

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-1105-PST-E **TCEQ ID:** RN100961473 **CASE NO.:** 37972

RESPONDENT NAME: Kenneth Haddad and Maynard Haddad dba H & H Car Wash

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMEDIATE AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: H & H Car Wash, 701 East Yandell Drive, El Paso, El Paso County</p> <p>TYPE OF OPERATION: Car wash</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 Respondents has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on November 23, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Judy Kluge, Enforcement Division, Enforcement Team 6, MC R-04, (817) 588-5825; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Messrs. Kenneth and Maynard Haddad, Owners, H & H Car Wash, 701 East Yandell Drive, El Paso, Texas 79902 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

DOCKET NO.: 2009-1105-PST-E

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: June 16, 2009</p> <p>Date of NOV/NOE Relating to this Case: July 7, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>1) Failure to provide corrosion protection to all underground components of an underground storage tank ("UST") system which are designed or used to convey, contain, or store regulated substances. Specifically, the amperes meter on the rectifier was not registering any power for Tank 1 [30 TEX. ADMIN. CODE § 334.49(a) and TEX. WATER CODE § 26.3475(d)].</p> <p>2) Failure to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are functioning as designed. Specifically, bimonthly inspections of the cathodic protection system were not being conducted [30 TEX. ADMIN. CODE § 334.49(c)(2)(C) and TEX. WATER CODE § 26.3475(d)].</p> <p>3) Failure 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, vapor monitoring was not being conducted on a monthly basis [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>4) Failure to conduct reconciliation of detailed inventory control records at least</p>	<p>Total Assessed: \$6,105</p> <p>Total Deferred: \$1,221 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$4,884</p> <p>Site Compliance History Classification <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>CN601566938 and CN601566920</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 Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order:</p> <p>i. Ensure that corrosion protection is in place for all underground components of the UST system and begin conducting bimonthly inspections of the impressed current cathodic protection system to ensure that the rectifier and other system components are functioning as designed; and</p> <p>ii. Install and implement a release detection method for all USTs and begin conducting reconciliation of inventory control records.</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a.i. and a.ii.</p>

DOCKET NO.: 2009-1105-PST-E

<p>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 [30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1)].</p>		
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Additional ID No(s): PST No. 1332



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	13-Jul-2009	Screening	15-Jul-2009	EPA Due	
	PCW	16-Jul-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	Kenneth Haddad and Maynard Haddad dba H & H Car Wash
Reg. Ent. Ref. No.	RN100961473
Facility/Site Region	6-El Paso
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	37972	No. of Violations	2
Docket No.	2009-1105-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**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability Enhancement **Subtotal 4**

Notes

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit Enhancement* **Subtotal 6**

Total EB Amounts	\$385
Approx. Cost of Compliance	\$5,800

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the Indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 15-Jul-2009

Docket No. 2009-1105-PST-E

PCW

Respondent Kenneth Haddad and Maynard Haddad dba H & H Car W

Policy Revision 2 (September 2002)

Case ID No. 37972

PCW Revision October 30, 2009

Reg. Ent. Reference No. RN100961473

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 <i>(number of NOVs meeting criteria)</i>	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government <i>(number of judgements or consent decrees meeting criteria)</i>	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which notices were submitted)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%

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) 20%

>> **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

Adjustment for one prior 1660 Order during the past five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 20%

Screening Date 15-Jul-2009	Docket No. 2009-1105-PST-E	PCW
Respondent Kenneth Haddad and Maynard Haddad dba H & H Car Wash	<small>Policy Revision 2 (September 2002)</small>	
Case ID No. 37972	<small>PCW Revision October 30, 2008</small>	
Reg. Ent. Reference No. RN100961473		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Judy Kluge		
Violation Number <input type="text" value="1"/>		
Rule Cite(s)	30 Tex. Admin. Code § 334.49(a) and (c)(2)(C) and Tex. Water Code § 26.3475(d)	
Violation Description	Failed to provide corrosion protection to all underground components of an UST system which are designed or used to convey, contain, or store regulated substances. Specifically, the amperes meter on the rectifier was not registering any power for Tank 1. Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are functioning as designed. Specifically, bimonthly inspections of the cathodic protection system were not being conducted.	
	Base Penalty	<input type="text" value="\$10,000"/>
>> Environmental, Property and Human Health Matrix		
OR	Harm	
	Release Major Moderate Minor	
	Actual	
	Potential	<input type="text" value="x"/>
	Percent	<input type="text" value="25%"/>
>> Programmatic Matrix		
	Falsification Major Moderate Minor	
	Actual	
	Potential	
	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"/>
		<input type="text" value="\$2,500"/>
Violation Events		
	Number of Violation Events <input type="text" value="1"/>	<input type="text" value="29"/> Number of violation days
<small>mark only one with an x</small>	daily <input type="text"/> weekly <input type="text"/> monthly <input type="text" value="x"/> quarterly <input type="text"/> semiannual <input type="text"/> annual <input type="text"/> single event <input type="text"/>	Violation Base Penalty <input type="text" value="\$2,500"/>
	One monthly event is recommended based on documentation of the violation during the June 16, 2009 investigation to the July 15, 2009 screening date.	
Good Faith Efforts to Comply		
	<input type="text" value="0.0%"/> Reduction	<input type="text" value="\$0"/>
	<small>Before NOV NOV to ED/PRP/Settlement Offer</small>	
Extraordinary	<input type="text"/>	
Ordinary	<input type="text"/>	
N/A	<input type="text" value="x"/> (mark with x)	
Notes	The Respondent does not meet the good faith criteria for this violation.	
	Violation Subtotal	<input type="text" value="\$2,500"/>
Economic Benefit (EB) for this violation		
	Estimated EB Amount	<input type="text" value="\$366"/>
Statutory Limit Test		
	Violation Final Penalty Total	<input type="text" value="\$3,053"/>
	This violation Final Assessed Penalty (adjusted for limits)	<input type="text" value="\$3,053"/>

Economic Benefit Worksheet

Respondent Kenneth Haddad and Maynard Haddad dba H & H Car Wash
Case ID No. 37972
Reg. Ent. Reference No. RN100961473
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
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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	\$5,000	16-Jun-2009	15-Mar-2010	0.75	\$12	\$248	\$261
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

Estimated cost to provide cathodic protection to all underground metal components of the UST system. The date required is the date of the investigation and the final date is the expected date of compliance.

Avoided Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	\$100	17-Apr-2009	16-Jun-2009	1.08	\$5	\$100	\$105

Notes for AVOIDED costs

Estimated avoided cost for conducting bimonthly inspections. The date required is 60 days prior to the investigation date and the final date is the investigation date.

Approx. Cost of Compliance	\$5,100	TOTAL	\$366
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Screening Date 15-Jul-2009	Docket No. 2009-1105-PST-E	PCW	
Respondent Kenneth Haddad and Maynard Haddad dba H & H Car Wash	<small>Policy Revision 2 (September 2002)</small>		
Case ID No. 37972	<small>PCW Revision October 30, 2008</small>		
Reg. Ent. Reference No. RN100961473			
Media [Statute] Petroleum Storage Tank			
Enf. Coordinator Judy Kluge			
Violation Number	2		
Rule Cite(s)	30 Tex. Admin. Code § 334.50(b)(1)(A) and (d)(1)(B)(ii) 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, vapor monitoring was not being conducted on a monthly basis. 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.		
Base Penalty	\$10,000		
>> Environmental, Property and Human Health Matrix			
	Harm		
	Major	Moderate	Minor
OR			
Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Potential	x	<input type="checkbox"/>	<input type="checkbox"/>
			Percent <input type="text" value="25%"/>
>>Programmatic Matrix			
	Major	Moderate	Minor
Falsification	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			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"/>
	<input type="text" value="\$2,500"/>		
Violation Events			
Number of Violation Events	<input type="text" value="1"/>	<input type="text" value="29"/>	Number of violation days
	daily	<input type="checkbox"/>	
	weekly	<input type="checkbox"/>	
	monthly	x	
	quarterly	<input type="checkbox"/>	
	semiannual	<input type="checkbox"/>	
	annual	<input type="checkbox"/>	
	single event	<input type="checkbox"/>	
<small>mark only one with an x</small>			Violation Base Penalty <input type="text" value="\$2,500"/>
One monthly event is recommended based on documentation of the violation during the June 16, 2009, investigation to the July 15, 2009, screening date.			
Good Faith Efforts to Comply			
	<input type="text" value="0.0%"/> Reduction		<input type="text" value="\$0"/>
	Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>	
Ordinary	<input type="checkbox"/>	<input type="checkbox"/>	
N/A	x	(mark with x)	
Notes	The Respondent does not meet the good faith criteria for this violation.		
	Violation Subtotal		<input type="text" value="\$2,500"/>
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="\$3,053"/>
	This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$3,053"/>		

Economic Benefit Worksheet

Respondent Kenneth Haddad and Maynard Haddad dba H & H Car Wash
Case ID No. 37972
Reg. Ent. Reference No. RN100861473
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
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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)	\$500	16-Jun-2009	15-Mar-2010	0.75	\$19	n/a	\$19

Notes for DELAYED costs: The estimated cost to conduct monthly reconciliation of inventory control 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				0.00	\$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 \$500

TOTAL \$19

Compliance History Report

Customer/Respondent/Owner-Operator: CN601566938 Haddad, Kenneth Classification: AVERAGE Rating: 1.50
Regulated Entity: RN100961473 H & H Car Wash Classification: HIGH Site Rating: 0.00
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 1332
Location: 701 E YANDELL DR, EL PASO, TX, 79902
TCEQ Region: REGION 06 - EL PASO
Date Compliance History Prepared: July 15, 2009
Agency Decision Requiring Compliance History: Enforcement

Compliance Period: July 15, 2004 to July 15, 2009
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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2008 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the state of Texas and the federal government.

Effective Date: 10/23/2008

ADMINORDER 2008-0382-PST-E

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.45(c)(3)(A)

Description: Failed to install an emergency shutoff valve (also known as shear or impact valve) on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser.

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(C)

Description: Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form.

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)

Description: Failed to provide an amended UST registration to the agency for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition.

Classification: Moderate

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

Description: Failed to maintain the required UST records and make them immediately available for the inspection upon request by agency personnel.

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)

30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)

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).

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)

30 TAC Chapter 334, SubChapter C 334.50(d)(1)(B)(ii)

Description: 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.

- 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	08/02/2004	(283563)
2	12/08/2004	(342658)
3	07/06/2006	(485313)
4	11/28/2006	(531390)
5	07/05/2007	(564918)
6	10/23/2007	(598198)
7	02/25/2008	(597062)
8	09/10/2008	(702308)
9	03/31/2009	(739649)
10	07/06/2009	(759129)

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

N/A

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

Compliance History Report

Customer/Respondent/Owner-Operator: CN601566920 Haddad, Maynard Classification: AVERAGE Rating: 1.50
Regulated Entity: RN100961473 H & H Car Wash Classification: HIGH Site Rating: 0.00
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 1332
Location: 701 E YANDELL DR, EL PASO, TX, 79902
TCEQ Region: REGION 06 - EL PASO
Date Compliance History Prepared: July 15, 2009
Agency Decision Requiring Compliance History: Enforcement

Compliance Period: July 15, 2004 to July 15, 2009
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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2008 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the state of Texas and the federal government.

Effective Date: 10/23/2008

ADMINORDER 2008-0382-PST-E

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.45(c)(3)(A)

Description: Failed to install an emergency shutoff valve (also known as shear or impact valve) on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser.

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(C)

Description: Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form.

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)

Description: Failed to provide an amended UST registration to the agency for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition.

Classification: Moderate

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

Description: Failed to maintain the required UST records and make them immediately available for the inspection upon request by agency personnel.

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)

30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)

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).

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)

30 TAC Chapter 334, SubChapter C 334.50(d)(1)(B)(ii)

Description: 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.

- 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. (CEEDS Inv. Track. No.)

1	08/02/2004	(283563)
2	12/08/2004	(342658)
3	07/06/2006	(485313)
4	11/28/2006	(531390)
5	07/05/2007	(564918)
6	10/23/2007	(598198)
7	02/25/2008	(597062)
8	09/10/2008	(702308)
9	03/31/2009	(739649)
10	07/06/2009	(759129)

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

N/A

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
KENNETH HADDAD AND MAYNARD
HADDAD DBA H & H CAR WASH
RN100961473**

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2009-1105-PST-E**

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Kenneth Haddad and Maynard Haddad dba H & H Car Wash ("the Respondents") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondents appear before the Commission and together stipulate that:

1. The Respondents own and operate a car wash with three underground storage tanks ("USTs") at 701 East Yandell Drive in El Paso, El Paso County, Texas (the "Facility").
2. The Respondents' three USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Commission and the Respondents agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondents are subject to the Commission's jurisdiction.
4. The Respondents received notice of the violations alleged in Section II ("Allegations") on or about July 12, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondents of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Six Thousand One Hundred Five Dollars (\$6,105) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondents have paid Four Thousand Eight Hundred Eighty-Four Dollars (\$4,884) of the

administrative penalty and One Thousand Two Hundred Twenty-One Dollars (\$1,221) is deferred contingent upon the Respondents' timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondents fail to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondents to pay all or part of the deferred penalty.

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

II. ALLEGATIONS

As owners and operators of the Facility, the Respondents are alleged to have:

1. Failed to provide corrosion protection to all underground components of an UST system which are designed or used to convey, contain, or store regulated substances, in violation of 30 TEX. ADMIN. CODE § 334.49(a) and TEX. WATER CODE § 26.3475(d), as documented during an investigation conducted on June 16, 2009. Specifically, the amperes meter on the rectifier was not registering any power for Tank 1.
2. Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are functioning as designed, in violation of 30 TEX. ADMIN. CODE § 334.49(c)(2)(C) and TEX. WATER CODE § 26.3475(d), as documented during an investigation conducted on June 16, 2009. Specifically, bimonthly inspections of the cathodic protection system were not being conducted.
3. 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), in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on June 16, 2009. Specifically, vapor monitoring was not being conducted on a monthly basis.

4. 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, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on June 16, 2009.

III. DENIALS

The Respondents generally deny each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondents pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondents' compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Kenneth Haddad and Maynard Haddad dba H & H Car Wash, Docket No. 2009-1105-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. The Respondents are jointly and severally liable for the violations documented in this Agreed Order, and are jointly and severally liable for timely and satisfactory compliance with all terms and conditions of this Agreed Order.
3. It is further ordered that the Respondents shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order:
 - i. Ensure that corrosion protection is in place for all underground components of the UST system and begin conducting bimonthly inspections of the impressed current cathodic protection system to ensure that the rectifier and other system components are functioning as designed, in accordance with 30 TEX. ADMIN. CODE § 334.49; and
 - ii. Install and implement a release detection method for all USTs and begin conducting reconciliation of inventory control records, in accordance with 30 TEX. ADMIN. CODE § 334.50.
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering

Provision Nos. 3.a.i. and 3.a.ii. 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 fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Waste Section Manager
El Paso Regional Office
Texas Commission on Environmental Quality
401 East Franklin Avenue, Suite 560
El Paso, Texas 79901-1206

4. The provisions of this Agreed Order shall apply to and be binding upon the Respondents. The Respondents are ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. If the Respondents fail to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondents' failure to comply is not a violation of this Agreed Order. The Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondents shall notify the Executive Director within seven days after the Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondents shall be made in writing to the Executive Director. Extensions are not effective until the Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondents in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

8. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.

9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondents, or three days after the date on which the Commission mails notice of the Order to the Respondents, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Srdian
For the Executive Director

11/2/2009
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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

Kenneth Haddad
Signature

10/21/09
Date

KENNETH J. HADDAD
Name (Printed or typed)
Authorized Representative of
Kenneth Haddad dba H & H Car Wash

Coordinator
Title

Maynard Haddad
Signature

10/21/09
Date

MAYNARD HADDAD
Name (Printed or typed)
Authorized Representative of
Maynard Haddad dba H & H Car Wash

Coordinator
Title

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