

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1215-PST-E TCEQ ID: RN100815216 CASE NO.: 36268

RESPONDENT NAME: SWH Realty, Ltd.

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"/> 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 VIOLATION(S) OCCURRED: SWH Realty, Ltd., 1221 North Cotton Street, El Paso, El Paso County</p> <p>TYPE OF OPERATION: Long-term health care facility</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 has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on December 15, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Thomas Greimel, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-5690; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Bryan E. Henington, Property Manager, SWH Realty, Ltd., 1221 North Cotton Street, El Paso, Texas 75243 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: <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: May 30, 2008</p> <p>Date of NOV/NOE Relating to this Case: July 7, 2008 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>1) Failure to provide an amended registration for any change or additional information regarding the underground storage tanks ("USTs") within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the ownership change on December 21, 2007 [30 TEX. ADMIN. CODE § 334.7(d)(3)].</p> <p>2) Failure to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form within 30 days of the ownership change [30 TEX. ADMIN. CODE § 334.8(c)(4)(C) and (c)(5)(B)(ii)].</p> <p>3) Failure to make available to the common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST. Specifically, one fuel delivery was accepted on February 14, 2008 without a delivery certificate [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)].</p> <p>4) Failure to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum UST [30 TEX. ADMIN. CODE § 37.815(a) and (b)].</p>	<p>Total Assessed: \$8,450</p> <p>Total Deferred: \$1,690 <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: \$6,760</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input 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>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a. Submitted a properly completed UST registration and self-certification form and obtained a TCEQ delivery certificate on June 25, 2008;</p> <p>b. Demonstrated acceptable financial assurance for the UST on June 23, 2008;</p> <p>c. Conducted the required triennial testing of the cathodic protection system and began conducting bimonthly inspections of the rectifier and other system components on June 23, 2008; and</p> <p>d. Implemented a release detection method for the UST on June 16, 2008.</p>

<p>5) 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 operating properly. Specifically, the Respondent did not conduct the bimonthly inspections of the corrosion protection system [30 TEX. ADMIN. CODE § 334.49(c)(2)(c) and TEX. WATER CODE § 26.3475(d)].</p> <p>6) 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. Specifically, the triennial test had not been conducted [30 TEX. ADMIN. CODE § 334.49(c)(4) and TEX. WATER CODE § 26.3475(d)].</p> <p>7) Failure to monitor the UST for releases at a frequency of at least once every 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)].</p>		
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Additional ID No(s): 31789



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

DATES	Assigned	7-Jul-2008			
	PCW	17-Sep-2008	Screening	24-Jul-2008	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	SWH Realty, Ltd.
Reg. Ent. Ref. No.	RN100815216
Facility/Site Region	6-El Paso
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36268	No. of Violations	5
Docket No.	2008-1215-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Thomas Greimel
		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)	<i>Subtotal 1</i>	\$7,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1		
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>		
Compliance History	20.0% Enhancement	<i>Subtotals 2, 3, & 7</i>

			\$1,500
Notes	Enhancement for one 1660 order.		

Culpability	No	0.0% Enhancement			<i>Subtotal 4</i>	\$0
Notes	The Respondent does not meet the culpability criteria.					

Good Faith Effort to Comply Total Adjustments	<i>Subtotal 5</i>	\$1,875
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Economic Benefit		0.0% Enhancement*			<i>Subtotal 6</i>	\$0
	Total EB Amounts	\$1,335	<small>*Capped at the Total EB \$ Amount</small>			
	Approx. Cost of Compliance	\$2,850				

SUM OF SUBTOTALS 1-7	<i>Final Subtotal</i>	\$7,125
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OTHER FACTORS AS JUSTICE MAY REQUIRE	18.6%		<i>Adjustment</i>	\$1,325
<small>Reduces or enhances the Final Subtotal by the indicated percentage.</small>				

Notes	Recommended enhancement to capture the avoided cost of compliance associated with Violation Nos. 3 and 4.		<i>Final Penalty Amount</i>	\$8,450
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STATUTORY LIMIT ADJUSTMENT	<i>Final Assessed Penalty</i>	\$8,450
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DEFERRAL	20.0%	Reduction	<i>Adjustment</i>	-\$1,690
<small>Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)</small>				

Notes	Deferral offered for expedited settlement.		
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PAYABLE PENALTY	\$6,760
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Screening Date 24-Jul-2008

Docket No. 2008-1215-PST-E

PCW

Respondent SWH Realty, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 36268

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN100815216

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

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)	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 (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%
<i>Please Enter Yes or No</i>			
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)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one 1660 order.

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

Screening Date 24-Jul-2008 **Docket No.** 2008-1215-PST-E **PCW**
Respondent SWH Realty, Ltd. *Policy Revision 2 (September 2002)*
Case ID No. 36268 *PCW Revision June 12, 2008*
Reg. Ent. Reference No. RN100815216
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Thomas Greimel

Violation Number
Rule Cite(s) 30 Tex. Admin. Code §§ 334.7(d)(3), 334.8(c)(4)(C) and (c)(5)(B)(ii)
Violation Description Failed to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the ownership change on December 21, 2007. Also, failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self certification within 30 days of the ownership change.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR

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

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text" value="10%"/>

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

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="checkbox"/>

Violation Base Penalty

One single event is recommended.

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input checked="" type="checkbox"/>	<input type="text"/>
N/A	<input type="text"/>	(mark with x)

Notes The Respondent came into compliance on June 25, 2008.

Violation Subtotal

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent: SWH Realty, Ltd.
Case ID No.: 36268
Reg. Ent. Reference No.: RN100815216
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				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)	\$100	20-Jan-2007	25-Jun-2008	1.43	\$7	n/a	\$7

Notes for DELAYED costs

Estimated cost to timely renew a delivery certificate by submitting a properly completed UST registration and self-certification form. Date Required is 30 days after the ownership change. Final Date is the 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

\$100

TOTAL

\$7

Screening Date 24-Jul-2008	Docket No. 2008-1215-PST-E	PCW
Respondent SWH Realty, Ltd.		<small>Policy Revision 2 (September 2002)</small>
Case ID No. 36268		<small>PCW Revision June 12, 2008</small>
Reg. Ent. Reference No. RN100815216		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Thomas Greimel		
Violation Number <input type="text" value="2"/>		
Rule Cite(s)	30 Tex. Admin. Code § 334.8(c)(5)(A)(i) and Tex. Water Code § 26.3467(a)	
Violation Description	Failed to make available to the common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST. Specifically, one fuel delivery was accepted on February 14, 2008 without a delivery certificate.	
	Base Penalty	<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>
				Percent <input type="text" value="5%"/>

>> Programmatic Matrix

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

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

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="checkbox"/>

Violation Base Penalty

One single event is recommended for accepting one delivery of fuel.

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input checked="" type="checkbox"/>	<input type="text"/>
N/A	(mark with x)	

Notes The Respondent came into compliance on June 25, 2008.

Violation Subtotal

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent SWH Realty, Ltd.
Case ID No. 36268
Reg. Ent. Reference No. RN100815216
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Economic benefit included in violation number 1.

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

\$0

TOTAL

\$0

Screening Date 24-Jul-2008	Docket No. 2008-1215-PST-E	PCW													
Respondent SWH Realty, Ltd.		<small>Policy Revision 2 (September 2002)</small>													
Case ID No. 36268		<small>PCW Revision June 12, 2008</small>													
Reg. Ent. Reference No. RN100815216															
Media [Statute] Petroleum Storage Tank															
Enf. Coordinator Thomas Greimel															
Violation Number <input type="text" value="3"/>															
Rule Cite(s)	30 Tex. Admin. Code § 37.815(a) and (b)														
Violation Description	Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum UST.														
	Base Penalty	<input type="text" value="\$10,000"/>													
>> Environmental, Property and Human Health Matrix															
OR	Harm														
	Major	Moderate	Minor												
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>												
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>												
		Percent	<input type="text" value="0%"/>												
>> Programmatic Matrix															
	Major	Moderate	Minor												
Falsification	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>												
		Percent	<input type="text" value="10%"/>												
Matrix Notes	100% of the rule requirement was not met.														
	Adjustment	<input type="text" value="\$9,000"/>													
			<input type="text" value="\$1,000"/>												
Violation Events															
	Number of Violation Events <input type="text" value="1"/>	<input type="text" value="185"/>	Number of violation days												
<small>mark only one with an x</small>	<table border="1" style="border-collapse: collapse;"> <tr><td>daily</td><td><input type="text"/></td></tr> <tr><td>monthly</td><td><input type="text"/></td></tr> <tr><td>quarterly</td><td><input type="text"/></td></tr> <tr><td>semiannual</td><td><input type="text"/></td></tr> <tr><td>annual</td><td><input type="text"/></td></tr> <tr><td>single event</td><td><input type="text" value="x"/></td></tr> </table>	daily	<input type="text"/>	monthly	<input type="text"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input type="text" value="x"/>		Violation Base Penalty <input type="text" value="\$1,000"/>
daily	<input type="text"/>														
monthly	<input type="text"/>														
quarterly	<input type="text"/>														
semiannual	<input type="text"/>														
annual	<input type="text"/>														
single event	<input type="text" value="x"/>														
	One single event (one per tank) is recommended based on documentation of the violation during the May 30, 2008 investigation.														
Good Faith Efforts to Comply		25.0% Reduction	<input type="text" value="\$250"/>												
		Before NOV NOV to EDRP/Settlement Offer													
Extraordinary	<input type="text"/>	<input type="text"/>													
Ordinary	<input type="text" value="x"/>	<input type="text"/>													
N/A	<input type="text"/>	<small>(mark with x)</small>													
Notes	The Respondent came into compliance on June 23, 2008.														
	Violation Subtotal	<input type="text" value="\$750"/>													
Economic Benefit (EB) for this violation		Statutory Limit Test													
Estimated EB Amount	<input type="text" value="\$683"/>	Violation Final Penalty Total	<input type="text" value="\$1,127"/>												
		This violation Final Assessed Penalty (adjusted for limits)	<input type="text" value="\$1,127"/>												

Economic Benefit Worksheet

Respondent: SWH Realty, Ltd.
Case ID No: 36268
Reg. Ent. Reference No.: RN100815216
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
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)				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]	\$650	21-Dec-2007	23-Jun-2008	1.00	\$33	\$650	\$683
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to provide financial assurance for the one petroleum UST. The Date Required is the date the Respondent purchased the Facility. The Final date is the date of compliance.

Approx. Cost of Compliance

\$650

TOTAL

\$683

Screening Date 24-Jul-2008 **Docket No.** 2008-1215-PST-E **PCW**
Respondent SWH Realty, Ltd. *Policy Revision 2 (September 2002)*
Case ID No. 36268 *PCW Revision June 12, 2008*
Reg. Ent. Reference No. RN100815216
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Thomas Greimel

Violation Number 4
Rule Cite(s) 30 Tex. Admin. Code § 334.49(c)(2)(c) and (c)(4) and Tex. Water Code § 26.3475(d)
Violation Description
 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 operating properly. Specifically, the Respondent did not conduct the bimonthly inspections of the corrosion protection system. Failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years. Specifically, the triennial test had not been conducted.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

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

>> 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 1 185 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 period preceding the investigation and the ownership change.

Good Faith Efforts to Comply 25.0% Reduction \$625

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

Notes The Respondent came into compliance on June 23, 2008.

Violation Subtotal \$1,875

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$641 Violation Final Penalty Total \$2,817

This violation Final Assessed Penalty (adjusted for limits) \$2,817

Economic Benefit Worksheet

Respondent SWH Realty, Ltd.
Case ID No. 36268
Reg. Ent. Reference No. RN100815216
Media Petroleum Storage Tank
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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)				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]	\$500	21-Dec-2007	23-Jun-2008	1.42	\$36	\$500	\$536
Other (as needed)	\$100	30-Mar-2008	23-Jun-2008	1.15	\$6	\$100	\$106

Notes for AVOIDED costs

Actual cost to conduct the required triennial testing per receipt of invoice. Date Required is date the Respondent began ownership of the Facility. Final Date is the compliance date. Avoided cost for conducting bimonthly inspection of the rectifier and other components of the impressed current cathodic protection system. Date Required is two months prior to the investigation date. Final Date is the compliance date.

Approx. Cost of Compliance

\$600

TOTAL

\$641

Screening Date 24-Jul-2008	Docket No. 2008-1215-PST-E	PCW		
Respondent SWH Realty, Ltd.		<small>Policy Revision 2 (September 2002)</small>		
Case ID No. 36268		<small>PCW Revision June 12, 2008</small>		
Reg. Ent. Reference No. RN100815216				
Media [Statute] Petroleum Storage Tank				
Enf. Coordinator Thomas Greimel				
Violation Number <input type="text" value="5"/>				
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 334.50(b)(1)(A) and Tex. Water Code § 26.3475(c)(1)"/>			
Violation Description	<input type="text" value="Failed to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring)."/>			
	Base Penalty	<input type="text" value="\$10,000"/>		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		Percent	<input type="text" value="25%"/>	
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
		Percent	<input type="text" value="0%"/>	
Matrix Notes	<input type="text" value="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"/>	Number of violation days	
		<input type="text" value="17"/>		
<small>mark only one with an x</small>	daily	<input type="text"/>	Violation Base Penalty	
	monthly	<input checked="" type="checkbox"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input type="text"/>	<input type="text" value="\$2,500"/>	
	<input type="text" value="One monthly event is recommended from the May 30, 2008 investigation date to the June 16, 2008 compliance date."/>			
Good Faith Efforts to Comply		<input type="text" value="25.0%"/> Reduction	<input type="text" value="\$625"/>	
		Before NOV	NOV to EDPRP/Settlement Offer	
	Extraordinary	<input type="text"/>	<input type="text"/>	
	Ordinary	<input checked="" type="checkbox"/>	<input type="text"/>	
	N/A	<input type="text"/>	<small>(mark with x)</small>	
Notes	<input type="text" value="The Respondent came into compliance on June 16, 2008."/>			
	Violation Subtotal	<input type="text" value="\$1,875"/>		
Economic Benefit (EB) for this violation		Statutory Limit Test		
	Estimated EB Amount	<input type="text" value="\$3"/>	Violation Final Penalty Total	
			<input type="text" value="\$2,817"/>	
	This violation Final Assessed Penalty (adjusted for limits)		<input type="text" value="\$2,817"/>	

Economic Benefit Worksheet

Respondent SWH Realty, Ltd.
Case ID No. 36268
Reg. Ent. Reference No. RN100815216
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)	\$1,500	30-May-2008	16-Jun-2008	0.05	\$3	n/a	\$3

Notes for DELAYED costs

Estimated cost to provide release detection for the UST. Date Required is the date of the investigation. Final Date is the 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

\$3

Compliance History

Customer/Respondent/Owner-Operator:	CN603364795 SWH Realty, Ltd.	Classification:	Rating:
Regulated Entity:	RN100815216 SWH Realty, Ltd.	Classification: POOR	Site Rating: 94.50
ID Number(s):	AIR NEW SOURCE PERMITS PETROLEUM STORAGE TANK REGISTRATION	ACCOUNT NUMBER REGISTRATION	EE1721Q 31789
Location:	MUNICIPAL SOLID WASTE NON PERMITTED 1221 N COTTON ST, EL PASO, TX, 79902	ID NUMBER	455060029
TCEQ Region:	REGION 06 - EL PASO	Rating Date: 9/1/2007	Repeat Violator: NO
Date Compliance History Prepared:	July 28, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	July 28, 2003 to July 28, 2008		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Thomas Greimel	Phone:	(512) 239-5690

Site Compliance History Components

- | | |
|--|-------------------------------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | Yes |
| 3. If Yes, who is the current owner? | SWH Realty, Ltd. |
| 4. If Yes, who was/were the prior owner(s)? | Southwestern General Hospital, Inc. |
| 5. When did the change(s) in ownership occur? | 12/21/2007 |

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 Effective Date: 07/05/2004 ADMINORDER 2002-0046-PST-E
 Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3475
 30 TAC Chapter 334, SubChapter C 334.49(c)(2)(C)
 30 TAC Chapter 334, SubChapter C 334.49(c)(4)

Description: Failure to test the cathodic protection system for operability and adequacy of protection within 3 to 6 months after installation and failed to check rectifier once every 60 days for impressed current systems.

Classification: Moderate

Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)
 30 TAC Chapter 37, SubChapter I 37.815(b)

Description: Failure to demonstrate financial assurance.

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3475
 30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)

Description: Failure to monitor for releases at least once per month.

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.346(a)
 30 TAC Chapter 334, SubChapter A 334.8(c)(4)(B)

Description: Failed to ensure that a UST registration and self-certification form was fully and accurately completed and submitted to the TCEQ in a timely manner.

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3467(a)
 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(A)(i)

Description: Failed to make available to a common carrier a valid, current TCEQ delivery certificate before

delivery of a regulated substance was accepted into the UST system.

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	07/15/2004	(281291)
2	04/18/2005	(377807)
3	07/03/2008	(682096)

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
ENFORCEMENT ACTION
CONCERNING
SWH REALTY, LTD.
RN100815216

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2008-1215-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 SWH Realty, Ltd. ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a long-term health care facility at 1221 North Cotton Street in El Paso, El Paso County, Texas (the "Facility").
2. The Respondent's one underground storage tank ("UST") is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about July 12, 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 Eight Thousand Four Hundred Fifty Dollars (\$8,450) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Six Thousand Seven Hundred Sixty Dollars (\$6,760) of the administrative penalty and One Thousand Six Hundred Ninety Dollars (\$1,690) is deferred

- contingent upon the Respondent's 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 Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
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 recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. Submitted a properly completed UST registration and self-certification form and obtained a TCEQ delivery certificate on June 25, 2008;
 - b. Demonstrated acceptable financial assurance for the UST on June 23, 2008;
 - c. Conducted the required triennial testing of the cathodic protection system and began conducting bimonthly inspections of the rectifier and other system components on June 23, 2008; and
 - d. Implemented a release detection method for the UST on June 16, 2008.
 10. 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.
 11. 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.
 12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

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

1. Failed to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3), as documented during an investigation conducted on May 30, 2008. Specifically, the registration was not updated to reflect the ownership change on December 21, 2007.

2. Failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form within 30 days of the ownership change, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(4)(C) and (c)(5)(B)(ii), as documented during an investigation conducted on May 30, 2008.
3. Failed to make available to the common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a), as documented during an investigation conducted on May 30, 2008. Specifically, one fuel delivery was accepted on February 14, 2008 without a delivery certificate.
4. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum UST, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b), as documented during an investigation conducted on May 30, 2008.
5. 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 operating properly, 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 May 30, 2008. Specifically, the Respondent did not conduct the bimonthly inspections of the corrosion protection system.
6. 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 May 30, 2008. Specifically, the triennial test had not been conducted.
7. Failed to monitor the UST for releases 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 May 30, 2008.

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: SWH Realty, Ltd., Docket No. 2008-1215-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 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.
3. 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.
4. 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.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John S. Sullivan
For the Executive Director

12/15/2008
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.

Bryan E. Henington
Signature

10/9/08
Date

Bryan E. Henington
Name (Printed or typed)
Authorized Representative of
SWH Realty, Ltd.

Property Manager
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.

