EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2005-0994-PST-E TCEQ ID: RN100250091 CASE NO.: 25887
RESPONDENT NAME: CITY OF EL PASO

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

SITE WHERE VIOLATION(S) OCCURRED: 700 San Franciso Avenue, El Paso, El Paso County

TYPE OF OPERATION: Public transportation facility

SMALL BUSINESS: ____ Yes __X__ No

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

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

COMMENTS RECEIVED: The *Texas Register* comment period expired on March 9, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

SEP Coordinator: Ms. Sharon Blue, Litigation Division, MC 175

TCEQ Enforcement Coordinator: Ms. Judy Kluge, Waste Enforcement Section, MC R-4, (817) 588-5825

TCEQ Regional Contact: Mr. Kent Waggoner., El Paso Regional Office, MC R-6, (915) 834-4957

Respondent: The Honorable John Cook, Mayor, City of El Paso, 2 Civic Center Plaza, El Paso, Texas 79901

Respondent's Attorney: Ms. Cynthia Osborn, Assistant City Attorney, City of El Paso, 2 Civic Center Plaza, El Paso, Texas 79901

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: ___ Complaint _X_ Routine ___ Enforcement Follow-up ___ Records Review **Date of Complaint Relating to this Case:** None **Date of Investigation Relating to this Case:** April 26, 2005 **Date of NOE Relating to this Case:** May 19, 2005 **Background Facts:** The EDPRP was filed on September 9, 2005. The Respondent filed an Answer and the case was referred to SOAH. The Respondent signed an Agreed Order on December 9, 2008. **Current Compliance Status:** The Respondent submitted documentation demonstrating completion of all Technical Requirements on October 6, 2005, thus, the Technical Requirements are moot. The Respondent's current delivery certificate expires in May 2009. **PWS:** 1. Failed to monitor USTs and associated piping for releases at a frequency of a least once every month (not to exceed 35 days between each monitoring), and failed to reconcile inventory control records on a monthly basis [30 TEX. ADMIN. CODE §§ 334.50(b)(1)(A), (b)(2)(A)(i)(III), and (d)(1)(B)(ii); and TEX. WATER CODE § 26.3475(a) and (c)(1)]. 2. Failed to provide legible copies of all required records pertaining to a UST system for inspection by Commission personnel [30 TEX. ADMIN. CODE § 334.10(b)]. 3. Failed to ensure that a legible tag, label, or marking with the UST identification number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the UST Registration and Self-Certification form [30 TEX. ADMIN. CODE § 334.8(c)(5)(C)]. 4. Failed to report a suspected release to the TCEQ within 24 hours of the discovery, and failed to immediately investigate and confirm all suspected releases of regulated substances within 30 days [30 TEX. ADMIN. CODE §§ 334.72(3) and 334.74].	**Total Assessed:** $73,980 **Total Deferred:** $73,980 ___ Expedited Order ___ Financial Inability to Pay _X_ SEP Conditional Offset **Total Due to General Revenue:** $0 **Site Compliance History Classification** __ High _X_ Average __ Poor **Person Compliance History Classification** __ High _X_ Average __ Poor **Major Source:** _X_ Yes ___ No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** Within 30 days, the Respondent shall implement and complete a Supplemental Environmental Project (SEP) (See SEP Attachment A). **Technical Requirements:** 1. Within 30 days, the Respondent shall: a. install or implement a release detection method; b. begin maintaining all records pertaining to the UST system; and c. mark the top of each fill tube or non-removable point in the immediate area of the fill tube of each UST. 2. Within 45 days, establish and implement a process for reporting and investigating a suspected release. 3. Within 60 days, submit written certification of compliance with these Ordering Provisions.

Penalty Calculation Worksheet (PCW)

TCEQ

Policy Revision 2 (September 2002) *PCW Revision May 19, 2005*

DATES					
Assigned	23-May-2005				
PCW	28-Jun-2005	Screening	03-Jun-2005	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	City of El Paso		
Reg. Ent. Ref. No.	RN100250091		
Facility/Site Region	6-El Paso	Major/Minor Source	Major Source

CASE INFORMATION

Enf./Case ID No.	25887	No. of Violations	4
Docket No.	2005-0994-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Judy Kluge
Multi-Media		EC's Team	Enforcement Team 6
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* $68,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 8% Enhancement *Subtotals 2, 3, & 7* $5,480

Notes: Enhancement due to four previous NOVs without same or similar violations within the past five years.

Culpability No 0% Enhancement *Subtotal 4* $0

Notes: The respondent does not meet the criteria for culpability.

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

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

Notes: The respondent is not yet in compliance.

Economic Benefit 0% Enhancement* *Subtotal 6* $0

**Capped at the Total EB $ Amount*

Total EB Amounts	$2,006
Approx. Cost of Compliance	$6,800

SUM OF SUBTOTALS 1-7 Final Subtotal $73,980

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment $0

Reduces or enhances the Final Subtotal by the indicated percentage. *(Enter number only; e.g. -30 for -30%.)*

Notes:

Final Penalty Amount $73,980

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty $73,980

DEFERRAL 0% Reduction Adjustment $0

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

Notes: This is not an expedited case.

PAYABLE PENALTY $73,980

Screening Date 03-Jun-2005 **Docket No.** 2005-0994-PST-E **PCW**
Respondent City of El Paso *Policy Revision 2 (September 2002)*
Case ID No. 25887 *PCW Revision May 19, 2005*
Reg. Ent. Reference No. RN100250091
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 *(number of NOVs meeting criteria)*	0	0%
	Other written NOVs	4	8%
Orders	Any agreed final enforcement orders containing a denial of liability *(number of orders meeting criteria)*	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government *(number of judgements or consent decrees meeting criteria)*	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government *(number of counts)*	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which notices were*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which violations were disclosed)*	0	0%
		Please Enter Yes or No	
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) **8%**

>> 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 Enhancement due to four previous NOVs without same or similar violations within the past five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) **8%**

Screening Date 03-Jun-2005 **Docket No.** 2005-0994-PST-E **PCW**

Respondent City of El Paso *Policy Revision 2 (September 2002)*

Case ID No. 25887 *PCW Revision May 19, 2005*

Reg. Ent. Reference No. RN100250091

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 1

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A), (b)(2)(A)(i)(III) and (d)(1)(B)(ii)

Secondary Rule Cite(s) Tex. Water Code § 26.3475(a) and (c)(1)

Violation Description Failure to monitor USTs and associated piping for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Specifically, the respondent failed to have the line leak detectors tested at least once per year for performance and operational reliability, and properly calibrated and maintained in accordance with the manufacturer's specifications and recommended procedures. In addition the respondent failed to reconcile inventory control records on a monthly basis, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons.

Base Penalty $10,000

>> **Environmental, Property and Human Health Matrix**

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential	x		

Percent 50%

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor

Percent

Matrix Notes: Failing to monitor the UST system for releases could expose human health or the environment to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment -$5,000

Base Penalty Subtotal $5,000

Violation Events

Number of Violation Events 1

mark only one — use a small x	
daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $5,000

One quarterly event is recommended based on the April 26, 2005 investigation date, and the June 3, 2005 screening date.

Economic Benefit (EB) for this violation

Estimated EB Amount $421

Statutory Limit Test

Violation Final Penalty Total $5,400

This violation Final Assessed Penalty (adjusted for limits) $5,400

Economic Benefit Worksheet

Respondent City of El Paso
Case ID No. 25887
Reg. Ent. Reference No. RN100250091
Media [Statute] Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	$0	$0	$0
Buildings				0.0	$0	$0	$0
Other (as needed)	$5,000	26-Apr-2005	30-Mar-2006	0.9	$15	$309	$324
Engineering/construction				0.0	$0	$0	$0
Land				0.0	$0	n/a	$0
Record Keeping System				0.0	$0	n/a	$0
Training/Sampling				0.0	$0	n/a	$0
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs				0.0	$0	n/a	$0
Other (as needed)				0.0	$0	n/a	$0
Notes for DELAYED costs	Estimated cost to monitor UST for releases. Date required is the date of investigation. Final date is the estimated date of compliance.						
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	$0	$0	$0
Personnel	$100	26-Apr-2005	30-Mar-2006	0.9	$5	$93	$97
Inspection/Reporting/Sampling				0.0	$0	$0	$0
Supplies/equipment				0.0	$0	$0	$0
Financial Assurance [2]				0.0	$0	$0	$0
ONE-TIME avoided costs [3]				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Notes for AVOIDED costs	Estimated personnel costs for conducting proper volumetric measurements of fuel inventories. Date required is the date of investigation. Final date is estimated date of compliance.						

Approx. Cost of Compliance $5,100

TOTAL $421

Screening Date 03-Jun-2005 **Docket No.** 2005-0994-PST-E **PCW**

Policy Revision 2 (September 2002)

PCW Revision May 19, 2005

Respondent City of El Paso

Case ID No. 25887

Reg. Ent. Reference No. RN100250091

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 2

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

Secondary Rule Cite(s)

Violation Description Failed to provide legible copies of all required records pertaining to a UST system for inspection by Commission personnel. Specifically, the records of their method of overfill prevention equipment and financial assurance documents were not available, as documented during the investigation conducted on April 26, 2005.

Base Penalty $10,000

>> **Environmental, Property and Human Health Matrix**

	Release	Harm: Major	Moderate	Minor
OR	Actual			
	Potential			

Percent

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor
		x	

Percent 10%

Matrix Notes: The respondent failed to comply with approximately 50% of the rule requirement.

Adjustment -$9,000

Base Penalty Subtotal $1,000

Violation Events

Number of Violation Events: 1

mark only one use a small x	
daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $1,000

One single event is recommended based on the April 26, 2005 investigation date.

Economic Benefit (EB) for this violation

Estimated EB Amount $5

Statutory Limit Test

Violation Final Penalty Total $1,080

This violation Final Assessed Penalty (adjusted for limits) $1,080

Economic Benefit Worksheet

Respondent City of El Paso
Case ID No. 25887
Reg. Ent. Reference No. RN100250091
Media [Statute] Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	$0	$0	$0
Buildings				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Engineering/construction				0.0	$0	$0	$0
Land				0.0	$0	n/a	$0
Record Keeping System	$100	26-Apr-2005	30-Mar-2006	0.9	$5	n/a	$5
Training/Sampling				0.0	$0	n/a	$0
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs				0.0	$0	n/a	$0
Other (as needed)				0.0	$0	n/a	$0
Notes for DELAYED costs	Estimated cost to establish and maintain a record keeping system. Date required is the date of investigation. Final date is the estimated date of compliance.						
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	$0	$0	$0
Personnel				0.0	$0	$0	$0
Inspection/Reporting/Sampling				0.0	$0	$0	$0
Supplies/equipment				0.0	$0	$0	$0
Financial Assurance [2]				0.0	$0	$0	$0
ONE-TIME avoided costs [3]				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Notes for AVOIDED costs							

Approx. Cost of Compliance $100

TOTAL $5

Screening Date 03-Jun-2005 **Docket No.** 2005-0994-PST-E **PCW**

Respondent City of El Paso *Policy Revision 2 (September 2002)*

Case ID No. 25887 *PCW Revision May 19, 2005*

Reg. Ent. Reference No. RN100250091

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 3

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(C)

Secondary Rule Cite(s)

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

Base Penalty $10,000

>> **Environmental, Property and Human Health Matrix**

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

OR

Percent

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor
	x		

Percent 25%

Matrix Notes: The respondent failed to comply with 100% of the rule requirement.

Adjustment -$7,500

Base Penalty Subtotal $2,500

Violation Events

Number of Violation Events: 1

mark only one use a small x	
daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $2,500

One single event is recommended based on the April 26, 2005 investigation date.

Economic Benefit (EB) for this violation

Estimated EB Amount $5

Statutory Limit Test

Violation Final Penalty Total $2,700

This violation Final Assessed Penalty (adjusted for limits) $2,700

Economic Benefit Worksheet

Respondent City of El Paso
Case ID No. 25887
Reg. Ent. Reference No. RN100250091
Media [Statute] Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	$0	$0	$0
Buildings				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Engineering/construction				0.0	$0	$0	$0
Land				0.0	$0	n/a	$0
Record Keeping System				0.0	$0	n/a	$0
Training/Sampling				0.0	$0	n/a	$0
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs				0.0	$0	n/a	$0
Other (as needed)	$100	26-Apr-2005	30-Mar-2006	0.9	$5	n/a	$5
Notes for DELAYED costs	The delayed cost includes the amount required to permanently affix a metal label to each UST fill tube, calculated for the time frame from the date of the investigation to the estimated date of compliance.						
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	$0	$0	$0
Personnel				0.0	$0	$0	$0
Inspection/Reporting/Sampling				0.0	$0	$0	$0
Supplies/equipment				0.0	$0	$0	$0
Financial Assurance [2]				0.0	$0	$0	$0
ONE-TIME avoided costs [3]				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Notes for AVOIDED costs							

Approx. Cost of Compliance $100

TOTAL $5

Screening Date 03-Jun-2005 **Docket No.** 2005-0994-PST-E **PCW**

Respondent City of El Paso *Policy Revision 2 (September 2002)*

Case ID No. 25887 *PCW Revision May 19, 2005*

Reg. Ent. Reference No. RN100250091

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 4

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.72(3) and 334.74

Secondary Rule Cite(s)

Violation Description Failure to report a suspected release to the TCEQ within 24 hours of the discovery, and failure to immediately investigate and confirm all suspected releases of regulated substances within 30 days. Specifically, a TCEQ investigation documented that monthly inventory control reconciliation and ATG test results for April, 2004 through March, 2005 indicated a suspected release that was never reported.

Base Penalty $10,000

>> **Environmental, Property and Human Health Matrix**

	Harm			
Release	Major	Moderate	Minor	
Actual				
Potential	x			

OR

Percent 50%

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor

Percent

Matrix Notes: Failing to investigate suspected releases could expose human health or the environment to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment -$5,000

Base Penalty Subtotal $5,000

Violation Events

Number of Violation Events 12

mark only one use a small x	
daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $60,000

Twelve monthly events are recommended for failure to report and investigate twelve suspected releases between April, 2004 and March, 2005.

Economic Benefit (EB) for this violation

Estimated EB Amount $1,575

Statutory Limit Test

Violation Final Penalty Total $64,800

This violation Final Assessed Penalty (adjusted for limits) $64,800

Economic Benefit Worksheet

Respondent City of El Paso
Case ID No. 25887
Reg. Ent. Reference No. RN100250091
Media [Statute] Petroleum Storage Tank
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	$0	$0	$0
Buildings				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Engineering/construction				0.0	$0	$0	$0
Land				0.0	$0	n/a	$0
Record Keeping System				0.0	$0	n/a	$0
Training/Sampling				0.0	$0	n/a	$0
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs				0.0	$0	n/a	$0
Other (as needed)				0.0	$0	n/a	$0
Notes for DELAYED costs							
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	$0	$0	$0
Personnel				0.0	$0	$0	$0
Inspection/Reporting/Sampling				0.0	$0	$0	$0
Supplies/equipment				0.0	$0	$0	$0
Financial Assurance [2]				0.0	$0	$0	$0
ONE-TIME avoided costs [3]	$1,500	01-May-2004	30-Apr-2005	1.0	$75	$1,500	$1,575
Other (as needed)				0.0	$0	$0	$0
Notes for AVOIDED costs	Estimated cost for system test, site check and reporting. Date required is the date of the first suspected release. Final date is the date when the investigation was due for the last suspected release.						

Approx. Cost of Compliance $1,500

TOTAL $1,575

Compliance History

Customer/Respondent/Owner-Operator:	CN601410244	City of El Paso	Classification: AVERAGE	Rating: 3.270
Regulated Entity:	RN100250091	CITY OF EL PASO SUN METRO TRANSIT	Classification: AVERAGE	Site Rating: 0.12

ID Number(s):		
WASTE WATER GENERAL PERMIT	PERMIT	TXG830033
STORMWATER	PERMIT	TXR05L794
PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	11418
AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	EE0402T
AIR NEW SOURCE PERMITS	PERMIT	48556

Location: 700 SAN FRANCISCO AVE, EL PASO, TX, 79901 Rating Date: 9/1/04 Repeat Violator: NO

TCEQ Region: REGION 06 - EL PASO

Date Compliance History Prepared: June 03, 2005

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 03, 2000 to June 03, 2005

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

Name: Chad N. Blevins Phone: 512-239-6017

Site Compliance History Components

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

Components (Multimedia) for the Site :

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

N/A

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

N/A

C. Chronic excessive emissions events.

N/A

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

1 04/02/2002 (100930)
2 01/11/2002 (100929)
3 09/23/2003 (332524)
4 09/23/2003 (332525)
5 12/17/2003 (332526)
6 12/17/2003 (332527)
7 01/08/2004 (332528)
8 01/28/2004 (332529)
9 04/27/2004 (370726)
10 05/19/2004 (370727)
11 06/07/2004 (370728)
12 07/06/2004 (370729)
13 11/09/2004 (370730)
14 11/09/2004 (370731)
15 11/09/2004 (370732)

16 03/04/2002 (245727)
17 05/07/2002 (245728)
18 02/28/2003 (245729)
19 03/04/2002 (245730)
20 05/07/2002 (245731)
21 07/20/2000 (245733)
22 03/04/2002 (245734)
23 05/07/2002 (245735)
24 07/20/2000 (245736)
25 05/22/2002 (245737)
26 08/21/2000 (245738)
27 03/04/2002 (245739)
28 07/19/2002 (245740)
29 08/21/2000 (245741)
30 03/04/2002 (245742)
31 09/06/2002 (245743)
32 03/04/2002 (245744)
33 03/04/2002 (245745)
34 09/03/2002 (245746)
35 03/04/2002 (245747)
36 03/04/2002 (245748)
37 10/18/2002 (245749)
38 03/04/2002 (245750)
39 03/04/2002 (245751)
40 10/31/2002 (245752)
41 03/04/2002 (245753)
42 03/04/2002 (245754)
43 12/04/2002 (245755)
44 03/04/2002 (245756)
45 05/07/2002 (245757)
46 01/06/2003 (245758)
47 03/04/2002 (245759)
48 05/07/2002 (245760)
49 01/31/2003 (245761)
50 01/03/2005 (392319)
51 01/03/2005 (392320)
52 01/03/2005 (392321)
53 01/03/2005 (392322)
54 05/19/2005 (380687)
55 03/08/2004 (332521)
56 07/07/2003 (332522)
57 09/23/2003 (332523)

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

Date: 01/09/2002 (100929)

Classification: Moderate

Self Report? NO

Citation: 30 TAC Chapter 116, SubChapter B 116.110(a)(2)(A)

Description: RECORDKEEPING

Date: 04/30/2004 (370728)

Classification: Moderate

Self Report? YES

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 07/31/2004 (370731)

Classification: Moderate

Self Report? YES

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 08/31/2004 (370732)

Classification: Moderate

Self Report? YES

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

F. Environmental audits.

N/A

Description:

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 CITY OF EL PASO, RN100250091	§ § § § § §	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2005-0994-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding City of El Paso ("El Paso") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and El Paso, represented by Ms. Cynthia Osborn, assistant city attorney for the City of El Paso, appear before the Commission and together stipulate that:

1. El Paso owns and operates a public transportation facility located at 700 San Francisco Avenue, El Paso, El Paso County, Texas (the "Facility").

2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.

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

4. El Paso received notice of the violations alleged in Section II ("Allegations") on or about May 23, 2005.

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

6. An administrative penalty in the amount of seventy-three thousand nine hundred eighty dollars ($73,980.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Seventy-three thousand nine hundred eighty dollars ($73,980.00)

of the administrative penalty shall be conditionally offset by El Paso's completion of a Supplemental Environmental Project.

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 El Paso have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

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

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

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

II. ALLEGATIONS

El Paso is alleged to have violated:

1. 30 TEX. ADMIN. CODE §§ 334.50(b)(1)(A), (b)(2)(A)(i)(III), and (d)(1)(B)(ii); and TEX. WATER CODE § 26.3475(a) and (c)(1) by failing to monitor USTs and associated piping for releases at a frequency of a least once every month (not to exceed 35 days between each monitoring). Specifically, El Paso failed to have the line leak detectors tested at least once per year for performance and operational reliability, and properly calibrated and maintained in accordance with the manufacturer's specifications and recommended procedures. In addition, the respondent failed to reconcile inventory control records on a monthly basis, sufficiently accurate to detect a release as small as the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons as documented on April 26, 2005.

2. 30 TEX. ADMIN. CODE § 334.10(b) by failing to provide legible copies of all required records pertaining to a UST system for inspection by Commission personnel. Specifically, the records of El Paso's method of overfill prevention equipment and financial assurance documents were not available as documented on April 26, 2005.

3. 30 TEX. ADMIN. CODE § 334.8(c)(5)(C) by failing to ensure that a legible tag, label, or marking with the UST identification number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the UST registration and self-certification form as documented on April 26, 2005.

4. 30 TEX. ADMIN. CODE §§ 334.72(3) and 334.74 by failing to report a suspected release to the TCEQ within 24 hours of the discovery, and failing to immediately investigate and confirm all suspected releases of regulated substances within 30 days. Specifically, monthly inventory control reconciliation and automatic tank gauging test results for April, 2004, through March, 2005, indicated a suspected release that was never reported, as documented on April 26, 2005.

III. DENIALS

El Paso generally denies each allegation in Section II ("Allegations").

IV. ORDER

1. It is, therefore, ordered by the TCEQ that El Paso pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and El Paso'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 considering or requiring corrective action or penalties for violations which are not raised here. Seventy-three thousand nine hundred eighty dollars ($73,980.00) of the administrative penalty shall be conditionally offset by El Paso's completion of a Supplemental Environmental Project ("SEP").

2. El Paso shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, seventy-three thousand nine hundred eighty dollars ($73,980.00) of the assessed administrative penalty shall be offset with the condition that El Paso implement the SEP defined in Attachment A, incorporated herein by reference. El Paso's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.

3. Administrative penalty payments for any portion of the administrative penalty not offset by a Supplemental Environmental Project or for any portion of the Supplemental Environmental Project deemed by the Executive Director as not complete shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: City of El Paso, Docket No. 2005-0994-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

4. El Paso shall undertake the following technical requirements:

   a. Within 30 days after the effective date of the Commission Order, El Paso shall:

      i. Install or implement a release detection method in accordance with 30 TEX. ADMIN. CODE § 334.50;

      ii. Begin maintaining all records pertaining to the UST system in accordance with 30 TEX. ADMIN. CODE § 334.10; and

      iii. Mark the top of each fill tube or non-removable point in the immediate area of the fill tube of each UST in accordance with 30 TEX. ADMIN. CODE § 334.8.

   b. Within 45 days after the effective date of the Commission Order, El Paso shall establish and implement a process for reporting and investigating a suspected release in accordance with 30 TEX. ADMIN. CODE §§ 334.72 and 334.74; and

   c. Within 60 days after the effective date of the Commission Order, El Paso shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records necessary to demonstrate compliance with these Ordering Provisions.

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

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

      The certification shall be submitted to:

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

and

Mr. Kent Waggoner, Waste Section Manager
Texas Commission on Environmental Quality
El Paso Regional Office
401 East Franklin Avenue, Ste. 560
El Paso, Texas 79901-1212

5. The provisions of this Agreed Order shall apply to and be binding upon El Paso. El Paso 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.

6. If El Paso 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, El Paso's failure to comply is not a violation of this Agreed Order. El Paso shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. El Paso shall notify the Executive Director within seven days after El Paso becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

7. 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 El Paso shall be made in writing to the Executive Director. Extensions are not effective until El Paso receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

8. This Agreed Order, issued by the Commission, shall not be admissible against El Paso 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.

9. 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.

10. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to El Paso, or three days after the date on which the Commission mails notice of the Order to El Paso, 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

_____ 2/5/2009
For the Executive Director Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, 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 my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- 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 against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

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

_____ December 9, 2008
Signature Date

Joyce A. Wilson City Manager
_____ _____
Name (Printed or typed) Title
Authorized representative of
City of El Paso

APPROVED AS TO CONTENT:

_____
Cynthia Osborn
Assistant City Attorney