

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2006-1683-PST-E TCEQ ID: RN101655074 CASE NO.: 31109
RESPONDENT NAME: TOOTSIE S. FARRIS DBA E & A ENERGY

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 1133 North Knox, Fort Hancock, Hudspeth County</p> <p>TYPE OF OPERATION: Out-of-service 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. Mary Hammer, Litigation Division, MC 175, (512) 239-2496 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Mr. Marlin Bullard, Waste Enforcement Section, MC R-9, (254) 761-3038 TCEQ Regional Contact: Mr. Terry McMillan, El Paso Regional Office, MC R-6, (915) 834-4953 Respondent: Ms. Tootsie S. Farris, Owner, E & A Energy, 107 Barcus, Ruidoso, New Mexico 88345 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: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: August 17, 2006 and September 7, 2006</p> <p>Date of NOE Relating to this Case: August 21, 2006</p> <p>Background Facts: An EDPRP was filed on April 10, 2007. The Respondent received notice of the EDPRP on April 16, 2007. The Respondent's delivery certificate expired in March 2004. The Facility is closed and is no longer operating. The Respondent has not filed an answer or requested a hearing.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>PST</p> <ol style="list-style-type: none"> Failed to register all petroleum storage tanks and amend the registration to show changes in the operational status of any tank system [30 TEX. ADMIN. CODE §§ 334.7(d)(3) and 334.127(a)(1)]. Failed to provide a release detection method capable of detecting a release from any portion of the UST system which contained regulated substances including the tanks, piping, and other underground ancillary equipment [30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)]. Failed to inspect and test the cathodic protection system at least once every three years [30 TEX. ADMIN. CODE § 334.49(c)(4)(C) and TEX. WATER CODE § 26.3475(d)]. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by the accidental release from the operation of petroleum storage tanks [30 TEX. ADMIN. CODE §§ 37.815(a) and (b)]. Failed to pay UST fees and associated late fees to TCEQ Account No. 0059703U [30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702]. 	<p>Total Assessed: \$9,200</p> <p>Total Deferred: \$0</p> <p>Total Due to General Revenue: \$9,200</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this proposed Order.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Technical Requirement(s)</p> <ol style="list-style-type: none"> Within 30 days, the Respondent shall register all storage tanks and amend the Facility's registration to correctly reflect the status of all storage tanks. Within 30 days, the Respondent shall either: <ol style="list-style-type: none"> Permanently remove from service all USTs for which any component is not in compliance with upgrade requirements; or Bring all UST components into compliance with upgrade requirements by inspecting and testing the cathodic protection system for any UST which is required to be protected from corrosion and continue to inspect and test the cathodic protection system at least once every three years; and Install and implement a release detection method for the USTs and the piping associated with the UST system; and Obtain acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by the accidental releases from the operation of petroleum USTs. Submit payment for fees.



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 19, 2005

DATES	Assigned	28-Aug-2006	Screening	08-Sep-2006	EPA Due	
	PCW	09-Feb-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	Tootsie S. Farris dba E & A Energy
Reg. Ent. Ref. No.	RN101655074
Facility/Site Region	6-El Paso
Major/Minor Source	Minor Source

CASE INFORMATION			
Enf./Case ID No.	31109	No. of Violations	5
Docket No.	2006-1683-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Marlin Bullard
Multi-Media		EC's Team	Enforcement Team 8
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 15% Enhancement Subtotals 2, 3, & 7

Notes

Culpability No Subtotal 4

Notes

Good Faith Effort to Comply 0% Reduction Subtotal 5

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	X	(mark with a small x)

Notes

Economic Benefit 0% Enhancement* Subtotal 6

Total EB Amounts	<input type="text" value="\$2,601"/>	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	<input type="text" value="\$3,975"/>	

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 08-Sep-2006

Docket No. 2006-1683-PST-E

PCW

Respondent Tootsie S. Farris dba E & A Energy

Policy Revision 2 (September 2002)

Case ID No. 31109

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101655074

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Marlin Bullard

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOV's with same or similar violations as those in the current enforcement action (number of NOV's meeting criteria)	3	15%
	Other written NOV's	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were disclosed)	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) 15%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The site has received three NOV's with same or similar violations

Total Adjustment Percentage (Subtotals 2, 3, & 7) 15%

Screening Date 08-Sep-2006

Docket No. 2006-1683-PST-E

PCW

Respondent Tootsie S. Farris dba E & A Energy

Policy Revision 2 (September 2002)

Case ID No. 31109

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101655074

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Marlin Bullard

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text" value="10%"/>

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="checkbox"/>

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 Tootsie S. Farris dba E & A Energy
 Case ID No. 31109
 Reg. Ent. Reference No. RN101655074
 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				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)	\$175	17-Aug-2006	21-May-2007	0.8	\$7	n/a	\$7

Notes for DELAYED costs: Estimated cost to register three above ground storage tanks, and submit an amended underground storage tank registration form to the TCEQ for two underground storage tanks. The date required is the investigation date and the final date is the estimated date of compliance.

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

Screening Date 08-Sep-2006

Docket No. 2006-1683-PST-E

PCW

Respondent Tootsie S. Farris dba E & A Energy

Policy Revision 2 (September 2002)

Case ID No. 31109

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101655074

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Marlin Bullard

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Failed to provide a release detection method capable of detecting a release from any portion of the underground storage tank system which contained regulated substances including the tanks, piping, and other underground ancillary equipment, as documented during an investigation conducted on August 17, 2006. Specifically, the respondent did not provide release detection for the underground storage tank systems.

Base Penalty

>> Environmental, Property and Human Health Matrix

Release	Harm		
	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Percent

>> Programmatic Matrix

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

Percent

Matrix Notes

Human health or the environment will or could have been exposed to pollutants which exceed levels that are protective of human health or environmental receptors.

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 checked="" type="checkbox"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

One quarterly event is recommended from the July 27, 2006 investigation date to the September 8, 2006 screening date.

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 Tootsie S. Farris dba E & A Energy
 Case ID No. 31109
 Reg. Ent. Reference No. RN101655074
 Media [Statute] Petroleum Storage Tank
 Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$1,500	17-Aug-2006	21-May-2007	0.8	\$4	\$76	\$80
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 monitor underground storage tanks for releases. The date required is the investigation date the the final date is the estimated date of compliance.

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

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

Screening Date 08-Sep-2006

Docket No. 2006-1683-PST-E

PCW

Respondent Tootsie S. Farris dba E & A Energy

Policy Revision 2 (September 2002)

Case ID No. 31109

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101655074

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Marlin Bullard

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="25%"/>
Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

>> Programmatic Matrix

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

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 checked="" type="checkbox"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

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 Tootsie S. Farris dba E & A Energy

Case ID No. 31109

Reg. Ent. Reference No. RN101655074

Media [Statute] Petroleum Storage Tank

Violation No. 3

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				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]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)	\$1,000	17-Aug-2003	17-Aug-2006	3.0	\$150	\$1,000	\$1,150
Notes for AVOIDED costs							
Avoided cost for completing the triennial test for two petroleum underground storage tanks. The date required is three years before the investigation date and the final date is the investigation date.							

Approx. Cost of Compliance

TOTAL

Screening Date 08-Sep-2006

Docket No. 2006-1683-PST-E

PCW

Respondent Tootsie S. Farris dba E & A Energy

Policy Revision 2 (September 2002)

Case ID No. 31109

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101655074

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Marlin Bullard

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text" value="10%"/>

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="checkbox"/>

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 Tootsie S. Farris dba E & A Energy
 Case ID No. 31109
 Reg. Ent. Reference No. RN101655074
 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
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	21-Aug-2005	21-Aug-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 underground storage tanks (\$650 per tank) for one year prior to the August 21, 2006 initial request to provide proof of financial assurance.							

Approx. Cost of Compliance

TOTAL

Screening Date 08-Sep-2006

Docket No. 2006-1683-PST-E

PCW

Respondent Tootsie S. Farris dba E & A Energy

Policy Revision 2 (September 2002)

Case ID No. 31109

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101655074

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Marlin Bullard

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR

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

>> Programmatic Matrix

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

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 type="text"/>	

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 Tootsie S. Farris dba E & A Energy
 Case ID No. 31109
 Reg. Ent. Reference No. RN101655074
 Media [Statute] Petroleum Storage Tank
 Violation No. 5

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				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: N/A

Approx. Cost of Compliance

TOTAL

Compliance History

Customer/Respondent/Owner-Operator:	CN602931768 FARRIS, TOOTSIE S	Classification: AVERAGE	Rating: 1.75
Regulated Entity:	RN101655074 E & A ENERGY	Classification: AVERAGE	Site Rating: 1.75
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	66565
Location:	1133 N KNOX, FT HANCOCK, TX, 79839	Rating Date: September 01 06	Repeat Violator: NO
TCEQ Region:	REGION 06 - EL PASO		
Date Compliance History Prepared:	September 15, 2006		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	September 15, 2001 to September 15, 2006		

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

Name: N/A Phone: N/A

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>Tootsie S Farris</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>Kevin Farris</u> |
| 5. When did the change(s) in ownership occur? | <u>04/01/2003</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	02/23/2006	(456260)	
2	11/21/2003	(248722)	
3	06/26/2002	(3578)	
4	02/06/2004	(262102)	
5	08/06/2004	(286304)	
6	10/07/2002	(13341)	
7	08/22/2006	(509357)	
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	02/23/2006	(456260)	
Self Report?	NO		Classification: Minor
Citation:	30 TAC Chapter 334, SubChapter A 334.7(d)(3)		
Description:	Failure to amend registration.		
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 334, SubChapter C 334.47(a)(2)		
Description:	Failure to permanently remove any existing UST system that was not brought into timely compliance with upgrade requirements.		
Self Report?	NO		Classification: Minor
Citation:	30 TAC Chapter 334, SubChapter F 334.127(a)(1)(G)		
Description:	Failure to register two aboveground storage tanks.		
Date:	11/21/2003	(248722)	
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 334, SubChapter C 334.50(b)(2)(A)(i)(III)		
Description:	Failure to have the annual performance test conducted on the line leak detectors.		

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)[G]

Description: Failure to have all records available for the investigation.

Date: 06/25/2002 (3578)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.49(a)[G]

Description: Failure to ensure corrosion protection system is maintained in a manner that will ensure that corrosion protection will be continuously provided to all underground metal components of the UST system.

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
TOOTSIE S. FARRIS
DBA E & A ENERGY,
RN101655074**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER
DOCKET NO. 2006-1683-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 Tootsie S. Farris dba E & A Energy ("Ms. Farris").

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

FINDINGS OF FACT

1. Ms. Farris owns and formerly operated a convenience store with retail sales of gasoline at 1133 North Knox in Fort Hancock, Hudspeth County, Texas (the "Facility").
2. Ms. Farris's two underground storage tanks ("USTs") and three above ground storage tanks ("ASTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Ms. Farris's USTs and ASTs contain a regulated petroleum substance as defined in the rules of the Commission.
3. During a record review conducted on August 17, 2006, a TCEQ El Paso Regional Office investigator documented that Ms. Farris violated the following requirements:
 - a. Failed to register all petroleum storage tanks and amend the registration to show changes in the operational status of any tank system. Specifically, three ASTs were not registered and two USTs were not shown as out of service on their registration.
 - b. TEX. WATER CODE § 26.3475(c)(1) by failing to provide a release detection method capable of detecting a release from any portion of the UST system which contained regulated substances including the tanks, piping, and other underground ancillary

equipment. Specifically, Ms. Farris did not provide release detection for the UST systems.

- c. TEX. WATER CODE § 26.3475(d) by failing to inspect and test the cathodic protection system at least once every three years. Specifically, Ms. Farris did not conduct the triennial test.
 - d. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by the accidental releases from the operation of petroleum storage tanks. Specifically, Ms. Farris failed to demonstrate acceptable financial assurance for the two USTs located at the facility.
4. During a record review conducted on September 7, 2006, a TCEQ enforcement coordinator documented that Ms. Farris violated TEX. WATER CODE § 5.702 by failing to pay UST fees and associated late fees to TCEQ Account No. 0059703U.
 5. Ms. Farris received notice of the violations on or about August 26, 2006.
 6. The Executive Director recognizes that the Facility is closed and is no longer operating.
 7. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Tootsie S. Farris dba E & A Energy" (the "EDPRP") in the TCEQ Chief Clerk's office on April 10, 2007.
 8. By letter dated April 10, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Ms. Farris with notice of the EDPRP. According to the return receipt "green card," Ms. Farris received notice of the EDPRP on April 16, 2007, as evidenced by the signature on the card.
 9. More than 20 days have elapsed since Ms. Farris received notice of the EDPRP, provided by the Executive Director. Ms. Farris 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 Findings of Fact Nos. 1 and 2, Ms. Farris is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 5, 7 and 26, 30 TEX. ADMIN. CODE ch. 334, and the rules of the Commission.

2. As evidenced by Finding of Fact No. 3.a., Ms. Farris failed to register all petroleum storage tanks and amend the registration to show changes in the operational status of any tank system, in violation of 30 TEX. ADMIN. CODE §§ 334.7(d)(3) and 334.127(a)(1).
3. As evidenced by Finding of Fact No. 3.b., Ms. Farris failed to provide a release detection method capable of detecting a release from any portion of the UST system which contained regulated substances including the tanks, piping, and other underground ancillary equipment, in violation of 30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475(c)(1).
4. As evidenced by Finding of Fact No. 3.c., Ms. Farris failed to inspect and test the cathodic protection system at least once every three years, in violation of 30 TEX. ADMIN. CODE § 334.49(c)(4)(C) and TEX. WATER CODE § 26.3475(d).
5. As evidenced by Finding of Fact No. 3.d., Ms. Farris failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by the accidental releases from the operation of petroleum storage tanks, in violation of 30 TEX. ADMIN. CODE §§ 37.815(a) and (b).
6. As evidenced by Finding of Fact No. 4, Ms. Farris failed to pay UST fees and associated late fees to TCEQ Account No. 0059703U, in violation of 30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702.
7. As evidenced by Findings of Fact Nos. 7 and 8, the Executive Director has timely served Ms. Farris with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
8. As evidenced by Finding of Fact No. 9, Ms. Farris has 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 Ms. Farris and assess the penalty recommended by the Executive Director.
9. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Ms. Farris for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
10. An administrative penalty in the amount of nine thousand two hundred dollars (\$9,200.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

11. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Ms. Farris is assessed an administrative penalty in the amount of nine thousand two hundred dollars (\$9,200.00) for violations of TEX. WATER CODE ch. 26 and rules of the TCEQ. The imposition of this administrative penalty and Ms. Farris'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: Tootsie S. Farris dba E & A Energy; Docket No. 2006-1683-PST-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Ms. Farris shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order, Ms. Farris shall register all storage tanks and amend the Facility's registration to correctly reflect the status of all storage tanks, in accordance with 30 TEX. ADMIN. CODE §§ 334.7(d)(3) and 334.127(a)(1).
 - b. Within 30 days after the effective date of this Order, Ms. Farris shall either:
 - i. Permanently remove from service all USTs for which any component is not in compliance with upgrade requirements, in accordance with 30 TEX. ADMIN. CODE § 334.47(a)(2); or
 - ii. Bring all UST components into compliance with upgrade requirements by inspecting and testing the cathodic protection system for any UST which is required to be protected from corrosion and continue to inspect and test the cathodic protection system at least once every three years, in accordance with 30 TEX. ADMIN. CODE § 334.49(c)(4)(C); and

- iii. Install and implement a release detection method for the USTs and the piping associated with the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.50(a)(1)(A); and
 - iv. Obtain acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by the accidental releases from the operation of petroleum USTs, in accordance with 30 TEX. ADMIN. CODE § 37.815(a) and (b).
- c. Within 30 days after the effective date of this Order, Ms. Farris shall submit payment for outstanding fees, including any associated penalties and interest and with the notation, "Tootsie S. Farris dba E & A Energy, Account No. 0059703U," to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, TX 78711-3088

- d. Within 45 days after the effective date of this Order, Ms. Farris shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts and/or other records to demonstrate compliance with Ordering Provisions Nos. 2.a., b. and c.

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 this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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

and

Terry McMillan, Waste Section Manager
Texas Commission on Environmental Quality
El Paso Regional Office
401 East Franklin Avenue, Suite 560
El Paso, Texas 79901-1212

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Ms. Farris. Ms. Farris 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. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Ms. Farris shall be made in writing to the Executive Director. Extensions are not effective until Ms. Farris receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Ms. Farris if the Executive Director determines that Ms. Farris has not complied with one or more of the terms or conditions in this Order.
7. 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.
8. 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.

Tootsie S. Farris dba E & A Energy
Docket No. 2006-1683-PST-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

