Ms. Warren if the Executive Director determines that Ms. Warren has not complied with one or more of the terms or conditions in this Order.
8. 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.
9. 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.

Default Order
Maria E. Warren dba Peppers Pit Stop
TCEQ Docket No. 2004-0515-PST-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF KARI L. GILBRETH

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Kari L. Gilbreth. 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 Maria Warren dba Pepper’s Pit Stop” (the “EDPRP”) with the Office of the Chief Clerk on September 23, 2004.

I sent the EDPRP to Ms. Warren at her last known addresses on September 23, 2004 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green cards,” Ms. Warren received notice of the EDPRP on October 6, 2004, as evidenced by the signature on the cards.

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 Maria E. Warren dba Peppers Pit Stop” (the “EDFARP”) with the Office of the Chief Clerk on January 26, 2005.

I sent the EDFARP to Ms. Warren at her last known addresses on January 26, 2005 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green cards,” Ms. Warren received notice of the EDFARP on February 4, 2005, as evidenced by the signature on the cards.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the “Executive Director’s Third Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Maria E. Warren dba Peppers Pit Stop” (the “EDTARP”) in the TCEQ Chief Clerk’s office on February 3, 2006.

I sent the EDTARP to Ms. Warren at her last known addresses on February 3, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Ms. Warren with notice of the EDTARP. According to the return receipt “green card,” Ms. Warren received notice of the EDTARP in February, 2006, as evidenced by the signature on the cards which was returned to TCEQ on February 10, 2006. The green card was signed by the Respondent, but was not dated.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the "Executive Director's Fourth 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 Maria E. Warren dba Peppers Pit Stop" (the "EDFOARP") in the TCEQ Chief Clerk's office on March 17, 2006.

I sent the EDFOARP to Ms. Warren at her last known addresses on March 17, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Ms. Warren with notice of the EDFOARP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Ms. Warren received notice of the EDFOARP.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the "Executive Director's Fifth 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 Maria E. Warren dba Peppers Pit Stop" (the "EDFIARP") in the TCEQ Chief Clerk's office on February 15, 2007.

I sent the EDFIARP to Ms. Warren at her last known addresses on February 15, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Ms. Warren with notice of the EDFIARP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Ms. Warren received notice of the EDFIARP.

More than 20 days have elapsed since Ms. Warren received notice of the EDPRP, the EDFARP, the EDTARP, the EDFOARP, and the EDFIARP, provided by the Executive Director. Ms. Warren failed to file an answer to either the EDPRP, the EDFARP, the EDTARP, the EDFOARP, or the EDFIARP, failed to request a hearing, and failed to schedule a settlement conference."



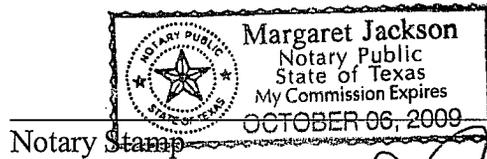
Kari L. Gilbreth

Attorney

Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Kari L. Gilbreth, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 30th day of May, A.D., 2007.



Margaret Jackson