

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2008-1444-PST-E TCEQ ID: RN102058997 CASE NO.: 36489
RESPONDENT NAME: BILL BEARDEN DBA OVILLA ROAD CITGO

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATIONS OCCURRED: 907 Lark Lane, Oak Leaf, Ellis County</p> <p>TYPE OF OPERATION: out-of-service convenience store</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired November 9, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Mr. Phillip M. Goodwin, P.G., Litigation Division, MC 175, (512) 239-0675 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. Bill Bearden, Owner, Ovilla Road Citgo, 907 Lark Lane, Oak Leaf, Texas 75154 Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: June 23, 2008 (investigation) August 14, 2008 (record review)</p> <p>Date of NOE Relating to this Case: October 20, 2008</p> <p>Background Facts: The EDRP was filed on January 12, 2009. The Respondent filed an answer and the case was referred to SOAH. The Respondent failed to appear at the Evidentiary Hearing, and the matter was remanded to the Executive Director for default proceedings.</p> <p>Current Compliance Status: Not yet in compliance.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to report a suspected release within 24 hours of discovery [30 TEX. ADMIN. CODE § 334.72]. Failed to investigate a suspected release within 30 days of discovery [30 TEX. ADMIN. CODE § 334.74(2)(A)]. Failed to ensure that the corrosion protection system is operating and maintained in a manner that will ensure that corrosion protection will be continuously provided to all underground components of an UST system; failed to have the corrosion protection system inspected and tested for operability and adequacy of protection at least once every three years [30 TEX. ADMIN. CODE § 334.49(a)(2), 334.49(c)(4)(C), and 334.54(c)(1) and TEX. WATER CODE § 26.3475(d)]. 	<p>Total Assessed: \$10,221</p> <p>Total Deferred: \$0</p> <p><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: \$10,221</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Within 30 days: <ol style="list-style-type: none"> Ensure that corrosion protection is in place for all components of the UST system and that power is turned on to the rectifier box; and Ensure that the corrosion protection system is inspected and tested every three years; and Establish and implement a process for reporting a suspected release. Within 60 days, conduct an investigation of the suspected release and implement appropriate corrective measures. Within 75 days, submit a detailed written report documenting compliance with these Ordering Provisions.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

TCEQ

DATES	Assigned	4-Sep-2008	Screening	8-Sep-2008	EPA Due	
	PCW	19-Dec-2008				

RESPONDENT/FACILITY INFORMATION			
Respondent	Bill Bearden dba Ovilla Road Citgo		
Reg. Ent. Ref. No.	RN102058997		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36489	No. of Violations	3
Docket No.	2008-1444-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Judy Kluge
		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 **\$8,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 5.0% Enhancement Subtotals 2, 3, & 7 **\$425**

Notes: Enhancement for one prior NOV with same or similar violations.

Culpability No 0.0% Enhancement Subtotal 4 **\$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments Subtotal 5 **\$0**

Economic Benefit 0.0% Enhancement* Subtotal 6 **\$0**

Total EB Amounts	\$1,488
Approx. Cost of Compliance	\$6,600

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal **\$8,925**

OTHER FACTORS AS JUSTICE MAY REQUIRE 14.5% Adjustment **\$1,296**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with Violation Nos. 1 and 2.

Final Penalty Amount **\$10,221**

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty **\$10,221**

DEFERRAL 0.0% Reduction Adjustment **\$0**

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.

PAYABLE PENALTY **\$10,221**

Screening Date 8-Sep-2008

Docket No. 2008-1444-PST-E

PCW

Respondent Bill Bearden dba Ovilla Road Citgo

Policy Revision 2 (September 2002)

Case ID No. 36489

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN102058997

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 8-Sep-2008

Docket No. 2008-1444-PST-E

PCW

Respondent Bill Bearden dba Ovilla Road Citgo

Policy Revision 2 (September 2002)

Case ID No. 36489

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN102058997

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 334.49(a)(2), 334.49(c)(4)(C), and 334.54(c)(1) and Tex. Water Code § 26.3475(d)

Violation Description

Failed to ensure that the corrosion protection system is operating and maintained in a manner that will ensure that corrosion protection will be continuously provided to all underground components of an UST system. Specifically, the power on the corrosion protection rectifier box was turned off. Also, failed to have the corrosion protection system inspected and tested for operability and adequacy of protection at least once every three years.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	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

25 Number of violation days

mark only one with an x	daily	
	monthly	x
	quarterly	
	semiannual	
	annual	
single event		

Violation Base Penalty \$2,500

One monthly event is recommended based on documentation of the violation during the August 14, 2008 investigation to the September 8, 2008 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$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 for this violation.

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,210

Violation Final Penalty Total \$3,006

This violation Final Assessed Penalty (adjusted for limits) \$3,006

Economic Benefit Worksheet

Respondent Bill Bearden dba Ovilla Road Citgo

Case ID No. 36489

Reg. Ent. Reference No. RN102058997

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
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Item Description No commas or \$

Delayed Costs

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$500	14-Aug-2008	9-Mar-2009	0.57	\$14	n/a	\$14

Notes for DELAYED costs

Estimated cost to ensure the rectifier box for the cathodic protection system is functioning properly. The date required is the date of the investigation 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 Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$1,000	14-Aug-2005	14-Aug-2008	3.92	\$196	\$1,000	\$1,196
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

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

Approx. Cost of Compliance

\$1,500

TOTAL

\$1,210

Screening Date 8-Sep-2008

Docket No. 2008-1444-PST-E

PCW

Respondent Bill Bearden dba Ovilla Road Citgo

Policy Revision 2 (September 2002)

Case ID No. 36489

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN102058997

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 334.72

Violation Description

Failed to report a suspected release within 24 hours of discovery. Specifically, TCEQ investigators noted strong gasoline odors and high levels of volatile organic compound concentrations in soil samples collected from an excavation pit located to the west side of the Facility.

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

Number of violation days 1

mark only one with an x

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 June 23, 2008 investigation.

Good Faith Efforts to Comply

0.0% Reduction

\$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 for this violation.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$100

Violation Final Penalty Total \$1,202

This violation Final Assessed Penalty (adjusted for limits) \$1,202

Economic Benefit Worksheet

Respondent Bill Bearden dba Ovilla Road Citgo
Case ID No. 36489
Reg. Ent. Reference No. RN102058997
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
Delayed Costs							
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

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				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$100	23-Jun-2008	24-Jun-2008	0.00	\$0	\$100	\$100
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Avoided cost to report a suspected release. The date required is the date of the suspected release and the final date is the date the report was due.

Approx. Cost of Compliance

\$100

TOTAL

\$100

Screening Date 8-Sep-2008

Docket No. 2008-1444-PST-E

PCW

Respondent Bill Bearden dba Ovilla Road Citgo

Policy Revision 2 (September 2002)

Case ID No. 36489

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN102058997

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 334.74(2)(A)

Violation Description

Failed to investigate a suspected release within 30 days of discovery. Specifically, the Respondent did not investigate the June 23, 2008 suspected release.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	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 2

47 Number of violation days

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$5,000

Two monthly events are recommended from the July 23, 2008 release investigation due date to the September 8, 2008 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$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 for this violation.

Violation Subtotal \$5,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$178

Violation Final Penalty Total \$6,012

This violation Final Assessed Penalty (adjusted for limits) \$6,012

Economic Benefit Worksheet

Respondent Bill Bearden dba Ovilla Road Citgo
Case ID No. 36489
Reg. Ent. Reference No. RN102058997
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

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$5,000	23-Jul-2008	9-Apr-2009	0.71	\$178	n/a	\$178

Notes for DELAYED costs

Estimated cost to conduct an investigation of the suspected release. The date required is the release investigation due date and the final date is the expected compliance date.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

TOTAL

\$178

Compliance History

Customer/Respondent/Owner-Operator: CN601114101 BEARDEN, BILL Classification: AVERAGE Rating: 0.75
Regulated Entity: RN102058997 OVILLA ROAD CITGO Classification: AVERAGE Site Rating: 0.75
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 74804
REGISTRATION
Location: 425 LARK LN, OAK LEAF, TX, 75154 Rating Date: 9/1/2008 Repeat Violator: NO
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: September 08, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: September 08, 2003 to September 08, 2008
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? 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 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.)
12/17/2004 (343957)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 12/17/2004 (343957)
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)
Description: Failure to provide amended registration for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first became aware of the change or addition, as applicable.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 334, SubChapter C 334.54(d)(2)
Description: The depth of regulated substance stored in an empty system, after the completion of the substance removal procedures, shall not exceed 2.5 centimeters at the deepest point.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 334, SubChapter C 334.54(c)(1)
Description: Failure to adequately protect the out of service UST system from corrosion.
- 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
BILL BEARDEN DBA OVILLA
ROAD CITGO; RN102058997

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2008-1444-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Bill Bearden dba Ovilla Road Citgo ("Mr. Bearden").

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

FINDINGS OF FACT

1. Mr. Bearden owns an out-of-service convenience store located at 907 Lark Lane, Oak Leaf, Ellis County, Texas (the "Facility").
2. Mr. Bearden's four underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Bearden's USTs contain a regulated substance as defined in the rules of the Commission.
3. During an inspection on June 23, 2008, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Mr. Bearden:
 - a. Failed to report a suspected release within 24 hours of discovery. Specifically, TCEQ investigators noted strong gasoline odors and high levels of volatile organic compound concentrations in soil samples collected from an excavation pit located to the west side of the Facility; and

- b. Failed to investigate a suspected release within 30 days of discovery. Specifically, Mr. Bearden did not investigate the June 23, 2008 suspected release.
4. During a records review on August 14, 2008, an investigator from the TCEQ Dallas/Fort Worth Office documented that Mr. Bearden failed to ensure that the corrosion protection system is operating and maintained in a manner that will ensure that corrosion protection will be continuously provided to all underground components of an UST system. Specifically, the power on the corrosion protection rectifier box was turned off. Also, failed to have the corrosion protection system inspected and tested for operability and adequacy of protection at least once every three years.
5. Mr. Bearden received notice of the violations on or about October 25, 2008.
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 Bill Bearden dba Ovilla Road Citgo" (the "EDPRP") in the TCEQ Chief Clerk's office on January 12, 2009.
7. By letter dated January 12, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Bearden with notice of the EDPRP. The first class mail has not been returned, indicating that Mr. Bearden received notice of the EDPRP.
8. An answer to the EDPRP requesting a hearing was filed for Mr. Bearden on February 18, 2009, and, pursuant to 30 TEX. ADMIN. CODE § 70.109, the matter was referred to the State Office of Administrative Hearings ("SOAH") on March 23, 2009.
9. A "Joint Motion to Waive Appearance at the Preliminary Hearing and Submission of Agreed Hearing Schedule" (the "Joint Motion") was signed by the Executive Director and Mr. Bearden and submitted to SOAH on June 24, 2009. Pursuant to the hearing schedule contained within the Joint Motion, an evidentiary hearing was scheduled for September 4, 2009.
10. On September 4, 2009, the Administrative Law Judge ("ALJ") convened the evidentiary hearing but Mr. Bearden failed to appear. The Executive Director requested that the matter be remanded to the Executive Director so that a Default Order may be entered and the case may be dismissed from the SOAH Docket.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Bearden's USTs are subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Bearden violated 30 TEX. ADMIN. CODE § 334.72, by failing to report a suspected release within 24 hours of discovery.
3. As evidenced by Finding of Fact No. 3.b., Mr. Bearden violated 30 TEX. ADMIN. CODE § 334.74(2)(A), by failing to investigate a suspected release within 30 days of discovery.
4. As evidenced by Finding of Fact No. 4., Mr. Bearden violated 30 TEX. ADMIN. CODE § 334.49(a)(2), 334.49(c)(4)(C), and 334.54(c)(1) and TEX. WATER CODE § 26.3475(d) by failing to ensure that the corrosion protection system is operating and maintained in a manner that will ensure that corrosion protection will be continuously provided to all underground components of an UST system, and by failing to have the corrosion protection system inspected and tested for operability and adequacy of protection at least once every three years.
5. As evidenced by Finding of Fact No. 7, the Executive Director timely served Mr. Bearden with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
6. As evidenced by Finding of Fact No. 8, an answer to the EDPRP requesting a hearing was filed for Mr. Bearden as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105.
7. As evidenced by Finding of Fact No. 9, Mr. Bearden signed the Joint Motion, which included the Agreed Hearing Schedule, and therefore had proper notice of the evidentiary hearing.
8. As evidenced by Finding of Fact No. 10, Mr. Bearden failed to appear for the evidentiary hearing. Pursuant to TEX. GOV'T CODE § 2001.056, TEX. WATER CODE § 7.057, and 30 TEX. ADMIN. CODE § 70.106(b), the Commission may enter a Default Order against Mr. Bearden and assess the penalty recommended by the Executive Director.
9. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Bearden for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

10. An administrative penalty in the amount of ten thousand two hundred twenty-one dollars (\$10,221.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
11. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Mr. Bearden is assessed an administrative penalty in the amount of ten thousand two hundred twenty-one dollars (\$10,221.00) for violations of state statutes and TCEQ rules. The payment of this administrative penalty and Mr. Bearden'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: Bill Bearden dba Ovilla Road Citgo; Docket No. 2008-1444-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. Mr. Bearden shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order, Mr. Bearden shall:
 - i. Ensure that corrosion protection is in place for all components of the UST system and that power is turned on to the rectifier box, in accordance with 30 TEX. ADMIN. CODE § 334.49; and
 - ii. Ensure that the corrosion protection system is inspected and tested every

three years, in accordance with 30 TEX. ADMIN. CODE § 334.54; and

- iii. Establish and implement a process for reporting a suspected release, in accordance with 30 TEX. ADMIN. CODE § 334.72.
- b. Within 60 days after the effective date of this Order, Mr. Bearden shall conduct an investigation of the suspected release and implement appropriate corrective measures, in accordance with 30 TEX. ADMIN. CODE § 334.74.
- c. Within 75 days after the effective date of this Order, Mr. Bearden shall submit to the Executive Director a detailed written report documenting the steps it has taken to comply with Ordering Provision Nos. 2.a. through 2.b. The written report shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 3.a. through 3.b. The written 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.”

Mr. Bearden shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 3.a. through 3.b. 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:

Mr. Sam Barrett, Waste Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality

2309 Gravel Drive
Fort Worth, Texas 76118-6951

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. Bearden. Mr. Bearden is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. If Mr. Bearden fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Bearden's failure to comply is not a violation of this Order. Mr. Bearden shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Bearden shall notify the Executive Director within seven days after Mr. Bearden becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Bearden shall be made in writing to the Executive Director. Extensions are not effective until Mr. Bearden receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
8. 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. Bearden if the Executive Director determines that Mr. Bearden has not complied with one or more of the terms or conditions in this Order.
9. 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.
10. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Bill Bearden dba Ovilla Road Citgo
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF PHILLIP M. GOODWIN

STATE OF TEXAS §
COUNTY OF TRAVIS §

My name is Phillip M. Goodwin. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Bill Bearden dba Ovilla Road Citgo (the EDPRP) was filed with the Office of the Chief Clerk on January 12, 2009.

I sent the EDPRP to Mr. Bearden at his last known address on January 12, 2009 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt green card, Mr. Bearden received notice of the EDPRP on February 17, 2009, as evidenced by the signature on the card.

I filed Mr. Bearden's Answer to the EDPRP on February 18, 2009 and referred the matter to the State Office of Administrative Hearings (SOAH) on March 23, 2009. I submitted a Joint Motion to Waive Appearance at the Preliminary Hearing and Submission of an Agreed Hearing Schedule (the Joint Motion) to SOAH on June 24, 2009, which was signed by both the Executive Director and Mr. Bearden. Pursuant to the agreed hearing schedule contained in the Joint Motion, an evidentiary hearing was scheduled for September 4, 2009. By signing the Joint Motion, Mr. Bearden acknowledged that he had received notice of the contents of the Joint Motion, including the Agreed Hearing Schedule.

On September 4, 2009, the Administrative Law Judge (ALJ) convened the evidentiary hearing but Mr. Bearden failed to appear. At that hearing, I requested and received a finding that Mr. Bearden was served with proper notice of the hearing. I also requested and received a remand from the ALJ pursuant to 1 TEX. ADMIN. CODE § 155.501(e)(1), which gives the ALJ the authority to remand the case back to the agency to allow the agency to dispose of the case on a default basis under TEX. GOV'T CODE § 2001.056 and the referring agency's rules. Pursuant to TEX. GOV'T CODE § 2001.056, TEX. WATER CODE § 7.057, and 30 TEX. ADMIN. CODE § 70.106(b), the Commission may enter a Default Order against Mr. Bearden and assess the penalty recommended by the Executive Director.

[Signature]
Phillip M. Goodwin, P.G.
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Phillip M. Goodwin, 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 12th day of October, A.D., 2009.

[Signature]

Notary Stamp

Notary Signature

