

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2005-1876-PST-E TCEQ ID: RN101897502 CASE NO.: 27345
RESPONDENT NAME: AMER TELL DBA QUICK STOP 1

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: 300 West US Highway 82, New Boston, Bowie 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.</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 December 10, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Mr. Steven Lopez, Water Enforcement Section, MC 219, (512) 239-1896 TCEQ Regional Contact: Ms. Michael Brashear, Tyler Regional Office, MC R-5, (903) 535-5176 Respondent: Mr. Amer Tell, Owner, Amer Tell dba Quick Stop 1, 300 West US Highway 82, New Boston, Texas 75570 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: September 14, 2005</p> <p>Date of NOE/ NOVs relating to this Case: October 27, 2005 (NOE)</p> <p>Background Facts:</p> <p>The EDPRP was filed on July 26, 2006. The Respondent signed an Agreed Order on August 28, 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> <p>Failed to maintain UST records at the Facility and failing to make them immediately available for inspection upon request. Specifically, the respondent did not provide inventory control records to the investigator [30 TEX. ADMIN. CODE § 334.10(b)].</p>	<p>Total Assessed: \$100</p> <p>Total Deferred: \$0</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$100/</p> <p>The Respondent has paid the administrative penalty in full.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions</p> <p>The Respondent shall:</p> <ol style="list-style-type: none"> 1. Immediately, begin maintaining all UST records, including inventory control records, at the Facility. 2. Within 45 days, submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision No. 1.

Penalty Calculation Worksheet (PCW)
 Policy Revision 2 (September 2002) PCW Revision May 19, 2005

DATES	Assigned	31-Oct-2005	Screening	03-Nov-2005	EPA Due	
	PCW	14-Aug-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	Amer Tell dba Quick Stop 1
Reg. Ent. Ref. No.	RN101897502
Facility/Site Region	5-Tyler <input checked="" type="checkbox"/> Major/Minor Source <input type="checkbox"/> Minor Source

CASE INFORMATION			
Enf./Case ID No.	27345	No. of Violations	1
Docket No.	2005-1876-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank <input checked="" type="checkbox"/>	Enf. Coordinator	Deana Holland
Multi-Media		EC's Team	Enforcement Team 3 <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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Subtotals 2, 3, & 7

Notes

Culpability No 0% Enhancement Subtotal 4

Notes

Good Faith Effort to Comply Subtotal 5

Before NOV NOV to EDRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	<small>(mark with a small x)</small>

Notes

Economic Benefit Subtotal 6

Total EB Amounts	\$11	<small>*Capped at the Total EB \$ Amount</small>
Approx. Cost of Compliance	\$100	

SUM OF SUBTOTALS 1-7 Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty

DEFERRAL Reduction Adjustment

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

Notes

PAYABLE PENALTY

Screening Date 03-Nov-2005 **Docket No.** 2005-1876-PST-E **PCW**
Respondent Amer Tell dba Quick Stop 1 *Policy Revision 2 (September 2002)*
Case ID No. 27345 *PCW Revision May 19, 2005*
Reg. Ent. Reference No. RN101897502
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Deana Holland

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 (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	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 (<i>number of judgements or consent decrees meeting criteria</i>)	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 (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	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 (<i>number of audits for which notices were</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	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) 0%

>> 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

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

Screening Date 03-Nov-2005

Docket No. 2005-1876-PST-E

PCW

Respondent Amer Tell dba Quick Stop 1

Policy Revision 2 (September 2002)

Case ID No. 27345

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101897502

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Deana Holland

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

		Major	Moderate	Minor	Percent
	Falsification	<input type="text"/>	<input type="text"/>	<input checked="" type="text" value="X"/>	

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one use a small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="text" value="X"/>

Violation Base Penalty

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 Amer Tell dba Quick Stop 1
 Case ID No. 27345
 Reg. Ent. Reference No. RN101897502
 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
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	\$100	14-Sep-2005	01-Jan-2008	2.3	\$11	n/a	\$11
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 for maintaining UST records at the Facility. Date Required is the date of the investigation. Final Date is the estimated date of compliance.

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/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

TOTAL

Compliance History

Customer/Respondent/Owner-Operator:	CN602776619 TELL, AMER	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN101897502 QUICK STOP 1	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	41416
Location:	300 W US HIGHWAY 82, NEW BOSTON, TX, 75570		Rating Date: 9/1/2005 Repeat Violator: NO
TCEQ Region:	REGION 05 - TYLER		
Date Compliance History Prepared:	December 05, 2005		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	December 05, 2000 to December 05, 2005		

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

Name: Chad Blevins Phone: 512-239-6017

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? | <u>Tell, Amer</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>Wimpy's 7-11 of New Boston</u> |
| 5. When did the change(s) in ownership occur? | <u>02/14/2003</u> |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 10/27/2005 (434335)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
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
AMER TELL DBA QUICK STOP 1
RN101897502

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER

DOCKET NO. 2005-1876-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 Amer Tell dba Quick Stop 1 ("Quick Stop 1") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Quick Stop 1, appear before the Commission and together stipulate that:

1. Quick Stop 1 owns and operates a convenience store with retail sales of gasoline located at 300 West US Highway 82 in New Boston, Bowie 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 Quick Stop 1 agree that the Commission has jurisdiction to enter this Agreed Order, and that Quick Stop 1 is subject to the Commission's jurisdiction.
4. Quick Stop 1 received notice of the violations alleged in Section II ("Allegations") on or about November 1, 2005.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Quick Stop 1 of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of one hundred dollars (\$100.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Quick Stop 1 has paid one hundred dollars (\$100.00) of the administrative penalty.

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 Quick Stop 1 have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Quick Stop 1 has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

Quick Stop 1 is alleged to have violated 30 TEX. ADMIN. CODE § 334.10(b), by failing to maintain UST records at the Facility and failing to make them immediately available for inspection upon request. Specifically, the respondent did not provide inventory control records to the investigator as documented during an investigation on September 14, 2005.

III. DENIALS

Quick Stop 1 generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Quick Stop 1 pay an administrative penalty as set forth in Section I, Paragraph 6, above. The payment of this administrative penalty and Quick Stop 1'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: Amer Tell dba Quick Stop 1, Docket No. 2005-1876-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. Quick Stop 1 shall undertake the following technical requirements:
- a. Immediately upon the effective date of this Agreed Order, Quick Stop 1 shall begin maintaining all UST records, including inventory control records, at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.10.
 - b. Within 45 days after the effective date of this Order, Quick Stop 1 shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision No. 2.a. 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.”

Quick Stop 1 shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision No. 2.a. to:

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

and

Michael Brashear, Waste Section Manager

Texas Commission on Environmental Quality
Tyler Regional Office
2916 Teague Drive
Tyler, Texas 75701-3756

3. The provisions of this Agreed Order shall apply to and be binding upon Quick Stop 1.
4. If Quick Stop 1 fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Quick Stop 1's failure to comply is not a violation of this Agreed Order. Quick Stop 1 shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Quick Stop 1 shall notify the Executive Director within seven days after Quick Stop 1 becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Quick Stop 1 shall be made in writing to the Executive Director. Extensions are not effective until Quick Stop 1 receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Quick Stop 1 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.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T. CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Quick Stop 1, or three days after the date on which the Commission mails notice of the Order to Quick Stop 1, 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

W. Brennan Perdue
For the Executive Director

11/9/07
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, I understand that any falsification of any compliance documents may result in criminal prosecution

Aner Tell
Signature

8/28/07
Date

AMER-TELL
Name (Printed or typed)
Authorized representative of
Amer Tell dba Quick Stop 1

manager/owner
Title