EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-0657-PST-E **TCEQ ID:** RN101806891 **CASE NO.:** 35754

RESPONDENT NAME: Roy Silva dba Roy's Chevron

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

SITE WHERE VIOLATION(S) OCCURRED: Roy's Chevron, 314 Main Street, Junction, Kimble County

TYPE OF OPERATION: Auto repair center with retail sales of gasoline

SMALL BUSINESS: X **Yes** ___ **No**

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

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

COMMENTS RECEIVED: The *Texas Register* comment period expired on January 26, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Mr. Steven Lopez, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-1896; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171

Respondent: Mr. Roy Silva, Operator, Roy's Chevron, 314 Main Street, Junction, Texas 76849

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

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint _X_ Routine __ Enforcement Follow-up __ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** April 1, 2008 **Date of NOV/NOE Relating to this Case:** April 11, 2008 (NOE) **Background Facts:** This was a routine investigation. **WASTE** 1) Failure to maintain copies of all the required records pertaining to the underground storage tank ("UST") system for at least five years. Specifically, the records pertaining to inventory control, corrosion protection, testing, and repairs were not maintained [30 TEX. ADMIN. CODE § 334.10(b)]. 2) Failure to conduct effective manual or automatic inventory control procedures for the UST system [30 TEX. ADMIN. CODE § 334.48(c)]. 3) Failure 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)]. 4) Failure to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)]. 5) Failure to conduct reconciliation of detailed inventory control records at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus	**Total Assessed:** $9,746 **Total Deferred:** $1,949 _X_ Expedited Settlement __Financial Inability to Pay The Financial Assurance Section of the Commission's Financial Administration Division reviewed financial documentation submitted by the Respondent and determined that the Respondent is able to pay the full payable penalty in accordance with the installment schedule detailed below. **SEP Conditional Offset:** $0 **Total Paid (Due) to General Revenue:** $345 (remaining $7,452 due in 23 monthly payments of $324 each) **Site Compliance History Classification** _X_ **High** __ **Average** __ **Poor** **Person Compliance History Classification** _X_ **High** __ **Average** __ **Poor** **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** The Order will require the Respondent to: a. Immediately upon the effective date of this Agreed Order, begin conducting proper inventory control procedures for all USTs at the Facility. b. Within 30 days after the effective date of this Agreed Order: i. Begin maintaining all UST records; ii. Conduct the required triennial testing of the corrosion protection system; iii. Install and implement a release detection method for all USTs at the Facility and begin conducting volume measurements and reconcilitation of inventory control records; and iv. Begin maintaining the spill and overfill prevention equipment in proper operating condition including, but not limited to repairing the spill bucket drain valves. c. 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. through .b.iv.

130 gallons [30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1)]. 6) Failure to conduct daily inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank as required in conjunction with automatic tank gauging [30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1)]. 7) Failure to ensure that all spill and overfill prevention devices are maintained in good operating condition. Specifically, the spill bucket drain valves would not open [30 TEX. ADMIN. CODE § 334.51(a)(6) and TEX. WATER CODE § 26.3475(c)(2)].		

Additional ID No(s).: 9508

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision April 29, 2008*

TCEQ

DATES					
Assigned	14-Apr-2008				
PCW	1-May-2008	Screening	16-Apr-2008	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Roy Silva dba Roy's Chevron		
Reg. Ent. Ref. No.	RN101806891		
Facility/Site Region	8-San Angelo	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	35754	No. of Violations	5
Docket No.	2008-0657-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Steven Lopez
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* $9,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History -10.0% Reduction — *Subtotals 2, 3, & 7* -$950

Notes: Reduction due to high performer classification.

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

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0.0% Reduction — *Subtotal 5* $0

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

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

0.0% Enhancement* — *Subtotal 6* $0

**Capped at the Total EB $ Amount*

Total EB Amounts	$1,312
Approx. Cost of Compliance	$4,000

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $8,550

OTHER FACTORS AS JUSTICE MAY REQUIRE 14.0% — *Adjustment* $1,196

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with violation no. 3.

Final Penalty Amount $9,746

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $9,746

DEFERRAL 20.0% Reduction — *Adjustment* -$1,949

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY $7,797

Screening Date 16-Apr-2008 **Docket No.** 2008-0657-PST-E **PCW**

Respondent Roy Silva dba Roy's Chevron *Policy Revision 2 (September 2002)*

Case ID No. 35754 *PCW Revision April 29, 2008*

Reg. Ent. Reference No. RN101806891

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Lopez

Compliance History Worksheet

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

Component	Number of...	*Enter Number Here*	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which notices were submitted*)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%
		Please Enter Yes or No	
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> **Repeat Violator (Subtotal 3)**

No

Adjustment Percentage (Subtotal 3) 0%

>> **Compliance History Person Classification (Subtotal 7)**

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> **Compliance History Summary**

Compliance History Notes Reduction due to high performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) -10%

Screening Date 16-Apr-2008 **Docket No.** 2008-0657-PST-E **PCW**

Respondent Roy Silva dba Roy's Chevron *Policy Revision 2 (September 2002)*

Case ID No. 35754 *PCW Revision April 29, 2008*

Reg. Ent. Reference No. RN101806891

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Lopez

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.10(b)

Violation Description Failed to maintain copies of all the required records pertaining to the UST system for at least five years. Specifically, the records pertaining to inventory control, corrosion protection, testing and repairs were not maintained.

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 | 15 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $1,000

One single event is recommended based on documentation of the violation during the April 1, 2008 investigation.

Economic Benefit (EB) for this violation

Estimated EB Amount $20

Statutory Limit Test

Violation Final Penalty Total $1,026

This violation Final Assessed Penalty (adjusted for limits) $1,026

Economic Benefit Worksheet

Respondent Roy Silva dba Roy's Chevron
Case ID No. 35754
Reg. Ent. Reference No. RN101806891
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
	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	$500	1-Apr-2008	14-Jan-2009	0.79	$20	n/a	$20
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 establish and maintain a record keeping system. The Date Required is the investigation date. The Final Date is the estimated date of compliance.

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

Disposal				0.00	$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: $20

Screening Date 16-Apr-2008 **Docket No.** 2008-0657-PST-E **PCW**

Policy Revision 2 (September 2002)

PCW Revision April 29, 2008

Respondent Roy Silva dba Roy's Chevron

Case ID No. 35754

Reg. Ent. Reference No. RN101806891

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Lopez

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.48(c)

Violation Description Failed to conduct effective manual or automatic inventory control procedures for the UST system.

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

15 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 from the investigation date of April 1, 2008 to the screening date of April 16, 2008.

Economic Benefit (EB) for this violation

Estimated EB Amount $18

Statutory Limit Test

Violation Final Penalty Total $2,565

This violation Final Assessed Penalty (adjusted for limits) $2,565

Economic Benefit Worksheet

Respondent Roy Silva dba Roy's Chevron
Case ID No. 35754
Reg. Ent. Reference No. RN101806891
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	No commas or $						
Delayed Costs							
Equipment				0.00	$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	1-Apr-2008	14-Dec-2008	0.70	$18	n/a	$18

Notes for DELAYED costs: Estimated cost to conduct proper inventory control procedures. The Date Required is the investigation date. The Final Date is the estimated date of compliance.

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

Disposal				0.00	$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: $18

Screening Date 16-Apr-2008 **Docket No.** 2008-0657-PST-E **PCW**

Respondent Roy Silva dba Roy's Chevron *Policy Revision 2 (September 2002)*

Case ID No. 35754 *PCW Revision April 29, 2008*

Reg. Ent. Reference No. RN101806891

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Lopez

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.49(c)(4) and Tex. Water Code § 26.3475(d)

Violation Description 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.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

Release	Harm: Major	Moderate	Minor
Actual			
Potential	x		

OR

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 — 1095 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $2,500

One single event is recommended for the three-year period preceding the April 1, 2008 investigation.

Economic Benefit (EB) for this violation

Estimated EB Amount $1,196

Statutory Limit Test

Violation Final Penalty Total $2,565

This violation Final Assessed Penalty (adjusted for limits) $2,565

Economic Benefit Worksheet

Respondent Roy Silva dba Roy's Chevron
Case ID No. 35754
Reg. Ent. Reference No. RN101806891
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
Delayed Costs	No commas or $						
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)						
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	1-Apr-2005	1-Apr-2008	3.92	$196	$1,000	$1,196
Other (as needed)				0.00	$0	$0	$0
Notes for AVOIDED costs	Avoided cost for conducting the triennial test. The Date Required is three years prior to the investigation date. The Final Date is the investigation date.						

Approx. Cost of Compliance: $1,000

TOTAL: $1,196

Screening Date 16-Apr-2008 **Docket No.** 2008-0657-PST-E **PCW**

Policy Revision 2 (September 2002)

PCW Revision April 29, 2008

Respondent Roy Silva dba Roy's Chevron

Case ID No. 35754

Reg. Ent. Reference No. RN101806891

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Lopez

Violation Number 4

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 monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring). Also, failed to conduct reconciliation of detailed inventory control records at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons and failed to conduct daily inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank as required in conjunction with automatic tank gauging.

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

15 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 from the investigation date of April 1, 2008 to the screening date of April 16, 2008.

Economic Benefit (EB) for this violation

Estimated EB Amount $59

Statutory Limit Test

Violation Final Penalty Total $2,565

This violation Final Assessed Penalty (adjusted for limits) $2,565

Economic Benefit Worksheet

Respondent Roy Silva dba Roy's Chevron
Case ID No. 35754
Reg. Ent. Reference No. RN101806891
Media Petroleum Storage Tank
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.00	$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)	$1,500	1-Apr-2008	14-Jan-2009	0.79	$59	n/a	$59

Notes for DELAYED costs: Estimated cost to provide release detection for the USTs to include reconciliation of inventory control records. The Date Required is the investigation date. The Final Date is the estimated date of compliance.

Avoided Costs							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.00	$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: $1,500

TOTAL: $59

Screening Date 16-Apr-2008 **Docket No.** 2008-0657-PST-E **PCW**

Policy Revision 2 (September 2002)

PCW Revision April 29, 2008

Respondent Roy Silva dba Roy's Chevron

Case ID No. 35754

Reg. Ent. Reference No. RN101806891

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Lopez

Violation Number 5

Rule Cite(s) 30 Tex. Admin. Code § 334.51(a)(6) and Tex. Water Code § 26.3475(c)(2)

Violation Description Failed to ensure that all spill and overfill prevention devices are maintained in good operating condition. Specifically, the spill bucket drain valves would not open.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential		x	

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 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 $9,000

$1,000

Violation Events

Number of Violation Events 1

15 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $1,000

One quarterly event is recommended from the investigation date of April 1, 2008 to the screening date of April 16, 2008.

Economic Benefit (EB) for this violation

Estimated EB Amount $20

Statutory Limit Test

Violation Final Penalty Total $1,026

This violation Final Assessed Penalty (adjusted for limits) $1,026

Economic Benefit Worksheet

Respondent Roy Silva dba Roy's Chevron
Case ID No. 35754
Reg. Ent. Reference No. RN101806891
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
	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	1-Apr-2008	14-Jan-2009	0.79	$20	n/a	$20

Notes for DELAYED costs: Estimated cost to repair the spill bucket drain valves and maintain the overfill protection equipment in proper working condition. The Date Required is the investigation date. The Final Date is the estimated date of compliance.

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

Disposal				0.00	$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: $20

Compliance History

Customer/Respondent/Owner-Operator:	CN601560980	Silva, Roy	Classification: HIGH	Rating: 0.00
Regulated Entity:	RN101806891	Roy's Chevron	Classification: HIGH	Site Rating: 0.00
ID Number(s):	PETROLEUM STORAGE TANKS REGISTRATION		REGISTRATION	9508
Location:	314 MAIN ST, JUNCTION, TX, 76849		Rating Date: 9/1/2007	Repeat Violator: NO
TCEQ Region:	REGION 08 - SAN ANGELO			
Date Compliance History Prepared:	April 16, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	April 16, 2003 to April 16, 2008			

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

Name: Steven Lopez Phone: 512-239-1896

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. if Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

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

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 03/24/2004 (266659)
2 04/11/2008 (641211)

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

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
ROY SILVA DBA ROY'S CHEVRON	§	
RN101806891	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2008-0657-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 Roy Silva dba Roy's Chevron ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent operates an auto repair center with retail sales of gasoline at 314 Main Street in Junction, Kimble County, Texas (the "Facility").

2. The Respondent's four underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.

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

4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about April 16, 2008.

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

6. An administrative penalty in the amount of Nine Thousand Seven Hundred Forty-Six Dollars ($9,746) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Three Hundred Forty-Five Dollars ($345) of the

administrative penalty and One Thousand Nine Hundred Forty-Nine Dollars ($1,949) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Seven Thousand Four Hundred Fifty-Two Dollars ($7,452) of the administrative penalty shall be payable in 23 monthly payments of Three Hundred Twenty-Four Dollars ($324) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.

10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As operator of the Facility, the Respondent is alleged to have:

1. Failed to maintain copies of all the required records pertaining to the UST system for at least five years, in violation of 30 TEX. ADMIN. CODE § 334.10(b), as documented during an investigation conducted on April 1, 2008. Specifically, the records pertaining to inventory control, corrosion protection, testing and repairs were not maintained.

2. Failed to conduct effective manual or automatic inventory control procedures for the UST system, in violation of 30 TEX. ADMIN. CODE § 334.48(c), as documented during an investigation conducted on April 1, 2008.

3. 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), as documented during an investigation conducted on April 1, 2008.

4. Failed to monitor USTs for releases at a frequency of at least once per 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 April 1, 2008.

5. Failed to conduct reconciliation of detailed inventory control records at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% 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 April 1, 2008.

6. Failed to conduct daily inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank as required in conjunction with automatic tank gauging, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on April 1, 2008.

7. Failed to ensure that all spill and overfill prevention devices are maintained in good operating condition, in violation of 30 TEX. ADMIN. CODE § 334.51(a)(6) and TEX. WATER CODE § 26.3475(c)(2), as documented during an investigation conducted on April 1, 2008. Specifically, the spill bucket drain valves would not open.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Roy Silva dba Roy's Chevron, Docket No. 2008-0657-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. It is further ordered that the Respondent shall undertake the following technical requirements:

a. Immediately upon the effective date of this Agreed Order, begin conducting proper inventory control procedures for all USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.48.

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

i. Begin maintaining all UST records, in accordance with 30 TEX. ADMIN. CODE § 334.10;

ii. Conduct the required triennial testing of the corrosion protection system, in accordance with 30 TEX. ADMIN. CODE § 334.49;

iii. Install and implement a release detection method for all USTs at the Facility and begin conducting volume measurements and reconciliation of inventory control records, in accordance with 30 TEX. ADMIN. CODE § 334.50; and

iv. Begin maintaining the spill and overfill prevention equipment in proper operating condition including, but not limited to repairing the spill bucket drain valves, in accordance with 30 TEX. ADMIN. CODE § 334.51.

c. 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. 2.a. through 2.b.iv. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

The certification shall be submitted to:

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

with a copy to:

Waste Section Manager
San Angelo Regional Office
Texas Commission on Environmental Quality
622 South Oakes, Suite K
San Angelo, Texas 76903-7013

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

4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

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

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

Roy Silva dba Roy's Chevron
DOCKET NO. 2008-0657-PST-E
Page 6

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Sadler
For the Executive Director

Date 1/9/2009

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

Roy Silva
Signature

12-3-08
Date

Roy Silva
Name (Printed or typed)
Authorized Representative of
Roy Silva dba Roy's Chevron

Operator
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.