

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2008-1159-PST-E **TCEQ ID:** RN101787885 **CASE NO.:** 36295
RESPONDENT NAME: Gerene Ferguson

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: Amazin Grazin, 9801 North Farm-to-Market Road 1264, Lubbock, Lubbock County</p> <p>TYPE OF OPERATION: Property with an underground storage tank ("UST")</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 February 2, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. James Nolan, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-6634; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Ms. Gerene Ferguson, Owner, 11007 Richmond Avenue, Lubbock, Texas 79424 Respondent's Attorney: Mr. J. Paul Manning, Attorney, Manning, Stone, Hawthorne & Aycock, P.C., 2112 Indiana Avenue, Lubbock, Texas 79410</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" 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 17, 2008</p> <p>Date of NOV/NOE Relating to this Case: June 19, 2008 (NOE)</p> <p>Background Facts: This was a record review.</p> <p>WASTE</p> <p>1) Failure to maintain required records pertaining to the UST system at the Facility [30 TEX. ADMIN. CODE § 334.10(b)(1)(B)].</p> <p>2) Failure to provide a method of release detection capable of detecting a release from any portion of the UST system and failed to test or monitor the line leak detectors at least once per year for performance and operational reliability [30 TEX. ADMIN. CODE § 334.50(a)(1) and 334.50(b)(2)(A)(i)(III) and (ii)].</p> <p>3) Failure to demonstrate acceptable financial assurance for taking corrective actions and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of a petroleum UST [30 TEX. ADMIN. CODE § 37.815(a) and (b)].</p>	<p>Total Assessed: \$5,748</p> <p>Total Deferred: \$1,149 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$4,599</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 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 completed the following corrective measures at the Facility:</p> <p>a. On July 1, 2008, the leak detection system was replaced and a leak test was conducted on the UST; and</p> <p>b. On July 30, 2008, all fuel was removed from the UST.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, begin to maintain the required records for the UST at the Facility;</p> <p>b. Within 30 days after the effective date of this Agreed Order, submit documentation that demonstrates acceptable financial assurance for taking corrective actions and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of a petroleum UST; and</p> <p>c. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a. and b.</p>

Additional ID No(s): 63033



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

DATES	Assigned	23-Jun-2008			
	PCW	4-Sep-2008	Screening	15-Jul-2008	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	Gerene Ferguson
Reg. Ent. Ref. No.	RN101787885
Facility/Site Region	2-Lubbock
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36295	No. of Violations	3
Docket No.	2008-1159-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	James Nolan
		EC's Team	Enforcement Team 4
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	<i>Subtotal 1</i>	\$4,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	7.0% Enhancement	<i>Subtotals 2, 3, & 7</i>	\$315
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Notes: The Respondent received one NOV for same or similar violations and one NOV for dissimilar violations at this site within the past five years.

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

Good Faith Effort to Comply Total Adjustments	<i>Subtotal 5</i>	\$250
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Economic Benefit	0.0% Enhancement*	<i>Subtotal 6</i>	\$0
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Total EB Amounts	\$1,188	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$2,205	

SUM OF SUBTOTALS 1-7	<i>Final Subtotal</i>	\$4,565
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OTHER FACTORS AS JUSTICE MAY REQUIRE	20.6%	<i>Adjustment</i>	\$1,183
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancements to capture the avoided costs of violations Nos. 2 and 3.

<i>Final Penalty Amount</i>	\$5,748
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STATUTORY LIMIT ADJUSTMENT	<i>Final Assessed Penalty</i>	\$5,748
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DEFERRAL	20.0% Reduction	<i>Adjustment</i>	-\$1,149
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY	\$4,599
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Screening Date 15-Jul-2008

Docket No. 2008-1159-PST-E

PCW

Respondent Gerene Ferguson

Policy Revision 2 (September 2002)

Case ID No. 36295

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN101787885

Media [Statute] Petroleum Storage Tank

Enf. Coordinator James Nolan

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	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<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) 7%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The Respondent received one NOV for same or similar violations and one NOV for dissimilar violations at this site within the past five years.

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

Screening Date 15-Jul-2008 **Docket No.** 2008-1159-PST-E **PCW**
Respondent Gerene Ferguson *Policy Revision 2 (September 2002)*
Case ID No. 36295 *PCW Revision June 12, 2008*

Reg. Ent. Reference No. RN101787885
Media [Statute] Petroleum Storage Tank
Enf. Coordinator James Nolan

Violation Number

Rule Cite(s)

Violation Description Failed to maintain required records pertaining to the underground storage tank ("UST") system at the Facility, as documented during a record review investigation conducted on June 17, 2008.

Base Penalty

>> Environmental, Property and Human Health Matrix

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

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

Good Faith Efforts to Comply

0.0% Reduction

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

Notes

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 Gerene Ferguson
Case ID No. 36295
Reg. Ent. Reference No. RN101787885
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	\$100	17-Jun-2008	27-Mar-2009	0.78	\$4	n/a	\$4
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 maintain the required records at the Facility. The Date Required is investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$4

Screening Date 15-Jul-2008	Docket No. 2008-1159-PST-E	PCW	
Respondent Gerene Ferguson		<small>Policy Revision 2 (September 2002)</small>	
Case ID No. 36295		<small>PCW Revision June 12, 2008</small>	
Reg. Ent. Reference No. RN101787885			
Media [Statute] Petroleum Storage Tank			
Enf. Coordinator James Nolan			
Violation Number <input type="text" value="2"/>			
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 334.50(a)(1) and 334.50(b)(2)(A)(i)(III) and (ii)"/>		
Violation Description	<input type="text" value="Failed to provide a method of release detection capable of detecting a release from any portion of the UST system and failed to test or monitor the line leak detectors at least once per year for performance and operational reliability, as documented during a record review investigation conducted on June 17, 2008."/>		
	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	x	<input type="text"/>	<input type="text"/>
		Percent	<input type="text" value="25%"/>
>> Programmatic Matrix			
	Falsification	Major	Moderate
	<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="14"/>	
<small>mark only one with an x</small>	daily	<input type="text"/>	Violation Base Penalty
	monthly	x	
	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 investigation date of June 17, 2008 to the date of compliance, July 1, 2008."/>			
Good Faith Efforts to Comply			
	10.0% Reduction		<input type="text" value="\$250"/>
	<small>Before NOV</small>	<small>NOV to EDPRP/Settlement Offer</small>	
Extraordinary	<input type="text"/>	<input type="text"/>	
Ordinary	<input type="text"/>	x	
N/A	<input type="text"/>	<small>(mark with x)</small>	
Notes	<input type="text" value="On July 1, 2008, the leak detector was replaced and a leak check was conducted on the UST."/>		
	Violation Subtotal	<input type="text" value="\$2,250"/>	
Economic Benefit (EB) for this violation			
	Estimated EB Amount	<input type="text" value="\$501"/>	Violation Final Penalty Total
			<input type="text" value="\$2,924"/>
	This violation Final Assessed Penalty (adjusted for limits)		<input type="text" value="\$2,924"/>

Economic Benefit Worksheet

Respondent: Gerene Ferguson
Case ID No.: 36295
Reg. Ent. Reference No.: RN101787885
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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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)	\$1,000	17-Jun-2008	1-Jul-2008	0.04	\$2	n/a	\$2

Notes for DELAYED costs
 Estimated cost to provide release detection for the UST. The Date Required is 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]				0.00	\$0	\$0	\$0
Other (as needed)	\$455	17-Jun-2007	1-Jul-2008	1.96	\$45	\$455	\$500

Notes for AVOIDED costs
 Estimated cost to test the line leak detectors. Date Required is the one year prior to investigation date and the Final Date is the date of compliance.

Approx. Cost of Compliance	\$1,455	TOTAL	\$501
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Screening Date 15-Jul-2008 Respondent Gerene Ferguson Case ID No. 36295 Reg. Ent. Reference No. RN101787885 Media [Statute] Petroleum Storage Tank Enf. Coordinator James Nolan 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 <div style="border: 1px solid black; padding: 5px; min-height: 50px;"> Failed to demonstrate acceptable financial assurance for taking corrective actions and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of a petroleum UST, as documented during a record review investigation conducted on June 17, 2008. </div>	Docket No. 2008-1159-PST-E <div style="text-align: right;">PCW</div> <small>Policy Revision 2 (September 2002) PCW Revision June 12, 2008</small>																									
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OR	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td colspan="4" style="text-align: center;">Harm</td> <td></td> </tr> <tr> <td></td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> <td></td> </tr> <tr> <td style="text-align: center;">Release</td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> <td></td> </tr> <tr> <td style="text-align: center;">Actual</td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: right;">Percent <input type="text" value="0%"/></td> </tr> <tr> <td style="text-align: center;">Potential</td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> <td></td> </tr> </table>	Harm						Major	Moderate	Minor		Release	<input type="text"/>	<input type="text"/>	<input type="text"/>		Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
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Matrix Notes	<div style="border: 1px solid black; padding: 5px; min-height: 30px;"> 100% of the rule requirement was not met. </div>																									
Adjustment <input type="text" value="\$9,000"/>																										
<input type="text" value="\$1,000"/>																										
Violation Events																										
	<table style="width:100%;"> <tr> <td style="width:50%;">Number of Violation Events <input type="text" value="1"/></td> <td style="width:50%;">Number of violation days <input type="text" value="1"/></td> </tr> </table>	Number of Violation Events <input type="text" value="1"/>	Number of violation days <input type="text" value="1"/>																							
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single event	<input checked="" type="text" value="x"/>																									
Violation Base Penalty <input type="text" value="\$1,000"/>																										
	<div style="border: 1px solid black; padding: 5px; min-height: 30px;"> One single event for the one UST is recommended. </div>																									
Good Faith Efforts to Comply																										
	<table style="width:100%;"> <tr> <td style="width:50%;"></td> <td style="width:50%; text-align: right;">0.0% Reduction</td> </tr> <tr> <td></td> <td style="text-align: right;">Before NOV NOV to EDPRP/Settlement Offer</td> </tr> <tr> <td style="text-align: center;">Extraordinary</td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td style="text-align: center;">Ordinary</td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td style="text-align: center;">N/A</td> <td style="text-align: center;"><input checked="" type="text" value="x"/> (mark with x)</td> </tr> </table>		0.0% Reduction		Before NOV NOV to EDPRP/Settlement Offer	Extraordinary	<input type="text"/>	Ordinary	<input type="text"/>	N/A	<input checked="" type="text" value="x"/> (mark with x)															
	0.0% Reduction																									
	Before NOV NOV to EDPRP/Settlement Offer																									
Extraordinary	<input type="text"/>																									
Ordinary	<input type="text"/>																									
N/A	<input checked="" type="text" value="x"/> (mark with x)																									
Notes	<div style="border: 1px solid black; padding: 5px; min-height: 30px;"> The Respondent does not meet the good faith criteria for this violation. </div>																									
Violation Subtotal <input type="text" value="\$1,000"/>																										
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="\$1,290"/>																									
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,290"/>																										

Economic Benefit Worksheet

Respondent: Gerene Ferguson
Case ID No.: 36295
Reg. Ent. Reference No.: RN101787885
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	17-Jun-2007	17-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 one petroleum UST. Date required is one year prior to the investigation date and the Final Date is the investigation date.

Approx. Cost of Compliance

\$650

TOTAL

\$683

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603376740	FERGUSON, GERENE	Classification: AVERAGE	Rating: 4.50
Regulated Entity:	RN101787885	AMAZIN GRAZIN	Classification: AVERAGE	Site Rating: 4.50
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	63033
Location:	9801 N FM 1264, LUBBOCK, TX, 79415			
TCEQ Region:	REGION 02 - LUBBOCK			
Date Compliance History Prepared:	January 12, 2009			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	August 14, 2003 to August 14, 2008			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	James Nolan		Phone:	(512) 239-6634

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? | | Country Depot, Ltd |
| 4. If Yes, who was/were the prior owner(s)? | | |
| 5. When did the change(s) in ownership occur? | | 02/10/2006 |
| 6. Rating Date: 9/1/2008 Repeat Violator: NO | | |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- | | | | |
|---|------------|----------|--|
| 1 | 02/25/2008 | (615550) | |
| 2 | 03/31/2008 | (640711) | |
| 3 | 06/19/2008 | (683557) | |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | |
|--------------|--|-----------------|----------|
| Date: | 02/25/2008 | (640711) | |
| Self | NO | Classification: | Moderate |
| Citation: | 30 TAC Chapter 334, SubChapter C 334.51(a)(6) | | |
| Description: | Failure of owner or operator to assure that all spill and overfill prevention devices installed are maintained in good operating condition, and that such devices are inspected and serviced in accordance with the manufacturers' specifications. | | |
| Self | NO | Classification: | Moderate |
| Citation: | 30 TAC Chapter 334, SubChapter C 334.49(b)(2) | | |
| Description: | Failure of owner to provide electrical isolation to prevent corrosion of metal components and to allow for visual inspection of the submersible pump and its components by removing excessive backfill from the manway of the submersible pump. | | |
| Date: | 02/25/2008 | (615550) | |
| Self | NO | Classification: | Moderate |
| Citation: | 30 TAC Chapter 334, SubChapter A 334.7(d)(3) | | |

Description: Failure of owner/operator to amend, update, or change UST registration information within 30 days of its occurrence.

Self Report? NO Classification Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.51(a)(6)

Description: Failure of owner or operator to assure that all spill and overfill prevention devices installed are maintained in good operating condition, and that such devices are inspected and serviced in accordance with the manufacturers' specifications.

Self Report? NO Classification Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.49(b)(2)

Description: Failure of owner to provide electrical isolation to prevent corrosion of metal components and to allow for visual inspection of the submersible pump and its components by removing excessive backfill from the manway of the submersible pump.

Self Report? NO Classification Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)(1)(B)

Description: Complete failure of owner/operator to submit records for investigation.

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
GERENE FERGUSON
RN101787885

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2008-1159-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 Gerene Ferguson ("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, represented by Mr. J. Paul Manning of the law firm of Field, Manning, Stone, Hawthorne & Aycock, P.C., appear before the Commission and together stipulate that:

1. The Respondent owns property with an underground storage tank ("UST") at 9801 North Farm-to-Market Road 1264 in Lubbock, Lubbock 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 June 24, 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 Five Thousand Seven Hundred Forty-Eight Dollars (\$5,748) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Four Thousand Five Hundred Ninety-Nine Dollars

(\$4,599) of the administrative penalty and One Thousand One Hundred Forty-Nine Dollars (\$1,149) 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 completed the following corrective measures at the Facility:
 - a. On July 1, 2008, the leak detection system was replaced and a leak test was conducted on the UST; and
 - b. On July 30, 2008, all fuel was removed from the UST.
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 of the Facility, the Respondent is alleged to have:

1. Failed to maintain required records pertaining to the UST system at the Facility, in violation of 30 TEX. ADMIN. CODE § 334.10(b)(1)(B), as documented during a record review investigation conducted on June 17, 2008.
2. Failed to provide a method of release detection capable of detecting a release from any portion of the UST system and failed to test or monitor the line leak detectors at least once per year for performance and operational reliability, in violation of 30 TEX. ADMIN. CODE § 334.50(a)(1) and 334.50(b)(2)(A)(i)(III) and (ii), as documented during a record review investigation conducted on June 17, 2008.

3. Failed to demonstrate acceptable financial assurance for taking corrective actions and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of a petroleum UST, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b), as documented during a record review investigation conducted on June 17, 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: Gerene Ferguson, Docket No. 2008-1159-PST-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, begin to maintain the required records for the UST at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.10(b)(1)(B);
 - b. Within 30 days after the effective date of this Agreed Order, submit documentation that demonstrates acceptable financial assurance for taking corrective actions and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of a petroleum UST, in accordance with 30 TEX. ADMIN. CODE § 37.815; and
 - c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b.

The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those

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individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Waste Section, Manager
Lubbock Regional Office
Texas Commission on Environmental Quality
5012 50th Street, Suite 100
Lubbock, Texas 79414-3421

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

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

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John S. Miller
For the Executive Director

Date 1/23/2009

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

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

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

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

Gerene Ferguson
Signature Gerene Ferguson

Date 11-18-08

Gerene Ferguson
Name (Printed or typed)
Authorized Representative of
Gerene Ferguson

Title owner

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.

