

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2003-1163-PST-E TCEQ ID: RN102469491 CASE NO.: 9562

RESPONDENT NAME: D&P MANAGEMENT SERVICES, L.L.C., DBA AIRPORT SHELL

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: 8610 Airport Boulevard, Houston, Harris County</p> <p>TYPE OF OPERATION: convenience store with retail sales of 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 January 21, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p>TCEQ Attorney: Mr. Robert Mosley, Litigation Division, MC 175, (512) 239-0627 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873</p> <p>SEP Coordinator: Ms. Sharon Blue, Litigation Division, MC 175, (512) 239-2223</p> <p>TCEQ Enforcement Coordinator: Ms. Audra Ryble, Air Enforcement Section, MC R-14, (361) 825-3126</p> <p>TCEQ Regional Contact: Ms. Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623</p> <p>Respondent: Mr. Tyrone P. Dorian, President, D&P Management Services, L.L.C. 7120 Grand Boulevard, Suite 200, Houston, Texas 77054-3411</p> <p>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 21, 2002 and December 10, 2002</p> <p>Date of NOE Relating to this Case: April 7, 2003</p> <p>Background Facts: An EDRP was filed on July 2, 2004. The case was referred to SOAH on August 25, 2004. An EDFARP was filed March 21, 2005. A signed Agreed Order was received on November 26, 2007.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to conduct inventory control procedures at a retail fueling facility [30 TEX. ADMIN. CODE § 334.48(c)]. Failed to monitor USTs for releases; failing to conduct a piping tightness test at least once per year; failing to test a line leak detector at least once per year for performance and operational reliability [30 TEX. ADMIN. CODE §§ 334.50(b)(1)(A), (b)(2)(A)(ii)(I), and (b)(2)(A)(i)(III), and TEX. WATER CODE § 26.3475(a) and (c)(1)]. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before delivery of a regulated substance was accepted [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)]. Failed to ensure the timely renewal of a previously issued UST delivery certificate [30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and TEX. WATER CODE § 26.346(a)]. 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 non-removable point in the immediate area of the fill tube for each regulated UST at the Facility [30 TEX. ADMIN. CODE § 334.8(c)(5)(C)]. 	<p>Total Assessed: \$27,000</p> <p>Total Deferred: \$0</p> <p>SEP Conditional Offset: \$13,500</p> <p>Total Paid to General Revenue: \$13,500</p> <p>The Respondent has paid \$13,500 of the assessed penalty. The remaining amount of \$13,500 of the assessed administrative penalty shall be offset with the condition that the Respondent implement the Supplemental Environmental Project (SEP) as defined in the Order. (Attachment A).</p> <p>Site Compliance History Classification <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Action(s) Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <ol style="list-style-type: none"> Replaced a damaged drop tube gasket on November 12, 2002. Obtained a UST delivery certificate on November 12, 2002. Properly labeled the UST fill tubes on November 26, 2002. Completed a line leak detector test and piping tightness test on December 19, 2002. Conducted Underground Storage Tank ("UST") monitoring before April 15, 2003. Conducted inventory control before January 23, 2004. <p>Ordering Provisions:</p> <p>The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP) as outlined in the Order.</p>

<p>6. Failed to ensure that the UST system was operated, maintained, and managed in a manner that would prevent releases of regulated substances from such systems. Specifically, the drop tube gasket on one UST was damaged [30 TEX. ADMIN. CODE § 334.48(a)].</p>		
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Attachment A

Docket Number: 2003-1163-PST-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	D&P Management Services, LLC
Penalty Amount:	Twenty-Seven Thousand Dollars (\$27,000)
SEP Amount:	Thirteen Thousand Five Hundred Dollars (\$13,500)
Type of SEP:	Pre-approved
Third-Party Recipient:	Houston-Galveston Area Emission Reduction Credit Organization (AERCO) Clean Cities Clean Vehicles
Location of SEP:	Harris County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

Respondent shall contribute the SEP Amount to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the **Houston-Galveston Area Emission Reduction Credit Organization (AERCO) Clean Cities/Clean Vehicles Program** will perform a SEP in Harris County pursuant to the agreement between AERCO and the TCEQ. SEP monies will be used to aid local school districts and area transit agencies in reaching local match requirements mandated by the Federal Highway Administration's ("FHWA") Congestion Mitigation/Air Quality funding program. SEP funds will be disbursed to school districts and transit agencies in need of funding assistance in the Houston-Galveston non-attainment area. SEP funds will be used for the costs to retrofit or replace older diesel buses with alternative fueled or clean fuel diesel buses. The older "high emission" buses will be permanently retired and sold only for scrap.

Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by retiring high-emission buses from service, purchasing newer, clean fuel technology buses, and replacing newer buses with fuel treatment technology that reduces particulate emissions and hydrocarbons.

C. Minimum Expenditure

Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, Respondent must contribute the SEP Amount to the Third-Party Recipient. Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Houston-Galveston Area Council
Houston-Galveston AERCO
P.O. Box 22777
Houston, TX 77227-2777

3. Records and Reporting

Concurrent with the payment of the SEP Amount, Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. Respondent shall mail a copy of the check and transmittal letter to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

In the event of incomplete performance, the check for the amount due shall include the notation "SEP Refund" and the docket number of the case, be made out to "Texas Commission on Environmental Quality," and be mailed to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

5. Publicity

Any public statements concerning this SEP made by or on behalf of Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as a SEP for Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.



DATES
 PCW 7-Oct-2003 Screening 25-Sep-2003 Priority Due 23-Jan-2004 EPA Due

RESPONDENT INFORMATION
 Respondent D & P Management Services, L.L.C. dba Airport Shell
 Respondent/Site ID No(s) Petroleum Storage Tank Facility ID No. 71218
 Facility/Site Region 12 - Houston Major/Minor Source Minor

CASE INFORMATION
 Enf./Case ID No(s) 9562
 Docket No. 2003-1163-PST-E No. Violations 6
 Case Priority 3 Order Type 1660 with deferral
 Enf. Coordinator Audra Baumgartner EC's Team Enforcement Team A
 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: \$37,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.
Compliance History -10% Reduction Subtotals 2, 3 & 7: \$3,750

Notes: Reduction due to high performer classification. +

Culpability 0% Enhancement Subtotal 4: \$0

No Select Yes/No
Notes: The Respondent does not meet the culpability criteria. +

Good Faith Effort to Comply 0% Reduction Subtotal 5: \$0

	Before NOV	NOV to EDRP/Settlement Offer	
Extraordinary			
Ordinary			
None of the above	X	(mark with small x)	

Notes: The case involves past events with no opportunity for compliance. +

Economic Benefit 0% Enhancement Subtotal 6: \$0

\$153	Total EB Amounts	*Capped at the Total EB \$ Amount	=
\$2,400	Approx. Cost of Compliance		=

SUM OF SUBTOTALS 1-7 Final Subtotal: \$33,750

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: \$33,750

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty: \$33,750

DEFERRAL Deferral: 20% Reduction Adjustment: \$6,750

Reduces the Final Assessed Penalty by the indicated percentage. (enter number only; e.g. 20 for 20% reduction)
Notes: No previous NOVs for the same or similar violations in the past 5 years. =

PAYABLE PENALTY \$27,000

Screening Date 25-S 2003

Docke mber 2003-1163-PST-E

PCW

Respondent D & P Management Services, L.L.C. dba Airport Shell

Policy Revision 2 (09/02)

Case ID No. 9562

PCW Revision 6/12/2003

Respondent/Site ID No. Petroleum Storage Tank Facility ID No. 71218

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Audra Baumgartner

Site Address 8610 Airport Boulevard, Houston, Harris 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 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)

High Performer Select High, Average or Poor

Adjustment Percentage (Subtotal 7) -10%

Compliance History Summary

Compliance History Notes

Reduction due to high performer classification.

Total Adjustment Percentage (Subtotals 2, 3 & 7) -10%

Resp. at D & P Management Services, L.L.C. dba Airport Shell
 Case ID No. 9562
 Respondent/Site ID No. Petroleum Storage Tank Facility ID No. 71218
 Media [Statute] Petroleum Storage Tank

PCW
 Policy Revision 2 (09/02)
 PCW Revision 6/12/2003

Enf. Coordinator Audra Baumgartner
 Violation Number 1
 Primary Rule Cite 30 Tex. Admin. Code 334.48(c)
 Secondary Cite(s)
 Violation Description Failure to conduct inventory control procedures at a retail fueling facility.

» Environmental, Property and Human Health Matrix

Base Penalty \$10,000

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

» Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor

Percent

Matrix Notes

The failure to conduct inventory control could result in the exposure of human health and/or the environment to a significant amount of pollutants which would exceed protective levels.

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 2

mark only one; use small x

daily	
monthly	
quarterly	
semiannual	x
annual	
single event	

Violation Base Penalty \$5,000

Events Notes

Two semiannual events are recommended from the date of the investigation (October 21, 2002) to the screening date (September 25, 2003) to make penalty commensurate with the situation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount (\$) \$7

Violation Final Penalty total \$4,500

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

Economic Benefit Worksheet

Respondent D & P Management Services, L.L.C. dba Airport Shell
 ID Number(s) 9562
 Media [Statute] Petroleum Storage Tank
 Violation Number 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	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)	\$100	21-Oct-2002	1-Apr-2004	1.4	\$7	n/a	\$7

Notes for DELAYED costs

Approximate cost to conduct inventory control. Beginning date is investigation and end date is the expected 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-Sep-03

Docket Number 2003-1163-PCT-E

PCW

Respon: D & P Management Services, L.L.C. dba Airport Shell

Policy Revision 2 (09/02)

Case ID No. 9562

PCW Revision 6/12/2003

Respondent/Site ID No. Petroleum Storage Tank Facility ID No. 71218

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Audra Baumgartner

Violation Number 2

Primary Rule Cite 30 Tex. Admin. Code §§ 334.50(b)(1)(A), 334.50(b)(2)(A)(ii)(I), and 334.50(b)(2)(A)(i)(III)

Secondary Cite(s) Tex. Water Code § 26.3475(a) and (c)(1)

Violation Description Failure to monitor USTs for releases. Failure to conduct a piping tightness test at least once per year. Failure to test a line leak detector at least once per year for performance and operational reliability.

Base Penalty \$10,000

» Environmental, Property and Human Health Matrix

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

» Programmatic Matrix

OR	Falsification	Major	Moderate	Minor	Percent

Matrix Notes

The failure to monitor for releases could result in the exposure of human health and/or the environment to a significant amount of pollutants which would exceed protective levels.

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 2

mark only one; use small x

daily	
monthly	
quarterly	
semiannual	x
annual	
single event	

Violation Base Penalty \$5,000

Events Notes

Two semiannual events are recommended from the date of the investigation (October 21, 2002) to the screening date (September 25, 2003) to make penalty commensurate with the situation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount (\$) \$145

Violation Final Penalty total \$4,500

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

Economic Benefit Worksheet

Respondent D & P Management Services, L.L.C. dba Airport Shell

ID Number(s) 9562

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	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)	\$2,000	21-Oct-2002	1-Apr-2004	1.4	\$145	n/a	\$145

Notes for DELAYED costs

Approximate cost to conduct release detection. Beginning date is investigation and end date is the expected 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

Case ID No. 9562
 Respondent/Site ID No. Petroleum Storage Tank Facility ID No. 71218
 Media [Statute] Petroleum Storage Tank

Enf. Coordinator Audra Baumgartner

Violation Number

Primary Rule Cite
 Secondary Cite(s)

Violation Description

» Environmental, Property and Human Health Matrix Base Penalty

Release	Harm		
	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input type="text" value="x"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent

» Programmatic Matrix

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

Percent

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 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 D & P Management Services, L.L.C. dba Airport Shell

ID Number(s) 9562

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)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Economic benefit is addressed under Violation 4.

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-Sep-03

Docket Number 2003-1163-PST-E

PCW

Responde & P Management Services, L.L.C. dba Airport Shell

Policy Revision 2 (09/02)

Case ID No. J562

PCW Revision 6/12/2003

Respondent/Site ID No. Petroleum Storage Tank Facility ID No. 71218

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Audra Baumgartner

Violation Number 4

Primary Rule Cite 30 Tex. Admin. Code § 334.8(c)(4)(A)(vii)

Secondary Cite(s) Tex. Water Code § 26.346(a)

Violation Description Failure to ensure the timely renewal of a previously issued UST delivery certificate.

Base Penalty \$10,000

» Environmental, Property and Human Health Matrix

Harm

Release	Major	Moderate	Minor
Actual			
Potential			

Percent

OR

» Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

Violation Events

Number of Violation Events 1

mark only one; use small x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

Events Notes

One single event is recommended based on the date of investigation (October 21, 2002).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount (\$) \$0

Violation Final Penalty total \$900

This Violation Final Assessed Penalty (adjusted for limits) \$900

Economic Benefit Worksheet

Respondent D & P Management Services, L.L.C. dba Airport Shell

ID Number(s) 9562

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

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)	\$100	21-Oct-2002	14-Nov-2002	0.1	\$0	n/a	\$0

Notes for DELAYED costs

Approximate cost to prepare and submit a self-certification form to the TCEQ. Date required is date of investigation and final date is when the new self-certification was submitted.

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-Sep-03

Docket Number 2003-1104-01E

Policy Revision 2 (09/02)

Respondent Management Services, L.L.C. dba Airport Shell

PCW Revision 6/12/2003

Case ID No. 002

Respondent/Site ID No. Petroleum Storage Tank Facility ID No. 71218

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Audra Baumgartner

Violation Number 5

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 in the immediate area of the fill tube for each regulated UST at the facility.

Base Penalty \$10,000

» Environmental Property and Human Health Matrix

		Harm			Percent
Release		Major	Moderate	Minor	
OR	Actual				
	Potential				

» Programmatic Matrix

		Major	Moderate	Minor	Percent
OR	Falsification	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 1

mark only one; use small x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

Events Notes One single event is recommended from based on the date of investigation (October 21, 2002).

Economic Benefit (EB) for this violation

Statutory Limit - rest

Estimated EB Amount (\$) \$0

Violation Final Penalty total \$900

This Violation Final Assessed Penalty (adjusted for limits) \$900

Economic Benefit Worksheet

Respondent D & F Management Services, L.L.C. dba Airport Shell
ID Number(s) 9562
Media [Statute] Petroleum Storage Tank
Violation Number 5

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)	\$100	21-Oct-2002	26-Nov-2002	0.1	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to label USTs and have drop tube gasket repaired. Date required is investigation and final date is when compliance was achieved.

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 \$100

TOTAL \$0

Respondent DTP Management Services, L.L.C. dba Airport Shell

PCW Revision 6/12/2003

Case ID No. 1

Respondent/Site ID No. Petroleum Storage Tank Facility ID No. 71218

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Audra Baumgartner

Violation Number 6

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

Secondary Cite(s)

Violation Description Failure to ensure that the UST system is operated, maintained, and managed in a manner that will prevent releases of regulated substances from such systems. During the investigation, the drop tube gasket on one UST was damaged.

Base Penalty \$10,000

» Environmental, Property and Human Health Matrix

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

» Programmatic Matrix

OR	Falsification	Major	Moderate	Minor	Percent

Matrix Notes The failure to properly maintain the USTs could result in releases of a significant amount of pollutants which would exceed levels protective of human health and/or the environment.

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 1

mark only one; use small x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$2,500

Events Notes One quarterly event is recommended from investigation (October 21, 2002) to compliance date (November 12, 2002) to make penalty commensurate with the situation.

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount (\$) \$0

Violation Final Penalty total \$2,250

This Violation Final Assessed Penalty (adjusted for limits) \$2,250

Economic Benefit Worksheet

Respondent D & P Management Services, L.L.C. dba Airport Shell

ID Number(s) 9562

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	Onetime Costs	EB Amount
------------------	---	---------------	------------	-----	----------------	---------------	-----------

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (As needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (As Needed)	\$100	21-Oct-2002	12-Nov-2002	0.1	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to have drop tube gasket repaired. Date required is investigation and final date is when compliance was achieved.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/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:	CN601272453	D & P Management Services, LLC	Classification: HIGH	Rating: 0.00
Regulated Entity:	RN102469491	AIRPORT SHELL	Classification: HIGH	Site Rating: 0.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	71218
Location:	8610 AIRPORT BLVD, HOUSTON, TX, 77061		Rating Date: 9/1/03 Repeat Violator: NO	
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	October 09, 2003			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	September 01, 1998 to August 31, 2003			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Audra Baumgartner		Phone:	361-825-3126

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? Yes
3. If Yes, who is the current owner? D & P Management Services, LLC
4. If Yes, who was/were the prior owner(s)? _____
5. When did the change(s) in ownership occur? _____

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 dates of investigations.

1 03/28/2003

2 12/20/1999

- E. Written notices of violations (NOV).

N/A

- 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
D & P MANAGEMENT SERVICES,
L.L.C. DBA AIRPORT SHELL,
RN102469491

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2003-1163-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 D & P Management Services, L.L.C. dba Airport Shell ("D & P") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and D & P, appear before the Commission and together stipulate that:

1. D & P owns and operates a convenience store with retail sales of gasoline located at 8610 Airport Boulevard, Houston, Harris 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 D & P agree that the Commission has jurisdiction to enter this Agreed Order, and that D & P is subject to the Commission's jurisdiction.
4. D & P received notice of the violations alleged in Section II ("Allegations") on or about April 12, 2003.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by D & P of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of twenty-seven thousand dollars (\$27,000.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). D & P has paid thirteen thousand five hundred dollars (\$13,500.00) of the administrative penalty. Thirteen thousand five hundred dollars (\$13,500.00) of the assessed administrative penalty shall be offset with the condition that D & P implement the Supplemental Environmental Project ("SEP") defined in Attachment A, incorporated herein by reference. D & P's obligation to pay the conditionally offset portion of the administrative penalty shall be discharged upon final completion of all provisions of the SEP agreement.
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 D & P have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that D & P Management Services has implemented the following corrective measures at the Facility in response to this enforcement action:
 - a. replaced a damaged drop tube gasket on November 12, 2002;
 - b. obtained a UST delivery certificate on November 12, 2002;
 - c. properly labeled the UST fill tubes on November 26, 2002;
 - d. completed a line leak detector test and piping tightness test on December 19, 2002;
 - e. conducted Underground Storage Tank ("UST") monitoring before April 15, 2003; and
 - f. conducted inventory control before January 23, 2004.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that D & P has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

D & P is alleged to have violated:

1. 30 TEX. ADMIN. CODE § 334.48(c) by failing to conduct inventory control procedures at a retail fueling facility as documented on October 22, 2002 and December 10, 2002.
2. 30 TEX. ADMIN. CODE § 334.50(b)(1)(A), (b)(2)(A)(ii)(I), and (b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a) and (c)(1) by failing to monitor USTs for releases; failing to conduct a piping tightness test at least once per year; and failing to test a line leak detector at least once per year for performance and operational reliability as documented on October 22, 2002 and December 10, 2002.
3. 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a) by failing to make available to a common carrier a valid, current TCEQ delivery certificate before delivery of a regulated substance was accepted as documented on October 22, 2002 and December 10, 2002.
4. 30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and TEX. WATER CODE § 26.346(a) by failing to ensure the timely renewal of a previously issued UST delivery certificate as documented on October 22, 2002 and December 10, 2002.
5. 30 TEX. ADMIN. CODE § 334.8(c)(5)(C) by failing 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 in the immediate area of the fill tube for each regulated UST at the Facility as documented on October 22, 2002.
6. 30 TEX. ADMIN. CODE § 334.48(a) by failing to ensure that the UST system was operated, maintained, and managed in a manner that would prevent releases of regulated substances from such systems. Specifically, the drop tube gasket on one UST was damaged as documented on October 22, 2002.

III. DENIALS

D & P generally denies each allegation in Section II ("Allegations").

IV. ORDER

1. It is, therefore, ordered by the TCEQ that D & P pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and D & P'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: D & P Management Services, L.L.C. dba Airport Shell, Docket No. 2003-1163-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. D & P shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. Thirteen thousand five hundred dollars (\$13,500.00) of the assessed administrative penalty shall be offset with the condition that D & P implement the SEP defined in Attachment A, incorporated herein by reference. D & P's obligation to pay the conditionally offset portion of the administrative penalty shall be discharged upon final completion of all provisions of the SEP agreement.
3. The provisions of this Agreed Order shall apply to and be binding upon D & P. D & P 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. This Agreed Order, issued by the Commission, shall not be admissible against D & P 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.
5. 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.
6. 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 D & P, or three days after

the date on which the Commission mails notice of the Order to D & P, whichever is earlier.
The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

1/14/2008

Date

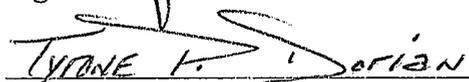
I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, 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

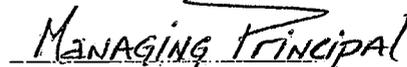


Name (Printed or typed)

Authorized representative of
D & P Management Services, L.L.C.
dba Airport Shell

Date

Nov. 14, 2007



Title

Attachment A

Docket Number: 2003-1163-PST-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	D&P Management Services, LLC
Penalty Amount:	Twenty-Seven Thousand Dollars (\$27,000)
SEP Amount:	Thirteen Thousand Five Hundred Dollars (\$13,500)
Type of SEP:	Pre-approved
Third-Party Recipient:	Houston-Galveston Area Emission Reduction Credit Organization (AERCO) Clean Cities Clean Vehicles
Location of SEP:	Harris County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

Respondent shall contribute the SEP Amount to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the **Houston-Galveston Area Emission Reduction Credit Organization (AERCO) Clean Cities/Clean Vehicles Program** will perform a SEP in Harris County pursuant to the agreement between AERCO and the TCEQ. SEP monies will be used to aid local school districts and area transit agencies in reaching local match requirements mandated by the Federal Highway Administration's ("FHWA") Congestion Mitigation/Air Quality funding program. SEP funds will be disbursed to school districts and transit agencies in need of funding assistance in the Houston-Galveston non-attainment area. SEP funds will be used for the costs to retrofit or replace older diesel buses with alternative fueled or clean fuel diesel buses. The older "high emission" buses will be permanently retired and sold only for scrap.

Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by retiring high-emission buses from service, purchasing newer, clean fuel technology buses, and replacing newer buses with fuel treatment technology that reduces particulate emissions and hydrocarbons.

C. Minimum Expenditure

Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, Respondent must contribute the SEP Amount to the Third-Party Recipient. Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Houston-Galveston Area Council
Houston-Galveston AERCO
P.O. Box 22777
Houston, TX 77227-2777

3. Records and Reporting

Concurrent with the payment of the SEP Amount, Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. Respondent shall mail a copy of the check and transmittal letter to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

In the event of incomplete performance, the check for the amount due shall include the notation "SEP Refund" and the docket number of the case, be made out to "Texas Commission on Environmental Quality," and be mailed to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

5. Publicity

Any public statements concerning this SEP made by or on behalf of Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as a SEP for Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.