

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-1907-PST-E TCEQ ID: RN102254414 CASE NO.: 35024
RESPONDENT NAME: STEVEN SWITZER DBA OUR C STORE 502

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input checked="" type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 640 North Story Road, Irving, Dallas County

TYPE OF OPERATION: Convenience store with retail sales of gasoline

SMALL BUSINESS: 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 December 29, 2008. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Benjamin O. Thompson, Litigation Division, MC 175, (512) 239-1297

Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Ms. Judy Kluge, Waste Enforcement Section, MC R-4, (817) 588-5825

TCEQ Regional Contact: Mr. Sam Barrett, DFW Regional Office, MC R-4, (817) 588-5903

Respondent: Mr. Steven Switzer, Owner, Our C Store 502, 640 North Story Road, Irving, Texas 75061

Respondent's Attorney: Not represented by counsel on this enforcement matter.

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: October 19, 2007</p> <p>Date of NOE Relating to this Case: November 26, 2007</p> <p>Background Facts: The EDRP was filed on April 15, 2008, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDRP on April 17, 2008, as evidenced by the signature on the card. The Respondent has failed to answer the EDRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: The Respondent has not come into compliance.</p> <p>PST:</p> <p>1. Failed to maintain Stage II records on-site at the Station ordinarily manned during business hours, and make them immediately available for review upon request [30 TEX. ADMIN. CODE § 115.246(7)(A) and TEX. HEALTH & SAFETY Code § 382.085(b)].</p> <p>2. Failed to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifold and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY Code § 382.085(b)].</p> <p>3. Failed to maintain the Stage II Vapor Recovery System in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board</p>	<p>Total Assessed: \$18,125</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$18,125</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>Ordering Provisions:</p> <p>Immediately, the Respondent's UST delivery certificate is revoked. The Respondent may submit an application for a new delivery certificate only after the Respondent has complied with all of the requirements of this Order.</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Immediately, take the following steps to shut down operations of the non-compliant UST Systems at the Station: <ol style="list-style-type: none"> a. Cease dispensing fuel from the USTs; b. Cease receiving deliveries of regulated substances to the USTs; c. Padlock the dispensers; d. Empty the UST Systems; and e. Temporarily remove the UST Systems from Service. 2. Within 10 days, send its UST delivery certificate to TCEQ. 3. Within 15 days, submit a detailed written report documenting the steps taken to comply with Ordering Provision Nos. 1 and 2. 4. If elected to permanently remove from service any UST systems at the Station: <ol style="list-style-type: none"> a. Immediately, permanently remove from service any UST systems; and b. Within 15 days, submit a written report to demonstrate compliance Ordering Provision No. 4.a. 5. Prior to resuming service: <ol style="list-style-type: none"> a. Install and implement a release detection method; b. Obtain acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and c. Conduct testing of the cathodic protection system.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Executive Order, and free of defects that would impair the effectiveness of the system including, but not limited to absence or disconnection of any component that is a part of the approved system, and failed to ensure that no person shall tamper in a manner that would impair the operation or effectiveness of the systems [30 TEX. ADMIN. CODE § 115.242(3) and (8) and TEX. HEALTH & SAFETY Code § 382.085(b)].</p> <p>4. Failed to have the required UST records maintained, readily accessible and available for inspection [30 TEX. ADMIN. CODE § 334.10(b)].</p> <p>5. Failed to ensure that all USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring); failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons; and failed to record inventory volume measurements for regulated substance inputs, withdrawals, and the amount remaining in the tank at the end of each operating day [30 TEX. ADMIN. CODE § 334.50(b)(1)(A), (d)(1)(B)(ii), and (d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>6. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].</p> <p>7. Failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years [30 TEX. ADMIN. CODE § 334.49(c)(4) and TEX. WATER CODE § 26.3475(d)].</p>		<p>6. Prior to receiving deliveries of any regulated substance:</p> <ul style="list-style-type: none"> a. Begin maintaining all Stage II vapor recovery records at the Station; b. Begin maintaining all UST records; c. Conduct the required annual and triennial testing of the Stage II equipment; d. Begin maintaining the Stage II vapor recovery system in proper operating condition including but not limited to removing the metal nut and installing a dust cap on the regular unleaded tank; e. Obtain a UST delivery certificate from TCEQ. <p>7. Within 10 days after resuming service, submit written certification to demonstrate compliance with Ordering Provision Nos. 5 and 6.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 6, 2007

DATES	Assigned	26-Nov-2007	Screening	28-Nov-2007	EPA Due	
	PCW	17-Feb-2008				

RESPONDENT/FACILITY INFORMATION			
Respondent	Steven Switzer dba Our C Store 502		
Reg. Ent. Ref. No.	RN102254414		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	35024	No. of Violations	7	
Docket No.	2007-1907-PST-E	Order Type	1660	
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Judy Kluge	
Multi-Media		EC's Team	Enforcement Team 6	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$13,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	5% Enhancement	Subtotals 2, 3, & 7	\$675
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Notes	Enhancement for one prior NOV with same or similar violations.
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Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)
Notes	The Respondent does not meet the good faith criteria.	

Total EB Amounts	\$4,457	0% Enhancement*	Subtotal 6	\$0
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Approx. Cost of Compliance \$6,550 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$14,175
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OTHER FACTORS AS JUSTICE MAY REQUIRE	28%	Adjustment	\$3,950
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Recommended enhancement to capture the avoided cost associated with the violations.
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Final Penalty Amount	\$18,125
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$18,125
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DEFERRAL	0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$18,125
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Screening Date 28-Nov-2007	Docket No. 2007-1907-PST-E	PCW
Respondent Steven Switzer dba Our C Store 502		<small>Policy Revision 2 (September 2002)</small>
Case ID No. 35024		<small>PCW Revision November 6, 2007</small>
Reg. Ent. Reference No. RN102254414		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Judy Kluge		

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

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

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one prior NOV with same or similar violations.

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

Screening Date	28-Nov-2007	Docket No.	2007-1907-PST-E	PCW
Respondent	Steven Switzer dba Our C Store 502			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	35024			<i>PCW Revision November 6, 2007</i>
Reg. Ent. Reference No.	RN102254414			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Judy Kluge			
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 115.246(7)(A) and Tex. Health & Safety Code § 382.085(b)			
Violation Description	Failed to maintain Stage II records on-site at the Station ordinarily manned during business hours, and make them immediately available for review upon request.			
		Base Penalty	\$10,000	

>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual				Percent <input type="text" value="0%"/>
Potential					

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
		x			Percent <input type="text" value="10%"/>
Matrix Notes	100% of the rule requirement was not met.				

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
single event	x	

Violation Base Penalty

One single event is recommended based on documentation of the violation during the October 19, 2007 investigation.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$19"/>	Violation Final Penalty Total <input type="text" value="\$1,343"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,343"/>	

Economic Benefit Worksheet

Respondent: Steven Switzer dba Our C Store 502
Case ID No.: 35024
Reg. Ent. Reference No.: RN102254414
Media: Petroleum Storage Tank
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$500	19-Oct-2007	28-Jul-2008	0.8	\$19	n/a	\$19
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 establish a record keeping system at the Station. The date required is the investigation date and the final date is the expected date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$500

TOTAL

\$19

Screening Date	28-Nov-2007	Docket No.	2007-1907-PST-E	PCW
Respondent	Steven Switzer dba Our C Store 502			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	35024			<i>PCW Revision November 6, 2007</i>
Reg. Ent. Reference No.	RN102254414			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Judy Kluge			
Violation Number	2			
Rule Cite(s)	30 Tex. Admin. Code § 115.245(2) and Tex. Health & Safety Code § 382.085(b)			
Violation Description	Failed to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first. Specifically, the Stage II annual compliance testing had not been conducted.			
	Base Penalty	\$10,000		

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
					Percent <input type="text" value="0%"/>
Matrix Notes	Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.				
					Adjustment <input type="text" value="\$7,500"/>

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	x
single event	<input type="text"/>	

Violation Base Penalty

One annual event is recommended for the 12 month period preceding the October 19, 2007 investigation.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$1,096"/>	Violation Final Penalty Total <input type="text" value="\$3,356"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$3,356"/>	

Economic Benefit Worksheet

Respondent: Steven Switzer dba Our C Store 502
Case ID No.: 35024
Reg. Ent. Reference No.: RN102254414
Media: Petroleum Storage Tank
Violation No.: 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

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
Annual Testing	\$1,000	19-Oct-2006	19-Oct-2007	1.9	\$96	\$1,000	\$1,096
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost for annual testing to verify proper operation of the Stage II equipment. The date required is the one year prior to the investigation date and the final date is the investigation date.

Approx. Cost of Compliance

\$1,000

TOTAL

\$1,096

Screening Date	28-Nov-2007	Docket No.	2007-1907-PST-E	PCW
Respondent	Steven Switzer dba Our C Store 502	Policy Revision 2 (September 2002)		
Case ID No.	35024	PCW Revision November 6, 2007		
Reg. Ent. Reference No.	RN102254414			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Judy Kluge			

Violation Number

Rule Cite(s)
 30 Tex. Admin. Code § 115.242(3) and (8) and Tex. Health & Safety Code § 382.085(b)

Violation Description
 Failed to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s), and free of defects that would impair the effectiveness of the system including, but not limited to absence or disconnection of any component that is a part of the approved system. Specifically, the Stage I drybreak dustcap was missing on the regular unleaded tank. Also, failed to ensure that no person shall tamper in a manner that would impair the operation or effectiveness of the systems. Specifically, the Stage I drybreak on the regular unleaded UST was wedged open with a metal nut.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>
				Percent <input type="text" value="10%"/>

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>

Matrix Notes
 Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an 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 based on documentation of the violation during the October 19, 2007 investigation to the November 28, 2007 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 Steven Switzer dba Our C Store 502
Case ID No. 35024
Reg. Ent. Reference No. RN102254414
Media 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
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No commas or \$

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment	\$500	19-Oct-2007	28-Aug-2008	0.9	\$1	\$29	\$30
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

Estimated cost to properly operate and maintain the Stage II vapor recovery system as specified including installing/repairing the Stage I drybreak cap. The date required is the investigation date and the final date is the expected date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$500

TOTAL

\$30

Screening Date	28-Nov-2007	Docket No.	2007-1907-PST-E	PCW
Respondent	Steven Switzer dba Our C Store 502			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	35024			<i>PCW Revision November 6, 2007</i>
Reg. Ent. Reference No.	RN102254414			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Judy Kluge			
Violation Number	4			
Rule Cite(s)	30 Tex. Admin. Code § 334.10(b)			
Violation Description	Failed to have the required UST records maintained, readily accessible, and available for the inspection upon request by agency personnel.			
Base Penalty	\$10,000			

>> Environmental, Property and Human Health Matrix

OR	Harm				Percent
	Release	Major	Moderate	Minor	
	Actual				
Potential				0%	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
		X			
Matrix Notes	100% of the rule requirement was not met.				

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
single event	X	

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the October 19, 2007 investigation.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$4"/>	Violation Final Penalty Total <input type="text" value="\$1,343"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,343"/>	

Economic Benefit Worksheet

Respondent Steven Switzer dba Our C Store 502

Case ID No. 35024

Reg. Ent. Reference No. RN102254414

Media 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
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Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$100	19-Oct-2007	28-Jul-2008	0.8	\$4	n/a	\$4
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to maintain UST records. The date required is the investigation date and 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

Approx. Cost of Compliance

\$100

TOTAL

\$4

Screening Date	28-Nov-2007	Docket No.	2007-1907-PST-E	PCW
Respondent	Steven Switzer dba Our C Store 502			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	35024			<i>PCW Revision November 6, 2007</i>
Reg. Ent. Reference No.	RN102254414			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Judy Kluge			

Violation Number	5
Rule Cite(s)	30 Tex. Admin. Code § 334.50(b)(1)(A), (d)(1)(B)(ii), and (d)(1)(B)(iii)(I) and Tex. Water Code § 26.3475(c)(1)
Violation Description	Failed to ensure that all USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring). Specifically, the automatic tank gauge was not being put into test mode monthly. Also, failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons. Also, failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day.
Base Penalty	\$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification			
	Major	Moderate	Minor	
				Percent 0%
Matrix Notes	Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.			

Adjustment	\$7,500
	\$2,500

Violation Events

Number of Violation Events	1	Number of violation days	40
<i>mark only one with an x</i>	daily		Violation Base Penalty \$2,500
	monthly		
	quarterly	x	
	semiannual		
	annual		
	single event		

One quarterly event is recommended based on documentation of the violation during October 19, 2007 investigation to the November 28, 2007 screening date.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount \$65	Violation Final Penalty Total \$3,356
This violation Final Assessed Penalty (adjusted for limits) \$3,356	

Economic Benefit Worksheet

Respondent: Steven Switzer dba Our C Store 502

Case ID No.: 35024

Reg. Ent. Reference No.: RN102254414

Media: 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
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No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$1,500	19-Oct-2007	28-Aug-2008	0.9	\$65	n/a	\$65
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
 The estimated cost of monitoring all USTs for releases, to include recording daily inventory volume measurements, and monthly reconciliation of inventory control records. The date required is the investigation date and the final date is date 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

Approx. Cost of Compliance	\$1,500	TOTAL	\$65
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Screening Date	28-Nov-2007	Docket No.	2007-1907-PST-E	PCW
Respondent	Steven Switzer dba Our C Store 502			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	35024			<i>PCW Revision November 6, 2007</i>
Reg. Ent. Reference No.	RN102254414			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Judy Kluge			
Violation Number	6			
Rule Cite(s)	30 Tex. Admin. Code § 37.815(a) and (b)			
Violation Description	Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.			
		Base Penalty	\$10,000	

>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual				Percent <input type="text" value="0%"/>
Potential					

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
		x			Percent <input type="text" value="10%"/>
Matrix Notes	100% of the rule requirement was not met.				
			Adjustment	\$9,000	

\$1,000

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	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

Three single events are recommended for the three USTs at the Station.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$2,048"/>	Violation Final Penalty Total <input type="text" value="\$4,028"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$4,028"/>	

Economic Benefit Worksheet

Respondent Steven Switzer dba Our C Store 502
Case ID No. 35024
Reg. Ent. Reference No. RN102254414
Media Violation No. Petroleum Storage Tank
 6

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				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]	\$1,950	19-Oct-2006	19-Oct-2007	1.0	\$98	\$1,950	\$2,048
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 three petroleum USTs (at \$650 per tank). The date required is twelve months preceding the date of the investigation and the final date is the investigation date.

Approx. Cost of Compliance

\$1,950

TOTAL

\$2,048

Screening Date 28-Nov-2007	Docket No. 2007-1907-PST-E	PCW
Respondent Steven Switzer dba Our C Store 502	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 35024	<i>PCW Revision November 6, 2007</i>	
Reg. Ent. Reference No. RN102254414		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Judy Kluge		
Violation Number <input type="text" value="7"/>		
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 334.49(c)(4) and Tex. Water Code § 26.3475(d)"/>	
Violation Description	<input type="text" value="Failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years. Specifically, the triennial test had not been conducted."/>	
Base Penalty		<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

OR	Harm				
		Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	
				Percent <input type="text" value="25%"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
					Percent <input type="text" value="0%"/>

Matrix Notes

Adjustment

Violation Events

	<input type="text" value="1"/>		<input type="text" value="1095"/>	Number of violation days												
<i>mark only one with an x</i>	<table style="width:100%; border-collapse: collapse;"> <tr><td style="padding: 2px;">daily</td><td style="border: 1px solid black; width: 40px;"><input type="text"/></td></tr> <tr><td style="padding: 2px;">monthly</td><td style="border: 1px solid black;"><input type="text"/></td></tr> <tr><td style="padding: 2px;">quarterly</td><td style="border: 1px solid black;"><input type="text"/></td></tr> <tr><td style="padding: 2px;">semiannual</td><td style="border: 1px solid black;"><input type="text"/></td></tr> <tr><td style="padding: 2px;">annual</td><td style="border: 1px solid black;"><input type="text"/></td></tr> <tr><td style="padding: 2px;">single event</td><td style="border: 1px solid black;"><input type="text" value="x"/></td></tr> </table>	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" value="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" value="x"/>															
				Violation Base Penalty <input type="text" value="\$2,500"/>												

One single event is recommended for the three-year period preceding the October 19, 2007 investigation.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$1,196"/>	Violation Final Penalty Total <input type="text" value="\$3,356"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$3,356"/>	

Economic Benefit Worksheet

Respondent: Steven Switzer dba Our C Store 502

Case ID No.: 35024

Reg. Ent. Reference No.: RN102254414

Media: Petroleum Storage Tank

Violation No.: 7

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

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]	\$1,000	19-Oct-2004	19-Oct-2007	3.9	\$196	\$1,000	\$1,196
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Avoided cost for completing the triennial test. The date required is three years before the investigation date and the final date is the investigation date.

Approx. Cost of Compliance \$1,000

TOTAL \$1,196

Compliance History

Customer/Respondent/Owner-Operator:	CN603272097 Steven Switzer	Classification: AVERAGE	Rating: 10.00
Regulated Entity:	RN102254414 OUR C STORE 502	Classification: AVERAGE	Site Rating: 10.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		17557
	AIR NEW SOURCE PERMITS REGISTRATION		70166
Location:	640 N STORY RD, IRVING, TX, 75061	Rating Date: September 01 07 Repeat Violator: NO	
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	November 28, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	November 27, 2002 to November 27, 2007		

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

Name: Judy Kluge Phone: 817-588-5825

Site Compliance History Components

- | | |
|--|---|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | Yes |
| 3. If Yes, who is the current owner? | <u>Switzer LP 1</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>Switzer Petroleum Products, Inc.</u> |
| 5. When did the change(s) in ownership occur? | <u>12/01/2004</u> |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 - 1 04/24/2007 (555126)
 - 2 11/19/2007 (598485)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - Date: 04/24/2007 (555126)
 - Self Report? NO Classification: Minor
 - Citation: 30 TAC Chapter 115, SubChapter C 115.246(7)(A)
 - Description: Failure to maintain records on-site at facilities ordinarily manned during business hours, and made immediately available for review upon request by authorized representatives of the Texas Commission on Environmental Quality (TCEQ).
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 115, SubChapter C 115.244(1)
 - Description: Failure to conduct daily inspections of the Stage II vapor recovery system for the defects specified in §115.242(3)(A) - (F), (H), and (K).
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(K)
 - Description: Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s), and free of defects that would impair the effectiveness of the system, including a system monitor or printer that is malfunctioning or out of paper.
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)
 - Description: Failure to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification.
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 115, SubChapter C 115.242(1)(C)

Description: Failure to ensure that all Stage II vapor recovery systems are onboard refueling vapor recovery (ORVR) compatible.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(A)

Description: Failure to provide and maintain the Stage II vapor recovery system in proper operating condition, as specified by California Air Resources Board (CARB) Executive Order(s), and free of defects that would impair the effectiveness of the system, including the absence or disconnection of any component that is a part of the

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(E)

Description: Failure to maintain the stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resource Board (CARB) Executive Order(s), and free of defects that would impair the effectiveness of the system, including for booted nozzles in vacuum assist type

Self Report? NO Classification: Moderate

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

Description: Failure to have required UST records which are maintained readily accessible and available for inspection upon request by Commission personnel.

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
STEVEN SWITZER DBA OUR C
STORE 502,
RN102254414**

§
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**BEFORE THE

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**DEFAULT AND SHUTDOWN ORDER
DOCKET NO. 2007-1907-PST-E**

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the TCEQ, which requests appropriate relief, including the revocation of the respondent's underground storage tank delivery certificate, the imposition of an administrative penalty and corrective action of the respondent. The Commission also considered the motion of the Executive Director requesting entry of an Order requiring the respondent to shutdown or remove from service the Underground Storage Tanks ("USTs") at the respondent's Station located at 640 North Story Road, Irving, Dallas County, Texas. The respondent made the subject of this Order is Steven Switzer dba Our C Store 502 ("Mr. Switzer").

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

FINDINGS OF FACT

1. Mr. Switzer owns and/or operates a convenience store with retail sales of gasoline located at 640 North Story Road, Irving, Dallas County, Texas (the "Station").
2. Mr. Switzer's three USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Switzer's USTs contain a regulated substance as defined in the rules of the Commission and consist of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. During an inspection on October 19, 2007, a TCEQ Houston Regional Office investigator documented that Mr. Switzer:

- a. Failed to maintain Stage II records on-site at the Station ordinarily manned during business hours, and make them immediately available for review upon request.
- b. Failed to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first. Specifically, the Stage II annual compliance testing had not been conducted.
- c. Failed to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system including, but not limited to absence or disconnection of any component that is a part of the approved system. Specifically, the Stage I drybreak dustcap was missing on the regular unleaded tank. Also, failed to ensure that no person shall tamper in a manner that would impair the operation or effectiveness of the systems. Specifically, the Stage I drybreak on the regular unleaded UST was wedged open with a metal nut.
- d. Failed to have the required UST records maintained, readily accessible, and available for inspection upon request by TCEQ personnel.
- e. Failed to ensure that all USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring). Specifically, the automatic tank gauge was not being put into test mode monthly. Also, failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons. Also, failed to record inventory volume measurements for regulated substance inputs, withdrawals, and the amount remaining in the tank at the end of each operating day.
- f. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.
- g. Failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years. Specifically, the triennial test had not been conducted.

4. In a letter dated November 26, 2007, the TCEQ Enforcement Division mailed Mr. Switzer a letter that included the alleged violations and notice that the TCEQ has the authority to order the shutdown of UST facilities for violations of release detection, spill and overfill, or corrosion protection.
5. Mr. Switzer received notice of the violation on or about December 1, 2007.
6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Steven Switzer dba Our C Store 502" (the "EDPRP") in the TCEQ Chief Clerk's office on April 15, 2008.
7. By letter dated April 15, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Switzer with notice of the EDPRP. According to the return receipt "green card," Mr. Switzer received notice of the EDPRP on April 17, 2008, as evidenced by the signature on the card.
8. By letter dated October 22, 2008, the TCEQ provided Mr. Switzer with notice of the TCEQ's intent to order Mr. Switzer's USTs shutdown if the violations pertaining to release detection, financial assurance, and corrosion protection were not corrected within 30 days of Mr. Switzer's receipt of the letter.
9. More than 20 days have elapsed since Mr. Switzer received notice of the EDPRP provided by the Executive Director. Mr. Switzer failed to file an answer to the EDPRP failed to request a hearing, and failed to schedule a settlement conference.
10. As of the date of entry of this Order, Mr. Switzer has not corrected the violations noted during the October 19, 2007 inspection.
11. The USTs at the Station which do not have a release detection system as required by 30 TEX. ADMIN. CODE § 334.50 and TEX. WATER CODE § 26.3475 may be releasing petroleum products to the environment without the knowledge of the tank owner or operator. Therefore, conditions at the Station constitute an immediate peril to public health, safety and welfare.

CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact Nos. 1 and 2, Mr. Switzer is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Switzer failed to maintain Stage II records on-site at the Station ordinarily manned during business hours, and make them immediately available for review upon request, in violation of 30 TEX. ADMIN. CODE § 115.246(7)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b).
3. As evidenced by Finding of Fact No. 3.b., Mr. Switzer failed to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first, in violation of 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b).
4. As evidenced by Finding of Fact No. 3.c., Mr. Switzer failed to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system including, but not limited to absence or disconnection of any component that is a part of the approved system, and failed to ensure that no person shall tamper in a manner that would impair the operation or effectiveness of the systems, in violation of 30 TEX. ADMIN. CODE § 115.242(3) and (8) and TEX. HEALTH & SAFETY CODE § 382.085(b).
5. As evidenced by Finding of Fact No. 3.d., Mr. Switzer failed to have the required UST records maintained, readily accessible, and available for the inspection upon request by TCEQ personnel, in violation of 30 TEX. ADMIN. CODE § 334.10(b).
6. As evidenced by Finding of Fact No. 3.e., Mr. Switzer failed to ensure that all USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring); failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons; and failed to record inventory volume measurements for regulated substance inputs, withdrawals, and the amount remaining in the tank at the end of each operating day, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A), (d)(1)(B)(ii), and (d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1).

7. As evidenced by Finding of Fact No. 3.f., Mr. Switzer failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b).
8. As evidenced by Finding of Fact No. 3.g., Mr. Switzer failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years, in violation of 30 TEX. ADMIN. CODE § 334.49(c)(4) and TEX. WATER CODE § 26.3475(d).
9. As evidenced by Findings of Fact Nos. 6 and 7, the Executive Director has timely served Mr. Switzer with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
10. As evidenced by Finding of Fact No. 9, Mr. Switzer 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 Mr. Switzer and assess the penalty recommended by the Executive Director.
11. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Switzer 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.
12. An administrative penalty in the amount of eighteen thousand one hundred twenty-five dollars (\$18,125.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
13. As evidence by Findings of Fact Nos. 3, 4, 5, 8, and 10, Mr. Switzer failed to correct documented violations of Commission requirements within 30 days after Mr. Switzer received notice of the violations and notice of the Executive Director's intent to shut down the Station.
14. TEX. WATER CODE §§ 26.3475(e) and 26.352(i) authorize the Commission to order a UST owner or operator to shut down a UST system if, within 30 days after receiving notice of the violations, the owner or operator fails to correct violations of Commission regulatory requirements relating to release detection for tanks or piping; spill and overflow prevention for tanks; corrosion protection for tanks or piping; or financial responsibility.

15. 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.
16. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Mr. Switzer' UST delivery certificate if the Commission finds that good cause exists.
17. Good cause for revocation of Mr. Switzer' UST delivery certificate exists as justified by Findings of Fact Nos. 3, 6, 7, and 9, and Conclusions of Law Nos. 2 through 10.
18. 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.
19. As evidence by Finding of Fact Nos. 10 and 11, current conditions at the Station constitute an imminent peril to public health, safety and welfare. Therefore, pursuant to the Administrative Procedure Act, TEX. GOV'T CODE § 2001.144(a)(3), this Order is final and effective on the date rendered.

ORDERING PROVISIONS

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

1. Mr. Switzer is assessed an administrative penalty in the amount of eighteen thousand one hundred twenty-five dollars (\$18,125.00) for violations of TEX. HEALTH & SAFETY CODE ch. 382, TEX. WATER CODE ch. 26, and rules of the TCEQ. The payment of this administrative penalty and Mr. Switzer'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: Steven Switzer dba Our C Store 502; Docket No. 2007-1907-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. Immediately upon the effective date of this Order, Mr. Switzer shall take the following steps to shut down operations of the non-compliant UST systems at the Station:
 - a. Cease dispensing fuel from the USTs;
 - b. Cease receiving deliveries of regulated substances to the USTs;
 - c. Padlock the dispensers;
 - d. Empty the UST systems of all regulated substances in accordance with 30 TEX. ADMIN. CODE § 334.54(d); and
 - e. Temporarily remove the UST systems from Service in accordance with 30 TEX. ADMIN. CODE § 334.54.
3. Immediately upon the effective date of this Order, Mr. Switzer's UST delivery certificate is revoked. Mr. Switzer may submit an application for a new delivery certificate only after Mr. Switzer has complied with all of the requirements of this Order.
4. Within 10 days after the effective date of this Order, Mr. Switzer shall send his UST delivery certificate to:

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

5. Within 15 days after the effective date of this Order, Mr. Switzer shall submit to the Executive Director a detailed written report, documenting the steps that he has taken to comply with Ordering Provision Nos. 2 and 4. Mr. Switzer shall submit the report to:

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

and

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

6. If Mr. Switzer elects to permanently remove from service any UST system at the Station, Mr. Switzer shall immediately and permanently remove the UST system at the Station in accordance with 30 TEX. ADMIN. CODE § 334.55. If Mr. Switzer permanently removes any UST system from service, Mr. Switzer shall, within 15 days after the effective date of this Order, submit to the commission a written report documenting compliance with 30 TEX. ADMIN. CODE § 334.55. Mr. Switzer shall submit the report to:

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

7. Prior to resuming service of the USTs, Mr. Switzer shall:
- a. Install and implement a release detection method for all USTs at the Station, and begin conducting proper inventory control procedures, in accordance with 30 TEX. ADMIN. CODE § 334.50;
 - b. Obtain acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in accordance with 30 TEX. ADMIN. CODE § 37.815; and
 - c. Conduct testing of the cathodic protection system, in accordance with 30 TEX. ADMIN. CODE § 334.49
8. Prior to receiving deliveries of any regulated substance, Mr. Switzer shall:
- a. Begin maintaining all Stage II vapor recovery records at the Station, in accordance with 30 TEX. ADMIN. CODE § 115.246
 - b. Begin maintaining all UST records, in accordance with 30 TEX. ADMIN. CODE § 334.10
 - c. Conduct the required annual and triennial testing of the Stage II equipment, in accordance with 30 TEX. ADMIN. CODE § 115.245;

- d. Begin maintaining the Stage II vapor recovery system in proper operating condition including but not limited to removing the metal nut and installing a dust cap on the regular unleaded tank, in accordance with 30 TEX. ADMIN. CODE § 115.242;
 - e. Obtain a UST delivery certificate from the TCEQ.
9. Within 10 days after resuming service of the USTs, Mr. Switzer shall submit written certification as described below, and include detailed supporting documentation including photographs, receipt, and/or other records to demonstrate compliance with Ordering Provisions No. 7 and 8.

The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

The certification shall be submitted to:

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

and

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

10. Upon receiving a new UST delivery certificate, Mr. Switzer shall post the delivery certificate in a location where it is clearly visible at all times, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii).
11. All relief not expressly granted in this Order is denied.
12. The provisions of this Order shall apply to and be binding upon Mr. Switzer. Mr. Switzer is ordered to give notice of this Order to personnel who maintain day-to-day control over the Station operations referenced in this Order.
13. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Switzer if the Executive Director determines that Mr. Switzer has not complied with one or more of the terms or conditions in this Order.
14. 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.
15. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order the Order is rendered, as provided by TEX. GOV'T CODE § 2001.144(a)(3).

Steven Switzer dba Our C Store 502
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF BENJAMIN O. THOMPSON

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

"My name is Benjamin O. Thompson. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

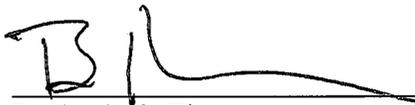
On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Steven Switzer dba Our C Store 502" (the "EDPRP") was filed with the Office of the Chief Clerk on April 15, 2008.

The EDPRP was sent to Mr. Switzer at its last known address on April 15, 2008 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Mr. Switzer received notice of the EDPRP on April 17, 2008, as evidenced by the signature on the card.

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

By letter dated October 22, 2008, sent via first class mail and certified mail, return receipt requested article no. 91 7108 2133 3935 2303 6711, I provided Steven Switzer with notice of the TCEQ's intent to order the USTs at the Facility shut down and removed from service if the violations pertaining to release detection, spill and overfill protection were not corrected within 30 days of Steven Switzer's receipt of the letter.

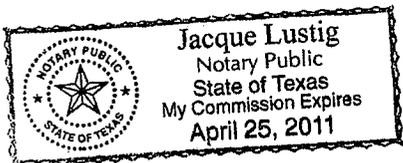
As of the date of this affidavit, I am not aware of any evidence that indicates that Steven Switzer has corrected the violations noted during the October 19, 2007, investigation."

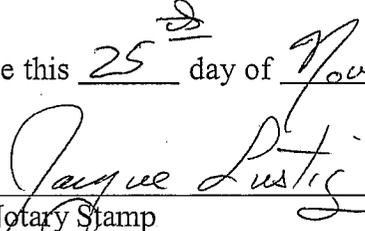


Benjamin O. Thompson
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Benjamin O. Thompson, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 25th day of November A.D., 2008.





Notary Stamp