

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2007-1639-PST-E TCEQ ID: RN102284643 CASE NO.: 34783**

**RESPONDENT NAME: CHANTRON PATRICK TES DBA TEXAS SPIRIT LIQUOR STORE**

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 1001 South Virginia Street, Terrell, Kaufman County</p> <p><b>TYPE OF OPERATION:</b> a retail business with two inactive underground storage tanks.</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on August 11, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Ms. Anna M. Cox, Litigation Division, MC 175, (512) 239-0974                  Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019  <b>TCEQ Enforcement Coordinator:</b> Ms. Judy Kluge, Waste Enforcement Section, MC R-4, (817) 588-5825  <b>TCEQ Regional Contact:</b> Mr. Samuel Barrett, DFW Regional Office, MC R-4, (817) 588-5903  <b>Respondent:</b> Mr. Chantron Patrick Tes, Owner, Texas Spirit Liquor Store, 1001 South Virginia Street, Terrell, Texas 75160  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter.</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input checked="" type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b>                      N/A</p> <p><b>Date of Investigation Relating to this Case:</b>                      August 23, 2007</p> <p><b>Date of NOE Relating to this Case:</b>                      October 1, 2007</p> <p><b>Background Facts:</b>                      The EDPRP was filed on February 27, 2008, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on February 28, 2008, as evidenced by the signature on the card. The Respondent has failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>PST:</b></p> <p>1. Failed to permanently remove from service, no later than 60 days after the prescribed implementation date, two USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements [30 TEX. ADMIN. CODE § 334.47(a)(2)].</p> <p>2. Failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0048196U for fiscal years 1996 through 2007 [30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702].</p>	<p><b>Total Assessed:</b> \$10,500</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$10,500</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p><b>Site Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Technical Requirements</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <p>1. Within 30 days, the Respondent shall:</p> <p>a. Permanently remove the UST system from service; and                      b. Submit payment for all outstanding fees, including any associated penalties and interest.</p> <p>2. Within 45 days, submit written certification and detailed supporting documentation to demonstrate compliance with the Ordering Provisions above.</p>



# Penalty Calculation Worksheet (PCW)

PCW Revision September 19, 2007

Policy Revision 2 (September 2002)

<b>DATES</b>	Assigned	8-Oct-2007	Screening	12-Oct-2007	EPA Due	
	PCW	7-Jan-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Chantron Patrick Tes dba Texas Spirit Liquor Store		
Reg. Ent. Ref. No.	RN102284643		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	34783	No. of Violations	2
Docket No.	2007-1639-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Judy Kluge
Multi-Media		EC's Team	Enforcement Team 6
Admin. Penalty \$	Limit Minimum \$0	Maximum	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	Subtotal 1	\$10,000
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<b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>	Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.	
Compliance History	5% Enhancement	Subtotals 2, 3, & 7 \$500

Notes	Enhancement for one prior NOV with same or similar violations.
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Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes	The Respondent does not meet the good faith criteria.
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	0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$4,823	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$10,000		

<b>SUM OF SUBTOTALS 1-7</b>	Final Subtotal	\$10,500
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0%	Adjustment	\$0
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Notes	
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Final Penalty Amount	\$10,500
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<b>STATUTORY LIMIT ADJUSTMENT</b>	Final Assessed Penalty	\$10,500
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<b>DEFERRAL</b>	0% Reduction	Adjustment	\$0
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Notes	Deferral not offered for non-expedited settlement.
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<b>PAYABLE PENALTY</b>		\$10,500
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PCW

Screening Date 12-Oct-2007

Docket No. 2007-1639-PST-E

Policy Revision 2 (September 2002)

Respondent Chantron Patrick Tes dba Texas Spirit Liquor Store

PCW Revision September 19, 2007

Case ID No. 34783

Reg. Ent. Reference No. RN102284643

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

### 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)	1	5%
	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) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one prior NOV with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

<b>Screening Date</b> 12-Oct-2007		<b>Docket No.</b> 2007-1639-PST-E		<b>PCW</b>
<b>Respondent</b> Chantron Patrick Tes dba Texas Spirit Liquor Store			<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 34783			<i>PCW Revision September 19, 2007</i>	
<b>Reg. Ent. Reference No.</b> RN102284643				
<b>Media [Statute]</b> Petroleum Storage Tank				
<b>Enf. Coordinator</b> Judy Kluge				
<b>Violation Number</b>	<input type="text" value="1"/>			
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 334.47(a)(2)"/>			
<b>Violation Description</b>	<input type="text" value="Failed to permanently remove from service, no later than 60 days after the prescribed implementation date, two USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements."/>			
<b>Base Penalty</b>				<input type="text" value="\$10,000"/>
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
OR	<b>Harm</b>			
	<b>Release</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Percent</b> <input type="text" value="25%"/>
<b>&gt;&gt; Programmatic Matrix</b>				
<b>Falsification</b>				
<b>Major</b>				
<b>Moderate</b>				
<b>Minor</b>				
				<b>Percent</b> <input type="text" value="0%"/>
<b>Matrix Notes</b>	<input type="text" value="Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation."/>			
<b>Adjustment</b>				<input type="text" value="\$7,500"/>
				<input type="text" value="\$2,500"/>
<b>Violation Events</b>				
<b>Number of Violation Events</b>		<input type="text" value="4"/>	<b>Number of violation days</b>	
		<input type="text" value="50"/>		
<i>mark only one with an x</i>	daily	<input type="text"/>	<b>Violation Base Penalty</b> <input type="text" value="\$10,000"/>	
	monthly	<input checked="" type="checkbox"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
single event	<input type="text"/>			
<input type="text" value="Four monthly events (two per UST) are recommended based on documentation of the violation during the August 23, 2007 investigation to the October 12, 2007 screening date."/>				
<b>Economic Benefit (EB) for this violation</b>			<b>Statutory Limit Test</b>	
<b>Estimated EB Amount</b>		<input type="text" value="\$4,823"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$10,500"/>	
			<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$10,500"/>	

## Economic Benefit Worksheet

**Respondent:** Chantron Patrick Tes dba Texas Spirit Liquor Store  
**Case ID No.:** 34783  
**Reg. Ent. Reference No.:** RN102284643  
**Media:** Petroleum Storage Tank  
**Violation No.:** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$10,000	22-Dec-1998	12-Aug-2008	9.6	\$4,823	n/a	\$4,823

Notes for DELAYED costs

The estimated cost of permanently removing the UST system from service. The date required is the date when the respondent was required to upgrade the UST system and the final 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/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$4,823

<b>Screening Date</b> 12-Oct-2007	<b>Docket No.</b> 2007-1639-PST-E	<b>PCW</b>		
<b>Respondent</b> Chantron Patrick Tes dba Texas Spirit Liquor Store	<i>Policy Revision 2 (September 2002)</i>			
<b>Case ID No.</b> 34783	<i>PCW Revision September 19, 2007</i>			
<b>Reg. Ent. Reference No.</b> RN102284643				
<b>Media [Statute]</b> Petroleum Storage Tank				
<b>Enf. Coordinator</b> Judy Kluge				
<b>Violation Number</b> <input type="text" value="2"/>				
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 334.22(a) and Tex. Water Code § 5.702"/>			
<b>Violation Description</b>	<input type="text" value="Failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0048196U for fiscal years 1996 through 2007."/>			
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>		
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
OR	<b>Harm</b>			
	<b>Release</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
		<b>Percent</b>	<input type="text" value="0%"/>	
<b>&gt;&gt; Programmatic Matrix</b>				
	<b>Falsification</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
		<b>Percent</b>	<input type="text" value="0%"/>	
<b>Matrix Notes</b>	<input type="text"/>			
<b>Adjustment</b>		<input type="text" value="\$10,000"/>		
		<input type="text" value="\$0"/>		
<b>Violation Events</b>				
Number of Violation Events <input type="text"/>		Number of violation days <input type="text"/>		
<i>mark only one with an x</i>	daily	<input type="text"/>	<b>Violation Base Penalty</b> <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"/>		
No administrative penalty is calculated for this violation as penalty and interest will be assessed at the next billing.				
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>		
Estimated EB Amount <input type="text" value="\$0"/>		Violation Final Penalty Total <input type="text" value="\$0"/>		
		<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$0"/>		

## Economic Benefit Worksheet

**Respondent** Chantron Patrick Tes dba Texas Spirit Liquor Store

**Case ID No.** 34783

**Reg. Ent. Reference No.** RN102284643

**Media** Petroleum Storage Tank

**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				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/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

TOTAL

\$0

# Compliance History

Customer/Respondent/Owner-Operator:	CN601212996	TES, CHANTRON PATRICK	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN102284643	TEXAS SPIRIT LIQUOR STORE	Classification: AVERAGE	Site Rating: 1.50
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	25270
Location:	1001 S VIRGINIA ST, TERRELL, TX, 75160		Rating Date: September 01 07	Repeat Violator: NO
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	October 10, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	October 10, 2002 to October 10, 2007			

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

Name: Judy Kluge Phone: 817-588-5825

### 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)?  | <u>N/A</u> |
| 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 04/12/2007 (553775)
    - 2 10/01/2007 (594871)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
    - Date: 04/13/2007 (553775)
    - Self Report? NO Classification: Moderate
    - Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)
    - Description: Failure to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.
  - 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  
CHANTRON PATRICK TES DBA  
TEXAS SPIRIT LIQUOR STORE;  
RN102284643

§  
§  
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§  
§  
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BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**DEFAULT ORDER**  
**DOCKET NO. 2007-1639-PST-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 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 Chantron Patrick Tes dba Texas Spirit Liquor Store ("Mr. Tes").

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

**FINDINGS OF FACT**

1. Mr. Tes owns and operates a retail business for alcoholic beverages with two inactive underground storage tanks ("USTs") located at 1001 South Virginia Street, Terrell, Kaufman County, Texas (the "Facility").
2. Mr. Tes' two USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Tes' USTs contain a regulated substance as defined in the rules of the Commission.
3. During an investigation conducted on August 23, 2007, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Mr. Tes:
  - a. Failed to permanently remove from service, no later than 60 days after the prescribed implementation date, two USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and
  - b. Failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0048196U for fiscal years 1996 through 2007.
4. Mr. Tes received notice of the violations on or about October 6, 2007.

5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Chantron Patrick Tes dba Texas Spirit Liquor Store" (the "EDPRP") in the TCEQ Chief Clerk's office on February 27, 2008.
6. By letter dated February 27, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Tes with notice of the EDPRP. According to the return receipt "green card," Mr. Tes received notice of the EDPRP on February 28, 2008, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Mr. Tes received notice of the EDPRP, provided by the Executive Director. Mr. Tes failed to file an answer to the EDPRP, 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, Mr. Tes 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., Mr. Tes failed to permanently remove from service, no later than 60 days after the prescribed implementation date, two USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, in violation of 30 TEX. ADMIN. CODE § 334.47(a)(2).
3. As evidenced by Finding of Fact No. 3.b., Mr. Tes failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0048196U for fiscal years 1996 through 2007, in violation of 30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702.
4. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. Tes with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
5. As evidenced by Finding of Fact No. 7, Mr. Tes failed to file a timely answer to the EDPRP, 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 Mr. Tes and assess the penalty recommended by the Executive Director.

6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Tes for violations of the Texas Water 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.
7. An administrative penalty in the amount of ten thousand five hundred dollars (\$10,500.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. 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. Mr. Tes is assessed an administrative penalty in the amount of ten thousand five hundred dollars (\$10,500.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Mr. Tes'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: Chantron Patrick Tes dba Texas Spirit Liquor Store; Docket No. 2007-1639-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. Mr. Tes shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Order, Mr. Tes shall:
    - i. Permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55; and

- ii. Submit payment for all outstanding fees, including any associated penalties and interest, with the notation "Chantron Patrick Tes dba Texas Spirit Liquor Store – TCEQ Financial Account No. 0048196U" 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

- b. Within 45 days after the effective date of this Order, Mr. Tes shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a.i. through 2.a.ii. 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."

Mr. Tes shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a.i. through 2.a.ii. 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:

Sam Barrett, Waste Section Manager  
Texas Commission on Environmental Quality  
Dallas/Fort Worth Regional Office  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. Tes. Mr. Tes 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 Mr. Tes 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, Mr. Tes's failure to comply is not a violation of this Order. Mr. Tes shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Tes shall notify the Executive Director within seven days after Mr. Tes 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 Mr. Tes shall be made in writing to the Executive Director. Extensions are not effective until Mr. Tes 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 Mr. Tes if the Executive Director determines that Mr. Tes 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.

Chantron Patrick Tes dba Texas Spirit Liquor Store  
Docket No. 2007-1639-PST-E  
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## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

AFFIDAVIT OF ANNA M. COX

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Anna M. Cox. 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, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Chantron Patrick Tes dba Texas Spirit Liquor Store” (the “EDPRP”) was filed with the Office of the Chief Clerk on February 27, 2008.

The EDPRP was mailed to Mr. Tes at his last known address on February 27, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Tes received notice of the EDPRP on February 28, 2008, as evidenced by the signature on the card.

More than 20 days have elapsed since Mr. Tes received notice of the EDPRP. Mr. Tes failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”

Anna Cox  
Anna M. Cox, Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Anna M. Cox, 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 20<sup>th</sup> day of MAY, A.D., 2008.



Mehgan Taack  
Notary Signature