EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-1905-MLM-E **TCEQ ID:** RN101882397 **CASE NO.:** 34992

RESPONDENT NAME: Neal's Lodges, Inc.

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	X MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	X PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	X EDWARDS AQUIFER

SITE WHERE VIOLATION(S) OCCURRED: Neal's Lodges, 20971 Highway 171, Concan, Uvalde County

TYPE OF OPERATION: Resort with an aboveground storage tank ("AST")

SMALL BUSINESS: __X__ **Yes** ___ **No**

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on May 26, 2008. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Mr. J. Craig Fleming, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-5806; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171
Respondent: Mr. Charles Rodger Roosa, Owner/Manager, Neal's Lodges, Inc., 20971 Highway 171, Concan, Texas 78838
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: ___ Complaint _X_ Routine ___ Enforcement Follow-up ___ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** September 12, 2007 **Date of NOV/NOE Relating to this Case:** November 12, 2007 (NOE) **Background Facts:** This was a routine investigation. **EDWARDS AQUIFER** 1) Failure to obtain authorization for the installation of an above ground storage tank ("AST"). Specifically, a 2,000 gallon gasoline AST was relocated on the Edwards Aquifer Recharge Zone without authorization [30 TEX. ADMIN. CODE § 213.4(a)(1)]. **WASTE** 2) Failure to cleanup spills/overfills from a diesel fuel tank. Specifically, hydrocarbon stains were observed under the dispenser hose of a 250 gallon diesel AST [30 TEX. ADMIN. CODE §§ 334.75 and 334.129]. 3) Failure to provide notification to the TCEQ at least 30 days prior to relocating the 2,000 gallon AST [30 TEX. ADMIN. CODE § 334.126(a)(1)(A)]. 4) Failure to provide registration for the AST [30 TEX. ADMIN. CODE § 334.127(a)(1)(A)].	**Total Assessed:** $8,000 **Total Deferred:** $1,600 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid (Due) to General Revenue:** $275 (remaining $6,125 due in 35 monthly payments of $175 each) **Site Compliance History Classification** ___ **High** ___ **Average** __ **Poor** **Person Compliance History Classification** __ **High** ___ **Average** __ **Poor** **Major Source:** ___ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** The Order will require the Respondent to: a. Within 30 days after the effective date of this Agreed Order: i. Submit an administravively complete Edwards Aquifer Protection Plan, including the associated application fee for the Site; ii. Obtain and submit the 2,000 gallon gasoline AST registration information; and iii. Implement reporting procedures to ensure that notifications are submitted prior to installing a new or replacing an AST. b. Respond completely and adequately to all TCEQ requests for additional information within 30 days of such requests, or by any other deadline specified in writing. c. Within 45 days after the effective date of this Agreed Order: i. Remove all of the contaminated areas resulting from the diesel spill; ii. Transport all contaminated soil to a permitted landfill; iii. Refill the excavated soil areas with clean soil; and iv. Repair or replace the leaking dispenser hose and/or nozzle on the 250 gallon diesel AST. d. Within 60 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a., b., and c.

Additional ID No(s).: PST Registration No. 25612

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision November 6, 2007*

TCEQ

DATES					
Assigned	19-Nov-2007				
PCW	27-Nov-2007	Screening	26-Nov-2007	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Neal's Lodges, Inc.		
Reg. Ent. Ref. No.	RN101882397		
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	34992	No. of Violations	4
Docket No.	2007-1905-MLM-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	J. Craig Fleming
Multi-Media	Edwards Aquifer	EC's Team	Enforcement Team 3
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* **$8,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — **0%** Enhancement — *Subtotals 2, 3, & 7* **$0**

Notes: No enhancement is recommended due to no compliance history.

Culpability — No — **0%** Enhancement — *Subtotal 4* **$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply — **0%** Reduction — *Subtotal 5* **$0**

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes: The Respondent does not meet the good faith criteria.

0% Enhancement* — *Subtotal 6* **$0**

**Capped at the Total EB $ Amount*

Total EB Amounts	$196
Approx. Cost of Compliance	$5,950

SUM OF SUBTOTALS 1-7 — *Final Subtotal* **$8,000**

OTHER FACTORS AS JUSTICE MAY REQUIRE — **0%** — *Adjustment* **$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **$8,000**

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* **$8,000**

DEFERRAL — **20%** Reduction — *Adjustment* **-$1,600**

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY **$6,400**

Screening Date 26-Nov-2007 **Docket No.** 2007-1905-MLM-E **PCW**

Respondent Neal's Lodges, Inc. *Policy Revision 2 (September 2002)*

Case ID No. 34992 *PCW Revision November 6, 2007*

Reg. Ent. Reference No. RN101882397

Media [Statute] Petroleum Storage Tank

Enf. Coordinator J. Craig Fleming

Compliance History Worksheet

>> Compliance History *Site* Enhancement (Subtotal 2)

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

		Please Enter Yes or No	
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No enhancement is recommended due to no compliance history.

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

Screening Date 26-Nov-2007 **Docket No.** 2007-1905-MLM-E **PCW**

Respondent Neal's Lodges, Inc. *Policy Revision 2 (September 2002)*

Case ID No. 34992 *PCW Revision November 6, 2007*

Reg. Ent. Reference No. RN101882397

Media [Statute] Petroleum Storage Tank

Enf. Coordinator J. Craig Fleming

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 213.4(a)(1)

Violation Description Failed to obtain authorization for the installation of an aboveground petroleum storage tank ("AST"). Specifically, a 2,000 gallon gasoline AST was relocated on the Edwards Aquifer Recharge Zone without authorization.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 3 | 76 Number of violation days

mark only one with an x

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $3,000

Three monthly events are recommended from the investigation date of September 12, 2007 to the screening date of November 26, 2007.

Economic Benefit (EB) for this violation

Estimated EB Amount $180

Statutory Limit Test

Violation Final Penalty Total $3,000

This violation Final Assessed Penalty (adjusted for limits) $3,000

Economic Benefit Worksheet

Respondent Neal's Lodges, Inc.
Case ID No. 34992
Reg. Ent. Reference No. RN101882397
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	No commas or $						
Delayed Costs							
Equipment				0.0	$0	$0	$0
Buildings				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Engineering/construction				0.0	$0	$0	$0
Land				0.0	$0	n/a	$0
Record Keeping System				0.0	$0	n/a	$0
Training/Sampling				0.0	$0	n/a	$0
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs				0.0	$0	n/a	$0
Other (as needed)	$5,000	12-Sep-2007	1-Jun-2008	0.7	$180	n/a	$180
Notes for DELAYED costs	Estimated cost to prepare and submit an Edwards Aquifer Protection Plan. The Date Required was the date of the investigation. The Final Date is the expected 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	NA						

Approx. Cost of Compliance $5,000

TOTAL $180

Screening Date 26-Nov-2007 **Docket No.** 2007-1905-MLM-E **PCW**

Respondent Neal's Lodges, Inc. *Policy Revision 2 (September 2002)*

Case ID No. 34992 *PCW Revision November 6, 2007*

Reg. Ent. Reference No. RN101882397

Media [Statute] Petroleum Storage Tank

Enf. Coordinator J. Craig Fleming

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 334.75 and 334.129

Violation Description Failed to cleanup surface spills/overfills from a diesel fuel tank. Specifically, hydrocarbon stains were observed under the dispenser hose of a 250 gallon diesel AST.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			x
Potential			

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment have been exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 1 | 76 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $1,000

One quarterly event is recommended from the investigation date of September 12, 2007 to the screening date of November 26, 2007.

Economic Benefit (EB) for this violation

Estimated EB Amount $9

Statutory Limit Test

Violation Final Penalty Total $1,000

This violation Final Assessed Penalty (adjusted for limits) $1,000

Economic Benefit Worksheet

Respondent Neal's Lodges, Inc.
Case ID No. 34992
Reg. Ent. Reference No. RN101882397
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment	$250	12-Sep-2007	1-Jul-2008	0.8	$1	$13	$14
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	$500	12-Sep-2008	1-Jul-2008	-0.2	-$5	n/a	-$5
Permit Costs				0.0	$0	n/a	$0
Other (as needed)				0.0	$0	n/a	$0
Notes for DELAYED costs	Estimated cost to remove and properly dispose of the contaminated soil at a permitted facility, and repair or replace the leaking dispenser hose and/or nozzle. The Date Required was the date of the investigation. The Final Date is the expected 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	NA						

Approx. Cost of Compliance $750

TOTAL $9

Screening Date 26-Nov-2007 **Docket No.** 2007-1905-MLM-E **PCW**

Respondent Neal's Lodges, Inc. *Policy Revision 2 (September 2002)*

Case ID No. 34992 *PCW Revision November 6, 2007*

Reg. Ent. Reference No. RN101882397

Media [Statute] Petroleum Storage Tank

Enf. Coordinator J. Craig Fleming

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.126(a)(1)(A)

Violation Description Failed to provide notification to the TCEQ at least 30 days prior to relocating the 2,000 gallon gasoline AST.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 1 | 76 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $1,000

One single event is recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $4

Statutory Limit Test

Violation Final Penalty Total $1,000

This violation Final Assessed Penalty (adjusted for limits) $1,000

Economic Benefit Worksheet

Respondent Neal's Lodges, Inc.
Case ID No. 34992
Reg. Ent. Reference No. RN101882397
Media Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	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)	$100	12-Sep-2007	1-Jun-2008	0.7	$4	n/a	$4

Notes for DELAYED costs: Estimated cost to provide notification for the installation of the 2,000 gallon gasoline AST. The Date Required was the date of the investigation. The Final Date is the expected 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: NA

Approx. Cost of Compliance $100 — **TOTAL** $4

Screening Date 26-Nov-2007 **Docket No.** 2007-1905-MLM-E **PCW**

Respondent Neal's Lodges, Inc. *Policy Revision 2 (September 2002)*

Case ID No. 34992 *PCW Revision November 6, 2007*

Reg. Ent. Reference No. RN101882397

Media [Statute] Petroleum Storage Tank

Enf. Coordinator J. Craig Fleming

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 334.127(a)(1)(A)

Violation Description Failed to provide registration information for the AST. Specifically, the 2,000 gallon AST was not registered as required.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 3 | 76 Number of violation days

mark only one with an x

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $3,000

Three monthly events are recommended from the September 12, 2007 investigation date to the screening date of November 26, 2007.

Economic Benefit (EB) for this violation

Estimated EB Amount $4

Statutory Limit Test

Violation Final Penalty Total $3,000

This violation Final Assessed Penalty (adjusted for limits) $3,000

Economic Benefit Worksheet

Respondent Neal's Lodges, Inc.
Case ID No. 34992
Reg. Ent. Reference No. RN101882397
Media Petroleum Storage Tank
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	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)	$100	12-Sep-2007	1-Jun-2008	0.7	$4	n/a	$4
Notes for DELAYED costs	Estimated cost to register the 2,000 gallon gasoline AST. The Date Required was the date of the investigation. The Final Date is the expected 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	NA						

Approx. Cost of Compliance	$100	TOTAL	$4

Compliance History

Customer/Respondent/Owner-Operator:	CN601026370	Neal's Lodges, Inc.	Classification:	Rating:
Regulated Entity:	RN101882397	NEALS LODGES	Classification:	Site Rating:
ID Number(s):	Petroleum Storage Tank Registration No.			25612
Location:	20970 Highway 171 in Concan, Uvalde County, Texas			
TCEQ Region:	REGION 13 - SAN ANTONIO			
Date Compliance History Prepared:	November 19, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	November 19, 2002 to November 19, 2007			

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

Name: J. Craig Fleming Phone: (512) 239-5806

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

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

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

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	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
NEAL'S LODGES, INC.	§	
RN101882397	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2007-1905-MLM-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Neal's Lodges, Inc. ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent, appear before the Commission and together stipulate that:

1. The Respondent owns and operates a resort with an aboveground storage tank ("AST") at 20971 Highway 171 in Concan, Uvalde County, Texas (the "Site").

2. This Site is regulated under the Edwards Aquifer rules and the Respondent's one above ground storage tank ("AST") is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.

3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.

4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about November 17, 2007.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Eight Thousand Dollars ($8,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent

has paid Two Hundred Seventy-Five Dollars ($275) of the administrative penalty and One Thousand Six Hundred Dollars ($1,600) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Six Thousand One Hundred Twenty-Five Dollars ($6,125) of the administrative penalty shall be payable in 35 monthly payments of One Hundred Seventy-Five Dollars ($175) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

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 the Respondent 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 the Respondent 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

As owner and operator of the Site, the Respondent is alleged to have:

1. Failed to obtain authorization for the installation of an AST, in violation of 30 TEX. ADMIN. CODE § 213.4(a)(1), as documented during an investigation conducted on September 12, 2007. Specifically, a 2,000 gallon gasoline AST was relocated on the Edwards Aquifer Recharge Zone without authorization.

2. Failed to cleanup spills/overfills from a diesel fuel tank, in violation of 30 TEX. ADMIN. CODE §§ 334.75 and 334.129, as documented during an investigation conducted on September 12, 2007.

Specifically, hydrocarbon stains were observed under the dispenser hose of a 250 gallon diesel AST.

3. Failed to provide notification to the TCEQ at least 30 days prior to relocating the 2,000 gallon AST, in violation of 30 TEX. ADMIN. CODE § 334.126(a)(1)(A), as documented during an investigation conducted on September 12, 2007.

4. Failed to provide registration for the AST, in violation of 30 TEX. ADMIN. CODE § 334.127(a)(1)(A), as documented during an investigation conducted on September 12, 2007.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent'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 requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Neal's Lodges, Inc., Docket No. 2007-1905-MLM-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. It is further ordered that the Respondent shall undertake the following technical requirements:

   a. Within 30 days after the effective date of this Agreed Order:

      i. Submit an administravively complete Edwards Aquifer Protection Plan, including the associated application fee for the Site to:

         Edwards Aquifer Protection Program
         San Antonio Regional Office
         Texas Commission on Environmental Quality
         14250 Judson Road
         San Antonio, Texas 78233-4480

      ii. Obtain and submit the 2,000 gallon gasoline AST registration information, in accordance with 30 TEX. ADMIN. CODE § 334.127; and

iii. Implement reporting procedures to ensure that notifications are submitted prior to installing a new or replacing an AST, in accordance with 30 TEX. ADMIN. CODE § 334.126.

b. Respond completely and adequately to all TCEQ requests for additional information within 30 days of such requests, or by any other deadline specified in writing.

c. Within 45 days after the effective date of this Agreed Order:

i. Remove all of the contaminated areas resulting from the diesel spill;

ii. Transport all contaminated soil to a permitted landfill;

iii. Refill the excavated soil areas with clean soil; and

iv. Repair or replace the leaking dispenser hose and/or nozzle on the 250 gallon diesel AST.

d. Within 60 days after the effective date of this Agreed Order, 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. 2.a., 2.b., and 2.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 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:

Petroleum Storage Tank Section, Manager
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Road
San Antonio, Texas 78233-4480

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.

4. If the Respondent 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, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent 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 the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent 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 the Respondent 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), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, 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

_____ 7/1/2008
For the Executive Director Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity 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 failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- 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;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Charles Rodger Roosa 3/12/08
Signature Date

CHARLES Rodger ROOSA Owner - Manager
Name (Printed or typed) Title
Authorized Representative of
Neal's Lodges, Inc.

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.