

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1319-PST-E **TCEQ ID:** RN102476041 **CASE NO.:** 36396

RESPONDENT NAME: Earnhardt El Paso Motors, LP dba BMW of El Paso and Mazda of El Paso

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: BMW of El Paso and Mazda of El Paso, 6318 Montana Avenue, El Paso, El Paso County</p> <p>TYPE OF OPERATION: Car dealership with one underground storage tank</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 January 12, 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; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Ms. Mary Walker, General Counsel, Earnhardt El Paso Motors, LP, 7300 West Orchid Lane, Chandler, Arizona 85226 Mr. Hal J. Earnhardt, III, Member, Earnhardt El Paso Motors, LP, 7300 West Orchid Lane, Chandler, Arizona 85226 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

DOCKET NO.: 2008-1319-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 20, 2008</p> <p>Date of NOV/NOE Relating to this Case: August 15, 2008 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>1) Failure to provide an amended underground storage tank ("UST") registration to the agency for any change or additional information regarding the UST within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not amended to reflect the current owner and operator information [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 at least 30 days before the expiration date. Specifically, the delivery certificate expired on September 30, 2005 [30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)].</p> <p>3) Failure to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST. Specifically, the Facility received four deliveries of fuel without having a current 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</p>	<p>Total Assessed: \$21,017</p> <p>Total Deferred: \$4,203 <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: \$16,814</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has permanently removed the UST system from service on August 5, 2008.</p>

DOCKET NO.: 2008-1319-PST-E

<p>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>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, bimonthly inspections of the impressed current 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>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 ensure that the UST is monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring). Specifically, the automatic tank gauge was not being put into test mode monthly [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>8) Failure to provide release detection for the piping associated with the UST. Specifically, the annual piping tightness test had not been conducted [30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a)].</p> <p>9) Failure to test the line leak detectors at least once per year for performance and operational reliability. Specifically, the line leak detectors had not been performance tested annually [30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a)].</p> <p>10) Failure 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 [30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1)].</p>		
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<p>11) Failure to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day [30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>12) Failure to conduct effective manual or automatic inventory control procedures for the UST involved in the retail sale of petroleum substances used as motor fuel [30 TEX. ADMIN. CODE § 334.48(c)].</p> <p>13) Failure 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 [30 TEX. ADMIN. CODE § 334.45(c)(3)(A)].</p>		
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Additional ID No(s): PSt No. 18758



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

TCEQ

DATES	Assigned	11-Aug-2008	Screening	13-Aug-2008	EPA Due	
	PCW	14-Aug-2008				

RESPONDENT/FACILITY INFORMATION

Respondent	Earnhardt El Paso Motors, LP dba BMW of El Paso and Mazda of El Paso		
Reg. Ent. Ref. No.	RN102476041		
Facility/Site Region	6-El Paso	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	36396	No. of Violations	7
Docket No.	2008-1319-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Judy Kluge
Admin. Penalty \$	Limit Minimum \$0	Maximum	\$10,000
		EC's Team	Enforcement Team 6

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
 Approx. Cost of Compliance
 *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 13-Aug-2008

Docket No. 2008-1319-PST-E

PCW

Respondent Earnhardt El Paso Motors, LP dba BMW of El Paso and I

Policy Revision 2 (September 2002)

Case ID No. 36396

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN102476041

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>)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	3	60%
	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 judgments 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%
<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)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

Enhancement for three 1660 orders and one NOV with same or similar violations.

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

Screening Date 13-Aug-2008	Docket No. 2008-1319-PST-E	PCW	
Respondent Earnhardt EI Paso Motors, LP dba BMW of EI Paso and Mazda of E		<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 36396		<i>PCW Revision June 12, 2008</i>	
Reg. Ent. Reference No. RN102476041			
Media [Statute] Petroleum Storage Tank			
Enf. Coordinator Judy Kluge			
Violation Number	1		
Rule Cite(s)	30 Tex. Admin. Code §§ 334.7(d)(3), 334.8(c)(4)(A)(vii), and (c)(5)(B)(ii)		
Violation Description	Failed to provide an amended UST registration to the agency for any change or additional information regarding the UST within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not amended to reflect the current owner and operator information. Failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date. Specifically, the delivery certificate expired on September 30, 2005.		
Base Penalty		\$10,000	
>> Environmental, Property and Human Health Matrix			
OR	Harm		
	Major	Moderate	Minor
	Actual	Potential	Percent
	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>
>>Programmatic Matrix			
	Major	Moderate	Minor
	Falsification	Major	Moderate
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>
			Percent <input type="text" value="10%"/>
Matrix Notes	100% of the rule requirement was not met.		
Adjustment		\$9,000	
		\$1,000	
Violation Events			
Number of Violation Events		1	Number of violation days
		1040	
<i>mark only one with an x</i>	daily	<input type="text"/>	Violation Base Penalty
	monthly	<input type="text"/>	
	quarterly	<input type="text"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input checked="" type="text" value="x"/>	
One single event is recommended.			\$1,000
Good Faith Efforts to Comply		25.0% Reduction	\$250
		Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>		
Ordinary	<input checked="" type="text" value="x"/>		
N/A	<input type="text"/>	(mark with x)	
Notes	The Respondent came into compliance on August 5, 2008.		
Violation Subtotal		\$750	
Economic Benefit (EB) for this violation		Statutory Limit Test	
Estimated EB Amount		\$15	Violation Final Penalty Total
		\$1,681	
		This violation Final Assessed Penalty (adjusted for limits)	
		\$1,681	

Economic Benefit Worksheet

Respondent Earnhardt El Paso Motors, LP dba BMW of El Paso and Mazda of El Paso
Case ID No. 36396
Reg. Ent. Reference No. RN102476041
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

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	\$100	31-Aug-2005	5-Aug-2008	2.93	\$15	n/a	\$15
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs
 The delayed cost includes the estimated amount required to timely renew a previously issued delivery certificate by submitting a properly completed UST registration and self-certification form. The date required is 30 days before the expiration date of September 30, 2005. The final date is the compliance date.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance	\$100	TOTAL	\$15
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Screening Date 13-Aug-2008	Docket No. 2008-1319-PST-E	PCW			
Respondent Earnhardt EI Paso Motors, LP dba BMW of EI Paso and Mazda of EI	<small>Policy Revision 2 (September 2002)</small>				
Case ID No. 36396	<small>PCW Revision June 12, 2008</small>				
Reg. Ent. Reference No. RN102476041					
Media [Statute] Petroleum Storage Tank					
Enf. Coordinator Judy Kluge					
Violation Number <input type="text" value="2"/>					
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 334.8(c)(5)(A)(i) and Tex. Water Code § 26.3467(a)"/>				
Violation Description	<input type="text" value="Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST. Specifically, the Facility received four deliveries of fuel without having a current delivery certificate."/>				
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"/>	Percent <input type="text" value="5%"/>	
Potential	<input type="text"/>	<input type="text"/>	x		
>> Programmatic Matrix					
	Falsification	Major	Moderate	Minor	Percent <input type="text" value="0%"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Matrix Notes	<input type="text" value="Human health or the environment will or 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				<input type="text" value="\$9,500"/>	
				<input type="text" value="\$500"/>	
Violation Events					
	Number of Violation Events	<input type="text" value="4"/>	Number of violation days	<input type="text" value="4"/>	
<small>mark only one with an x</small>		daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$2,000"/>	
		monthly	<input type="text"/>		
		quarterly	<input type="text"/>		
		semiannual	<input type="text"/>		
		annual	<input type="text"/>		
		single event	x		
<input type="text" value="Four single events are recommended for accepting four deliveries of fuel."/>					
Good Faith Efforts to Comply		<input type="text" value="25.0%"/>	Reduction	<input type="text" value="\$500"/>	
		Before NOV	NOV to EDPRP/Settlement Offer		
Extraordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>		
Ordinary	x	<input type="text"/>	<input type="text"/>		
N/A	<input type="text"/>	<small>(mark with x)</small>			
Notes	<input type="text" value="The Respondent came into compliance on August 5, 2008."/>				
Violation Subtotal				<input type="text" value="\$1,500"/>	
Economic Benefit (EB) for this violation		Statutory Limit Test			
Estimated EB Amount	<input type="text" value="\$0"/>	Violation Final Penalty Total	<input type="text" value="\$3,363"/>		
		This violation Final Assessed Penalty (adjusted for limits)		<input type="text" value="\$3,363"/>	

Economic Benefit Worksheet

Respondent Earnhardt El Paso Motors, LP dba BMW of El Paso and Mazda of El Paso
Case ID No. 36396
Reg. Ent. Reference No. RN102476041
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Economic benefit included in Violation No. 1.

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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 13-Aug-2008	Docket No. 2008-1319-PST-E	PCW		
Respondent Earnhardt El Paso Motors, LP dba BMW of El Paso and Mazda of El		<small>Policy Revision 2 (September 2002)</small>		
Case ID No. 36396		<small>PCW Revision June 12, 2008</small>		
Reg. Ent. Reference No. RN102476041				
Media [Statute] Petroleum Storage Tank				
Enf. Coordinator Judy Kluge				
Violation Number	<input type="text" value="3"/>			
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 37.815(a) and (b)"/>			
Violation Description	<input type="text" value="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			
	Release	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				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	x	<input type="text"/>	<input type="text"/>
		Percent	<input type="text" value="10%"/>	
Matrix Notes	<input type="text" value="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="365"/> Number of violation days	
<small>mark only one with an x</small>	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$1,000"/>	
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	x		
<input type="text" value="One single event is recommended for the one UST at the Facility."/>				
Good Faith Efforts to Comply		<input type="text" value="25.0%"/> Reduction	<input type="text" value="\$250"/>	
	Before NOV	NOV to EDPRP/Settlement Offer		
Extraordinary	<input type="text"/>	<input type="text"/>		
Ordinary	x	<input type="text"/>		
N/A	<input type="text"/>	(mark with x)		
Notes	<input type="text" value="The Respondent came into compliance on August 5, 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="\$1,681"/>	
		This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,681"/>		

Economic Benefit Worksheet

Respondent Earnhardt El Paso Motors, LP dba BMW of El Paso and Mazda of El Paso
Case ID No. 36396
Reg. Ent. Reference No. RN102476041
Media Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				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	20-Jun-2008	5-Aug-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 one petroleum UST. The date required is the date of the investigation and the final date is the compliance date.

Approx. Cost of Compliance	\$650	TOTAL	\$683
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Screening Date 13-Aug-2008	Docket No. 2008-1319-PST-E	PCW		
Respondent Earnhardt El Paso Motors, LP dba BMW of El Paso and Mazda of El		<i>Policy Revision 2 (September 2002)</i>		
Case ID No. 36396		<i>PCW Revision June 12, 2008</i>		
Reg. Ent. Reference No. RN102476041				
Media [Statute] Petroleum Storage Tank				
Enf. Coordinator Judy Kluge				
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, bimonthly inspections of the impressed current cathodic protection system were not being conducted. 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	Harm			
	Release	Major	Moderate	Minor
	Actual			
	Potential	x		
		Percent	25%	
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
		Percent	0%	
Matrix Notes	Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.			
Adjustment		\$7,500		
		\$2,500		
Violation Events				
Number of Violation Events		1	46	
		Number of violation days		
<i>mark only one with an x</i>	daily		Violation Base Penalty	
	monthly			
	quarterly	x		
	semiannual			
	annual			
	single event			
		\$2,500		
One quarterly event is recommended based on documentation of the violation from the June 20, 2008 investigation to the August 5, 2008 compliance date.				
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 August 5, 2008.			
Violation Subtotal		\$1,875		
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount	\$1,733	Violation Final Penalty Total	\$4,203	
		This violation Final Assessed Penalty (adjusted for limits) \$4,203		

Economic Benefit Worksheet

Respondent Earnhardt El Paso Motors, LP dba BMW of El Paso and Mazda of El Paso
Case ID No. 36396
Reg. Ent. Reference No. RN102476041
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
Bi-monthly Inspections	\$500	20-Apr-2008	5-Aug-2008	1.21	\$30	\$500	\$530
Triennial Tests	\$1,000	20-Jun-2005	5-Aug-2008	4.05	\$202	\$1,000	\$1,202

Notes for AVOIDED costs

The estimated avoided costs to conduct bimonthly inspections and the triennial testing of the cathodic protection system. The dates required are 60 days prior to and three years prior to the investigation date and the final dates are the compliance dates.

Approx. Cost of Compliance

\$1,500

TOTAL

\$1,733

Screening Date 13-Aug-2008	Docket No. 2008-1319-PST-E	PCW		
Respondent Earnhardt El Paso Motors, LP dba BMW of El Paso and Mazda of El Paso		<small>Policy Revision 2 (September 2002)</small>		
Case ID No. 36396		<small>PCW Revision June 12, 2008</small>		
Reg. Ent. Reference No. RN102476041				
Media [Statute] Petroleum Storage Tank				
Enf. Coordinator Judy Kluge				
Violation Number	5			
Rule Cite(s)	30 Tex. Admin. Code § 334.50(b)(1)(A), (b)(2), (b)(2)(A)(i)(III), (d)(1)(B)(ii), (d)(1)(B)(iii)(I) and Tex. Water Code § 26.3475(a) and (c)(1)			
Violation Description	Failed to ensure that the UST is monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring). Specifically, the automatic tank gauge was not being put into test mode monthly. Failed to provide release detection for the piping associated with the UST. Specifically, the annual piping tightness test had not been conducted. Failed to test the line leak detectors at least once per year for performance and operational reliability. Specifically, the line leak detectors had not been performance tested annually. 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. Failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day.			
Base Penalty		\$10,000		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		Percent	25%	
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		Percent	0%	
Matrix Notes	Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.			
Adjustment		\$7,500		
		\$2,500		
Violation Events				
Number of Violation Events		1	Number of violation days	
		46		
<small>mark only one with an x</small>	daily	<input type="checkbox"/>	Violation Base Penalty	
	monthly	<input type="checkbox"/>		
	quarterly	<input checked="" type="checkbox"/>		
	semiannual	<input type="checkbox"/>		
	annual	<input type="checkbox"/>		
	single event	<input type="checkbox"/>		
One quarterly event is recommended based on documentation of the violation from the June 20, 2008 investigation to the August 5, 2008 compliance date.			\$2,500	
Good Faith Efforts to Comply			\$625	
		25.0% Reduction		
		Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>		
Ordinary	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
N/A	<input type="checkbox"/>	<input type="checkbox"/>	<small>(mark with x)</small>	
Notes	The Respondent came into compliance on August 5, 2008.			
Violation Subtotal		\$1,875		
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount	\$1,109	Violation Final Penalty Total	\$4,203	
		This violation Final Assessed Penalty (adjusted for limits)		
		\$4,203		

Economic Benefit Worksheet

Respondent Earnhardt EI Paso Motors, LP dba BMW of EI Paso and Mazda of EI Paso
Case ID No. 36396
Reg. Ent. Reference No. RN102476041
Media Petroleum Storage Tank
Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$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	\$1,000	20-Jun-2008	5-Aug-2008	0.13	\$6	n/a	\$6
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 The estimated cost of monitoring all USTs for releases, recording daily inventory volume measurements, and monthly reconciliation of inventory control records. The date required is the investigation date and the 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]	\$1,000	20-Jun-2007	5-Aug-2008	2.05	\$102	\$1,000	\$1,102
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs Avoided costs for conducting annual piping tightness test and line leak detector test. The date required is one year prior to the investigation date and the final date is the date of compliance.

Approx. Cost of Compliance	\$2,000	TOTAL	\$1,109
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Screening Date 13-Aug-2008	Docket No. 2008-1319-PST-E	PCW
Respondent Earnhardt EI Paso Motors, LP dba BMW of EI Paso and Mazda of EI		<i>Policy Revision 2 (September 2002)</i>
Case ID No. 36396		<i>PCW Revision June 12, 2008</i>
Reg. Ent. Reference No. RN102476041		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Judy Kluge		
Violation Number	<input type="text" value="6"/>	
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 334.48(c)"/>	
Violation Description	<input type="text" value="Failed to conduct effective manual or automatic inventory control procedures for the UST involved in the retail sale of petroleum substances used as motor fuel."/>	
Base Penalty		<input type="text" value="\$10,000"/>
>> Environmental, Property and Human Health Matrix		
OR	Harm	
	Release Major Moderate Minor	
	Actual	<input type="text"/>
	Potential	<input type="text" value="x"/>
Percent		<input type="text" value="25%"/>
>> Programmatic Matrix		
	Falsification Major Moderate Minor	
	<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"/>	<input type="text" value="46"/> Number of violation days
<i>mark only one with an x</i>	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text" value="x"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>
Violation Base Penalty		<input type="text" value="\$2,500"/>
<input type="text" value="One quarterly event is recommended based on documentation of the violation from the June 20, 2008 investigation to the August 5, 2008 compliance date."/>		
Good Faith Efforts to Comply		<input type="text" value="25.0%"/> Reduction
	Before NOV NOV to EDPRP/Settlement Offer	
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text" value="x"/>	<input type="text"/>
N/A	<input type="text"/>	(mark with x)
Notes	<input type="text" value="The Respondent came into compliance on August 5, 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="\$4,203"/>
		This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$4,203"/>

Economic Benefit Worksheet

Respondent Earnhardt EI Paso Motors, LP dba BMW of EI Paso and Mazda of EI Paso
Case ID No. 36396
Reg. Ent. Reference No. RN102476041
Media Petroleum Storage Tank
Violation No. 6

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	20-Jun-2008	5-Aug-2008	0.13	\$3	n/a	\$3
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 conduct inventory control for all USTs involved in the retail sale of petroleum substances used as motor fuel. The date required is the date of the investigation and 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

\$500

TOTAL

\$3

Screening Date 13-Aug-2008	Docket No. 2008-1319-PST-E	PCW		
Respondent Earnhardt EI Paso Motors, LP dba BMW of EI Paso and Mazda of EI		<i>Policy Revision 2 (September 2002)</i>		
Case ID No. 36396		<i>PCW Revision June 12, 2008</i>		
Reg. Ent. Reference No. RN102476041				
Media [Statute] Petroleum Storage Tank				
Enf. Coordinator Judy Kluge				
Violation Number	<input type="text" value="7"/>			
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 334.45(c)(3)(A)"/>			
Violation Description	<input type="text" value="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."/>			
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"/>	x	<input type="text"/>
		Percent	<input type="text" value="10%"/>	
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
		Percent	<input type="text" value="0%"/>	
Matrix Notes	<input type="text" value="Human health or the environment will or could be exposed to a significant amount of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation."/>			
		Adjustment	<input type="text" value="\$9,000"/>	
		<input type="text" value="\$1,000"/>		
Violation Events				
	<input type="text" value="1"/>	<input type="text" value="46"/>	Number of violation days	
<i>mark only one with an x</i>	daily	<input type="text"/>		
	monthly	<input type="text"/>		
	quarterly	x		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input type="text"/>		
		Violation Base Penalty	<input type="text" value="\$1,000"/>	
		<input type="text" value="One quarterly event is recommended based on documentation of the violation during the June 20, 2008 investigation to the August 5, 2008 compliance date."/>		
Good Faith Efforts to Comply		<input type="text" value="25.0%"/>	Reduction	
		Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary	<input type="text"/>	<input type="text"/>		
Ordinary	x	<input type="text"/>		
N/A	<input type="text"/>	(mark with x)		
Notes	<input type="text" value="The Respondent came into compliance on August 5, 2008."/>			
		Violation Subtotal	<input type="text" value="\$750"/>	
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount	<input type="text" value="\$1"/>	Violation Final Penalty Total	<input type="text" value="\$1,681"/>	
		This violation Final Assessed Penalty (adjusted for limits)	<input type="text" value="\$1,681"/>	

Economic Benefit Worksheet

Respondent Earnhardt El Paso Motors, LP dba BMW of El Paso and Mazda of El Paso
Case ID No. 36396
Reg. Ent. Reference No. RN102476041
Media Petroleum Storage Tank
Violation No. 7

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment	\$100	20-Jun-2008	5-Aug-2008	0.13	\$0	\$1	\$1
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 securely anchor all emergency shutoff valves at the base of the dispensing unit. The date required is the date of the investigation and the 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	\$1
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Compliance History

Customer/Respondent/Owner-Operator:	CN602783987	Earnhardt El Paso Motors, LP	Classification: AVERAGE	Rating: 15.25
Regulated Entity:	RN102476041	BMW OF EL PASO AND MAZDA OF EL PASO	Classification: AVERAGE	Site Rating: 15.25
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION		18758
	AIR NEW SOURCE PERMITS	REGISTRATION		75219
Location:	6318 MONTANA AVE, EL PASO, TX, 79925		Rating Date: September 01 07	Repeat Violator: NO
TCEQ Region:	REGION 06 - EL PASO			
Date Compliance History Prepared:	August 11, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	August 11, 2003 to August 11, 2008			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Judy Kluge	Phone:	817-588-5825	

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? Yes
3. If Yes, who is the current owner? Earnhardt El Paso Motors, L.P
4. If Yes, who was/were the prior owner(s)? Mack Massey Motors, L.P.
5. When did the change(s) in ownership occur? 1/11/2005

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
- Effective Date: 07/05/2004 ADMINORDER 2003-1282-PST-E
 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 a valid, current TCEQ Fuel Delivery Certificate to common carrier prior to receiving fuel deliveries.
 Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.346(a)
 30 TAC Chapter 334, SubChapter A 334.8(c)(4)(A)(vii)
 Description: Failed to ensure that a TCEQ Fuel Delivery Certificate was renewed by timely and proper submission of a UST registration and self-certification form.
 - Effective Date: 11/06/2005 ADMINORDER 2004-1694-PST-E
 Classification: Moderate
 Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)
 30 TAC Chapter 37, SubChapter I 37.815(b)
 Description: A mechanism was received, but it did not provide coverage on the file review date.
 - Effective Date: 04/14/2006 ADMINORDER 2005-2042-AIR-E
 Classification: Moderate
 Citation: 30 TAC Chapter 114, SubChapter D 114.100(a)
 5C THC Chapter 382, SubChapter A 382.085(b)
 Description: Failure to comply with 30 TAC Chapter 114.100 Oxygenated Fuel requirement.
- 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 10/20/2003 (278981)
 - 2 07/15/2004 (275615)

3 08/23/2004 (290734)
4 09/23/2004 (289898)
5 03/22/2005 (374252)
6 12/09/2005 (439254)
7 02/20/2006 (450393)
8 11/21/2006 (531684)
9 08/08/2008 (686248)

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

Date: 10/20/2003 (278981)

Self Report? NO

Classification: Moderate

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

30 TAC Chapter 37, SubChapter I 37.815(b)

Description: Failure to provide acceptable financial assurance.

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
EARNHARDT EL PASO MOTORS, LP
DBA BMW OF EL PASO AND MAZDA
OF EL PASO
RN102476041**

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§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2008-1319-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 Earnhardt El Paso Motors, LP dba BMW of El Paso and Mazda of El Paso ("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 owns and operates a car dealership with one underground storage tank ("UST") at 6318 Montana Avenue in El Paso, El Paso County, Texas (the "Facility").
2. The Respondent's one 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 August 20, 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 Twenty-One Thousand Seventeen Dollars (\$21,017) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations").

The Respondent has paid Sixteen Thousand Eight Hundred Fourteen Dollars (\$16,814) of the administrative penalty and Four Thousand Two Hundred Three Dollars (\$4,203) 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 permanently removed the UST system from service on August 5, 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 UST registration to the agency for any change or additional information regarding the UST 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 June 20, 2008. Specifically, the registration was not amended to reflect the current owner and operator information.
2. Failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii), as documented during an investigation conducted on June 20, 2008. Specifically, the delivery certificate expired on September 30, 2005.
3. Failed to make available to a 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 June 20, 2008. Specifically, the Facility received four deliveries of fuel without having a current 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 June 20, 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 June 20, 2008. Specifically, bimonthly inspections of the impressed current cathodic protection system were not being conducted.
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 June 20, 2008. Specifically, the triennial test had not been conducted.
7. Failed to ensure that the UST is 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 20, 2008. Specifically, the automatic tank gauge was not being put into test mode monthly.
8. Failed to provide release detection for the piping associated with the UST, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a), as documented during an investigation conducted on June 20, 2008. Specifically, the annual piping tightness test had not been conducted.
9. Failed to test the line leak detectors at least once per year for performance and operational reliability, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a), as documented during an investigation conducted on June 20, 2008. Specifically, the line leak detectors had not been performance tested annually.
10. 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 20, 2008.
11. Failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day, 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 June 20, 2008.
12. Failed to conduct effective manual or automatic inventory control procedures for the UST involved in the retail sale of petroleum substances used as motor fuel, in violation of 30 TEX. ADMIN. CODE § 334.48(c), as documented during an investigation conducted on June 20, 2008.

13. 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, in violation of 30 TEX. ADMIN. CODE § 334.45(c)(3)(A), as documented during an investigation conducted on June 20, 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: Earnhardt El Paso Motors, LP dba BMW of El Paso and Mazda of El Paso, Docket No. 2008-1319-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 Siddle

For the Executive Director

12/29/2008

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.

Earnhardt El Paso Motors, LP
d/b/a BMW of El Paso and Mazda of El Paso

By: Earnhardt Texas Motors, LLC

Its: General Partner

By: Hal J. Earnhardt, III

Its: Member

November 6, 2008

Date

Hal J. Earnhardt, III

Member

Name (Printed or typed)

Title

Authorized Representative of

Earnhardt El Paso Motors, LP dba BMW of El Paso and Mazda of El Paso

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.

