

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2006-0866-PST-E TCEQ ID NO.: RN102757481 CASE NO.: 29941
RESPONDENT NAME: S. P. HOLMES, INC. DBA GEORGETOWN 66

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 checked="" 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: 321 North IH-35, Georgetown, Williamson 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 November 26, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 TCEQ Enforcement Coordinator: Ms. Danielle Porras, Waste Enforcement Section, MC 128, (512) 239-2602 TCEQ Regional Contact: Mr. Barry Kalda, Austin Regional Office, MC R-11, (512) 239-2929 Respondent: Mr. S. P. Holmes, President, S. P. Holmes, Inc., 6800 Edgefield, Austin, Texas 78731 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>Date of Investigation Relating to this Case: April 24, 2006</p> <p>Date of NOE Relating to this Case: June 21, 2006</p> <p>Background Facts:</p> <p>The EDPRP was filed on December 1, 2006. The Respondent received notice of the EDPRP on December 2, 2006, as evidenced by the signature on the green card. The Notice of Intent to Shutdown the USTs was filed on August 8, 2007. No answer has been filed.</p> <p>Current Compliance Status:</p> <p>Not yet in compliance. Delivery Certificate expires June 2009.</p> <p>PST:</p> <p>1) 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>2) Failed to have required UST records maintained, readily accessible and available for inspection upon request by a representative of the TCEQ [30 TEX. ADMIN. CODE § 334.10(b)].</p> <p>3) Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel [30 TEX. ADMIN. CODE § 334.48(c)].</p> <p>4) Failed to have a method of release detection capable of detecting a release from any portion of the UST system at the Facility [30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].</p>	<p>Total Assessed: \$9,375</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$9,375</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>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's UST delivery certificate is revoked immediately upon the effective date of this Order. The Respondent may submit an application for a new delivery certificate only after the Respondent has complied with all requirements of this Order.</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1) Immediately, take the following steps to shut down operations of the non-compliant UST systems at the Facility: <ol style="list-style-type: none"> a) Cease dispensing fuel from the USTs; b) Cease receiving deliveries of regulated substances into the USTs; c) Padlock the dispensers; d) Empty the USTs of all regulated substances; and e) Temporarily remove the UST system from service. 2) Within 10 days, send its UST delivery certificate to the TCEQ. 3) Within 15 days, submit a detailed written report documenting the steps taken to comply with Ordering Provisions Nos. 1 and 2. 4) If Respondent elects to permanently remove from service any UST system at the Facility, immediately and permanently remove the UST system at the Facility and within 15 days after the effective date of the Order, submit to the Commission a written report documenting compliance. 5) Prior to resuming service of the USTs: <ol style="list-style-type: none"> a) install and implement a release detection method for the UST system; and b) obtain 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 the USTs. 6) Immediately upon resuming services of the USTs: <ol style="list-style-type: none"> a) begin maintaining all records pertaining to the UST system; and b) begin conducting proper inventory control procedures for all USTs at the Facility. 7) Within 10 days after resuming service of the USTs, submit documentation that demonstrates compliance with Order Provision Nos. 5 and 6.



DATES	Assigned	26-Jun-2006		
	PCW	13-Oct-2006	Screening	27-Jun-2006
			EPA Due	

RESPONDENT/FACILITY INFORMATION	
Respondent	S. P. Holmes, Inc. dba Georgetown 66
Reg. Ent. Ref. No.	RN102757481
Facility/Site Region	11-Austin <input checked="" type="checkbox"/> Major/Minor Source Minor Source <input checked="" type="checkbox"/>

CASE INFORMATION			
Enf./Case ID No.	29941	No. of Violations	4
Docket No.	2006-0866-PST-E	Order Type	1660 <input checked="" type="checkbox"/>
Media Program(s)	Petroleum Storage Tank <input checked="" type="checkbox"/>	Enf. Coordinator	A. Sunday Udoetok
Multi-Media		EC's Team	Enforcement Team 8 <input checked="" type="checkbox"/>
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$7,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	25% Enhancement	Subtotals 2, 3, & 7	\$1,875
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Notes An enhancement is recommended for one Agreed Order and one Notice of Violation for similar violations.

Culpability	No <input checked="" type="checkbox"/>	0% Enhancement	Subtotal 4	\$0
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Notes The respondent does not meet the culpability criteria.

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with a small x)

Notes The respondent does not meet the good faith criteria.

Economic Benefit	0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$1,475	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$3,992	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$9,375
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OTHER FACTORS AS JUSTICE MAY REQUIRE		Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount	\$9,375
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$9,375
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DEFERRAL	0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes This is not an expedited case.

PAYABLE PENALTY	\$9,375
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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)	1	20%
	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)	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	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) 25%

>> 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 An enhancement is recommended for one Agreed Order and one Notice of Violation for similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 25%

Screening Date 27-Jun-2006

Docket No. 2006-0866-PST-E

PCW

Respondent S. P. Holmes, Inc. dba Georgetown 66

Policy Revision 2 (September 2002)

Case ID No. 29941

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN102757481

Media [Statute] Petroleum Storage Tank

Enf. Coordinator A. Sunday Udoetok

Violation Number 1

Primary Rule Cite(s) 30 Tex. Admin. Code § 37.815(a) and (b)

Secondary Rule Cite(s)

Violation Description 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, as documented during an investigation conducted on April 24, 2006.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

		Harm			
Release		Major	Moderate	Minor	
OR	Actual				Percent
	Potential				

>> Programmatic Matrix

		Major	Moderate	Minor	
Falsification					Percent
		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 2

daily	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$2,000

Two single events (one event per tank) are recommended.

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount \$1,365

Violation Final Penalty Total \$2,500

This violation Final Assessed Penalty (adjusted for limits) \$2,500

Economic Benefit Worksheet

Respondent: S. P. Holmes, Inc. dba Georgetown 66
 Case ID No.: 29941
 Reg. Ent. Reference No.: RN102757481
 Media [Statute]: 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
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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/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]	\$1,300	24-Apr-2005	24-Apr-2006	1.0	\$65	\$1,300	\$1,365
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 financial assurance for two petroleum USTs (\$650 per tank) for one year prior to the February 28, 2006 investigation.						

Approx. Cost of Compliance \$1,300

TOTAL \$1,365

Screening Date 27-Jun-2006

Docket No. 2006-0866-PST-E

PCW

Respondent S. P. Holmes, Inc. dba Georgetown 66

Policy Revision 2 (September 2002)

Case ID No. 29941

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN102757481

Media [Statute] Petroleum Storage Tank

Enf. Coordinator A. Sunday Udoetok

Violation Number 2

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.50(a)(1)(A)

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

Violation Description Failure to have a method of release detection capable of detecting a release from any portion of the UST system at the Facility, as documented during an investigation conducted on April 24, 2006.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

		Falsification	Major	Moderate	Minor		
						Percent	

Matrix Notes Human health or the environment could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors.

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 1

mark only one use a small x	daily	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One quarterly event is recommended from the April 24, 2006 investigation date to the June 27, 2006 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$52

Violation Final Penalty Total \$3,125

This violation Final Assessed Penalty (adjusted for limits) \$3,125

Economic Benefit Worksheet

Respondent S. P. Holmes, Inc. dba Georgetown 66
 Case ID No. 29941
 Reg. Ent. Reference No. RN102757481
 Media [Statute] 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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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)	\$1,500	24-Apr-2006	03-Jan-2007	0.7	\$52	n/a	\$52

Notes for DELAYED costs Estimated cost to provide release detection for the USTs at the Facility. Date Required is the investigation date and the Final Date is the anticipated date of compliance.

Avoided Costs							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$1,500 TOTAL \$52

Screening Date 27-Jun-2006

Docket No. 2006-0866-PST-E

PCW

Respondent S. P. Holmes, Inc. dba Georgetown 66

Policy Revision 2 (September 2002)

Case ID No. 29941

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN102757481

Media [Statute] Petroleum Storage Tank

Enf. Coordinator A. Sunday Udoetok

Violation Number 3

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

Secondary Rule Cite(s)

Violation Description Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel, as documented during an investigation conducted on April 24, 2006.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (25%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent.

Matrix Notes Human health or the environment could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors.

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 1

Table for event frequency: daily, monthly, quarterly (marked with X), semiannual, annual, single event.

Violation Base Penalty \$2,500

One quarterly event is recommended from the April 24, 2006 investigation date to the June 27, 2006 screening date.

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount \$53

Violation Final Penalty Total \$3,125

This violation Final Assessed Penalty (adjusted for limits) \$3,125

Economic Benefit Worksheet

Respondent S. P. Holmes, Inc. dba Georgetown 66
Case ID No. 29941
Reg. Ent. Reference No. RN102757481
Media [Statute] Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$1,092	24-Apr-2006	03-Jan-2007	0.7	\$3	\$51	\$53
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

Estimated cost to conduct effective inventory control for the USTs at the Facility. Date Required is the investigation date and the Final Date is the anticipated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance \$1,092

TOTAL \$53

Screening Date 27-Jun-2006

Docket No. 2006-0866-PST-E

PCW

Respondent S. P. Holmes, Inc. dba Georgetown 66

Policy Revision 2 (September 2002)

Case ID No. 29941

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN102757481

Media [Statute] Petroleum Storage Tank

Enf. Coordinator A. Sunday Udoetok

Violation Number 4

Primary Rule Cite(s)

30 Tex. Admin. Code § 334.10(b)

Secondary Rule Cite(s)

Violation Description

Failed to have required UST records maintained, readily accessible and available for inspection upon request by a representative of the TCEQ. Specifically, documentation for corrosion protection and overfill prevention were not available for review, as documented during an investigation conducted on April 24, 2006.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

		Harm			Percent
OR	Release	Major	Moderate	Minor	
	Actual				
	Potential				

>> Programmatic Matrix

		Falsification			Percent
	Major	Moderate	Minor		
			X		5%

Matrix Notes

50% of the rule requirement was not met.

Adjustment -\$9,500

Base Penalty Subtotal \$500

Violation Events

Number of Violation Events 1

mark only one use a small x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	X

Violation Base Penalty \$500

One single event is recommended based on the April 24, 2006 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$5

Violation Final Penalty Total \$625

This violation Final Assessed Penalty (adjusted for limits) \$625

Economic Benefit Worksheet

Respondent S. P. Holmes, Inc. dba Georgetown 66
Case ID No. 29941
Reg. Ent. Reference No. RN102757481
Media [Statute] Petroleum Storage Tank
Violation No. 4

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)	\$100	24-Apr-2006	03-Jan-2007	0.7	\$0	\$5	\$5
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

Estimated cost to maintain the required records. Date Required is the investigation date and the Final Date is the anticipated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance \$100

TOTAL \$5

Compliance History

Customer/Respondent/Owner-Operator:	CN600743017 S. P. Holmes, Inc.	Classification: AVERAGE	Rating: 8.50
Regulated Entity:	RN102757481 GEORGETOWN 66	Classification: AVERAGE	Site Rating: 16.00
ID Number(s):	EDWARDS AQUIFER PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION REGISTRATION	11-93050601 26064
Location:	321 N IH 35, GEORGETOWN, TX, 78628	Rating Date: 9/1/2005 Repeat Violator: NO	
TCEQ Region:	REGION 11 - AUSTIN		
Date Compliance History Prepared:	June 27, 2006		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	June 27, 2001 to June 27, 2006		

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

Name: A. Sunday Udoetok Phone: (512) 239 2292

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 Effective Date: 11/26/2004 ADMINORDER 2003-0992-PST-E
 Classification: Moderate
 Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)[G]
 30 TAC Chapter 37, SubChapter I 37.815(b)[G]
 Description: Failure to adequately demonstrate financial assurance.

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.)

N/A 1 09/27/2002 (145480)
 2 10/25/2002 (145955)
 3 06/22/2006 (464708)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 09/27/2002 (145480)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)[G]
 30 TAC Chapter 37, SubChapter I 37.815(b)[G]
 Description: Failure to adequately demonstrate financial assurance.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
AGAINST S. P. HOLMES, INC.
DBA GEORGETOWN 66
RN102757481

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT AND SHUTDOWN ORDER
DOCKET NO. 2006-0866-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. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the revocation of the respondent's underground storage tank ("UST") delivery certificate, the imposition of an administrative penalty and corrective action of the respondent. The Texas Commission on Environmental Quality also considered the Motion of the Executive Director requesting entry of an Order requiring the respondent, S. P. Holmes, Inc. dba Georgetown 66 ("S. P. Holmes" or "Respondent"), to shutdown or remove from service the USTs at the Georgetown 66 Station, located at 321 North IH-35, Georgetown, Williamson County, Texas.

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

FINDINGS OF FACT

1. S. P. Holmes owns and operates a convenience store with retail sales of gasoline located at 321 North IH-35, Georgetown, Williamson County, Texas (the "Facility").
2. S. P. Holmes's two underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. S. P. Holmes' USTs contain a regulated substance as defined in the rules of the Commission.
3. During an investigation conducted on April 24, 2006, a TCEQ Austin Regional investigator documented that S.P. Holmes:

- a. 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;
 - b. Failed to have required UST records maintained, readily accessible and available for inspection upon request by a representative of the TCEQ. Specifically, on the date of the inspection, documentation for corrosion protection and overfill protection were not available for review;
 - c. Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel; and
 - d. Failed to have a method for release detection capable of detecting a release from any portion of the UST system at the Facility.
4. By letter dated June 23, 2006, the TCEQ Houston Regional Office provided S. P. Holmes with notice of the violations and the TCEQ's authority to shutdown and remove from service UST systems not in compliance with UST system release detection, spill and overfill prevention, and/or corrosion protection requirements if the violations were not corrected.
 5. S. P. Holmes received notice of the violations on or about June 26, 2006
 6. 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 S. P. Holmes, Inc. dba Georgetown 66" (the "EDPRP") in the TCEQ Chief Clerk's office on December 1, 2006.
 7. By letter dated December 1, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served S. P. Holmes with notice of the EDPRP. According to the return receipt "green card," S. P. Holmes received notice of the EDPRP on December 2, 2006, as evidenced by the signature on the card.
 8. More than 20 days have elapsed since S. P. Holmes received notice of the EDPRP provided by the Executive Director. S. P. Holmes failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.
 9. By letter dated August 8, 2007, the TCEQ provided S. P. Holmes with notice of the TCEQ's intent to order the UST systems at the Facility shut down and removed from service if the violations pertaining to release detection were not corrected within 30 days of S. P. Holmes' receipt of the letter.
 10. As of the date of entry of this Order, S. P. Holmes has not corrected the violations noted during the April 26, 2006 inspection.

11. The UST systems at the Facility do not have release detection, as required by 30 TEX. ADMIN. CODE § 334.50, and may be releasing petroleum products to the environment without the knowledge of the tank owner or operator. Therefore, conditions at the Facility constitute an imminent peril to public health, safety and welfare.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, S. P. Holmes' USTs are subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., S. P. Holmes 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).
3. As evidenced by Finding of Fact No. 3.b., S. P. Holmes failed to have required UST records maintained, readily accessible and available for inspection upon request by a representative of the TCEQ. Specifically, on the date of the inspection, documentation for corrosion protection and overfill protection were not available for review, in violation of 30 TEX. ADMIN. CODE § 334.10(b).
4. As evidenced by Finding of Fact No. 3.c., S. P. Holmes failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel, in violation of 30 TEX. ADMIN. CODE § 334.48(c).
5. As evidenced by Finding of Fact No. 3.d., S. P. Holmes failed to have a method of release detection capable of detecting a release from any portion of the UST system at the Facility, in violation of 30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475(c)(1).
6. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director timely served S. P. Holmes with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
7. As evidenced by Finding of Fact No. 8, S. P. Holmes 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 S. P. Holmes and assess the penalty recommended by the Executive Director.
8. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against S. P. Holmes for violations of the Texas Water Code within the Commission's jurisdiction; for violations of rules adopted under such statute; or for violations of orders or permits issued under such statute.

9. An administrative penalty in the amount of nine thousand three hundred seventy-five dollars (\$9,375.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
10. As evidenced by Finding of Fact No. 10, S. P. Holmes failed to correct all documented violations of Commission requirements within 30 days after S. P. Holmes received notice of the violations and notice of the Executive Director's intent to shut down the Facility.
11. TEX. WATER CODE § 26.3475(e) authorizes the Commission to order a UST owner or operator to shut down a UST system if, within 30 days after receiving notice of the violations, the owner or operator fails to correct violations of Commission regulatory requirements relating to release detection for tanks and/or piping, spill and overflow protection for tanks, and/or corrosion protection for tanks and piping.
12. 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.
13. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke S. P. Holmes' UST delivery certificate if the Commission finds that good cause exists.
14. Good cause for revocation of S. P. Holmes's UST delivery certificate exists as justified by Findings of Fact Nos. 6 through 8 and Conclusions of Law Nos. 6 and 7.
15. As evidenced by Finding of Fact No. 11, current conditions at the Facility constitute an imminent peril to public health, safety and welfare.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Immediately upon the effective date of this Order:
 - a. S. P. Holmes shall take the following steps to shut down operations of the non-compliant UST systems at the Facility:
 - i. Cease dispensing fuel from the USTs;
 - ii. Cease receiving deliveries of regulated substances to the USTs;
 - iii. Padlock the dispensers;
 - iv. Empty the UST systems of all regulated substances in accordance with 30 TEX. ADMIN. CODE § 334.54(e); and,

- v. Temporarily remove the UST systems from service in accordance with 30 TEX. ADMIN. CODE § 334.54.
 - b. S. P. Holmes' UST delivery certificate is revoked immediately upon the effective date of this Order. S. P. Holmes may submit an application for a new delivery certificate only after S. P. Holmes has complied with all of the requirements set forth in these Ordering Provisions.
2. Within 10 days after the effective date of this Order, S. P. Holmes shall send its UST delivery certificate to:

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

3. Within 15 days after the effective date of this Order, S. P. Holmes shall submit to the Executive Director a detailed written report, documenting the steps that it has taken to comply with Ordering Provision Nos. 1.a.i. through 1.a.v.. S. P. Holmes shall submit the report to:

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

and

Barry Kalda Waste Section Manager
Texas Commission on Environmental Quality
2800 South IH 35, Suite 100
Austin, Texas 78704

4. If S. P. Holmes elects to permanently remove from service any UST system at the Facility, S. P. Holmes shall immediately and permanently remove the UST system at the Facility in accordance with 30 TEX. ADMIN. CODE § 334.55. If S. P. Holmes permanently removes any UST system from service, S. P. Holmes shall, within 15 days after the effective date of this Order, submit to the Commission a written report documenting compliance with 30 TEX. ADMIN. CODE § 334.55. S. P. Holmes shall submit the report to:

Petroleum Storage Tank Registration Team, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

5. S. P. Holmes is assessed an administrative penalty in the amount of nine thousand three hundred seventy-five dollars (\$9,375.00) for violations under TEX. WATER CODE ch. 26 and the rules of the TCEQ. The payment of the administrative penalty and S. P. Holmes' 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: S. P. Holmes, Inc. dba Georgetown 66; Docket No. 2006-0866-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

6. Prior to resuming service of the UST, S. P. Holmes shall undertake the following technical requirements:
- a. Install and implement a release detection method for the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.50; and
 - b. Obtain 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.
7. S. P. Holmes' UST systems shall remain out of service pursuant to TEX. WATER CODE § 26.3475, as directed by Ordering Provision No. 1.a., until such time as S. P. Holmes demonstrates to the satisfaction of the Executive Director that it has corrected the violations noted in Finding of Fact Nos. 3.a. and 3.d., and Conclusion of Law Nos. 2 and 5 herein.
8. Immediately upon resuming service of the USTs, S. P. Holmes shall:
- a. Begin maintaining all records pertaining to the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.10; and
 - b. Begin conducting proper inventory control procedures for all USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.48.
9. Within 10 days after resuming service of the USTs, S. P. Holmes shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 6 and 8.

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:

Barry Kalda Waste Section Manager
Texas Commission on Environmental Quality
2800 South IH 35, Suite 100
Austin, Texas 78704

10. All relief not expressly granted in this Order is denied.
11. The provisions of this Order shall apply to and be binding upon S. P. Holmes. S. P. Holmes is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
12. 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 S. P. Holmes if the Executive Director determines that S. P. Holmes has not complied with one or more of the terms or conditions in this Order.
13. 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.
14. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order is the date this decision is rendered pursuant to the Administrative Procedure Act, TEX. GOV'T CODE § 2001.144(a)(3).

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF JACQUELYN BOUTWELL

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Jacquelyn Boutwell. 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.

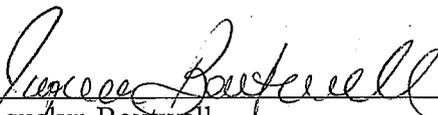
On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the ‘Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of S. P. Holmes, Inc. dba Georgetown 66 (the ‘EDPRP’) with the Office of the Chief Clerk on December 1, 2006.

I sent the EDPRP to S. P. Holmes at its last known address on December 1, 2006, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” S. P. Holmes received notice of the EDPRP on December 2, 2006, as evidenced by the signature on the card.

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

By letter dated August 8, 2007, via first class mail and Certified Mail, Return Receipt Requested (Article No.7002 0860 0004 6476 5218), I provided S. P. Holmes with notice of the TCEQ’s intent to order the UST systems at the Facility shut down and removed from service if the violations pertaining to release detection, spill and overflow prevention equipment, and/or corrosion prevention were not corrected within 30 days of S. P. Holmes’s receipt of the letter. According to the return receipt “green card,” S. P. Holmes received notice of the TCEQ’s intent to order the UST systems at the Facility shut down and removed from service on August 10, 2007, as evidenced by the signature on the card.

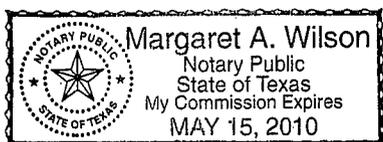
As of the date of this affidavit, S. P. Holmes has not corrected all the violations noted during the April 26, 2006 inspection.



Jacquelyn Boutwell
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jacquelyn Boutwell, 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 22ND day of OCTOBER A.D., 2008.





Notary Stamp