

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2007-0311-PST-E TCEQ ID: RN102249653 CASE NO.: 32844**

**RESPONDENT NAME: WEST TEXAS GAS, INC. DBA WTG SAN ANGELO WAREHOUSE 210100**

<b>ORDER TYPE:</b>		
<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	

<b>CASE TYPE:</b>		
<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

**SITE WHERE VIOLATION(S) OCCURRED:** 4006 South Chadbourne Street, San Angelo, Tom Green County

**TYPE OF OPERATION:** Petroleum and bulk storage facility with retail and wholesale sales of petroleum products

**SMALL BUSINESS:**  Yes  No

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

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

**COMMENTS RECEIVED:** The *Texas Register* comment period expired on December 29, 2008. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Mr. Barham A. Richard, Litigation Division, MC 175, (512) 239-0107  
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

**TCEQ Enforcement Coordinator:** Mr. Tom Greimel, Waste Enforcement Section, MC 128, (512) 239-5690

**TCEQ Regional Contact:** Mr. Mark Newman, San Angelo Regional Office, MC R-8, (329) 655-9479

**Respondent:** Mr. J.L. Davis, President, West Texas Gas, Inc., 211 North Colorado Street, Midland, Texas 79701

**Respondent's Attorney:** Mr. G. William Fowler, Attorney, 3800 East 42nd Street, Suite 600, Odessa, Texas 79762

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Dates of Investigation Relating to this Case:</b> August 2006; July 19, 2007</p> <p><b>Date of NOE Relating to this Case:</b> February 18, 2007.</p> <p><b>Background Facts:</b> An EDPRP was filed on November 11, 2007. The Respondent filed an Answer and the case was referred to SOAH. Settlement was achieved and a signed Agreed Order was received on October 27, 2008.</p> <p><b>Current Compliance Status:</b> Technical Requirements have not been completed.</p> <p><b>PST:</b></p> <p>1. Failed to immediately undertake all reasonable actions to abate and remove a discharge or spill [TEX. WATER Code §§ 26.121(a) and 26.266(a)].</p> <p>2. Failed to complete the remediation of a previous release of petroleum hydrocarbons, and failed to prevent an unauthorized discharge of hydrocarbons into or adjacent to waters in the State and to implement the required investigations and corrective actions [TEX. WATER Code §§ 26.121(a) and 26.266(a)].</p>	<p><b>Total Assessed:</b> \$30,000</p> <p><b>Total Deferred:</b> \$15,000</p> <p><input type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay  <input checked="" type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid to General Revenue:</b> \$15,000</p> <p>The Respondent paid \$15,000 of the administrative penalty. The remaining amount of \$15,000 shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project.</p> <p><b>Site Compliance History Classification:</b>  <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. West Texas Gas shall implement and complete a Supplemental Environmental Project (SEP) (See SEP Attachment A); and</li> <li>2. Continue to conduct corrective action of the UST release designated as LPST # 109976.</li> <li>3. Within 45 days:                         <ol style="list-style-type: none"> <li>a. Conduct and report removal of non-aqueous phase liquids ("NAPL") and thereafter report further NAPL removal on a schedule set by the TCEQ Remediation Division; and</li> <li>b. Submit groundwater monitoring data on a schedule indicated by the Remediation Division. Contingent on those results, the Remediation Division may require additional delineation of the contamination plume by installation of monitoring wells; those wells must be drilled and sampled within 90 days of a Remediation Request.</li> </ol> </li> <li>4. Within 60 days, submit written certification to demonstrate compliance with these Ordering Provisions.</li> </ol>

Attachment A  
Docket Number: 2007-0311-PST-E

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Respondent:** West Texas Gas, Inc. dba WTG San Angelo Warehouse 210100  
**Penalty Amount:** Thirty thousand dollars (\$30,000)  
**SEP Amount:** Fifteen thousand dollars (\$15,000)  
**Type of SEP:** Pre-approved  
**Third-Party Recipient:** San Angelo Friends of the Environment (S.A.F.E.) - *Recycling Program for Electronics, Glass, Plastics*  
**Location of SEP:** Tom Green County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

A. Project

The Respondent shall contribute to the San Angelo Friends of the Environment (S.A.F.E.) - *Recycling Program for Electronics, Glass, Plastics*. Specifically, the contribution will be used in accordance with the *Supplemental Environmental Project Agreement between the San Angelo Friends of the Environment and the Texas Commission on Environmental Quality*. SEP funds will be used for the direct cost of purchasing recycling equipment, for labor costs, and for other for disposal and recycling costs associated with this project. All dollars contributed will be used solely for the direct cost of the project, and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that there is no prior commitment to make this contribution and that it is being done solely in an effort to settle this enforcement action.

B. Environmental Benefit

According to our most recent report from the state's landfills, Texans disposed of almost 30 million tons of solid waste in 2004. That amounts to more than a ton for every person in the state (population—22.5 million), or more than 7 lbs per person per day. The cost of putting this waste in a landfill is more than \$750 million. Including the costs of collection and transportation to landfills, solid-waste disposal costs Texans more than \$1 billion annually. Recycling our wastes rather than disposing of them in landfills creates the following environmental benefits:

- Recycling conserves both renewable and non-renewable natural resources, and reduces the energy consumption, waste, and pollution created by mining and harvesting these resources.
- Manufacturing new products from recycled materials requires less energy than making them from virgin resources. This reduces manufacturing costs and the cost of new products, reduces the need to burn fossil fuels for energy, and reduces the waste and pollution created by manufacturing processes.

This SEP will provide a discernible environmental benefit by resulting in less glass and other recyclable materials going into landfills in Tom Green County, as well as a reduction in the manufacture of new glass.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

San Angelo Friends of the Environment  
Terri Calderon, Executive Director  
702 Warehouse Road  
San Angelo, Texas 76903

**3. Records and Reporting**

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Litigation Division  
Attention: SEP Coordinator, MC 175  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**4. Failure to Fully Perform**

If Respondent does not perform its obligations under this SEP in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Offset Amount.

In the event of incomplete performance, the Respondent shall include on the check the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. The Respondent shall make the payment for the amount due to "Texas Commission on Environmental Quality" and mail it to:

West Texas Gas, Inc. dba WTG San Angelo Warehouse 210100  
Agreed Order - Attachment A Docket No. 2007-0311-PST-E

Litigation Division  
Attention: SEP Coordinator, MC 175  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**5. Publicity**

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

**6. Clean Texas Program**

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

**7. Other SEPs by TCEQ or Other Agencies**

The SEP identified in this Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision January 9, 2007

DATES	Assigned	10-Sep-2007	Screening	17-Sep-2007	EPA Due	
	PCW	25-Sep-2007				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	West Texas Gas, Inc. dba WTG San Angelo Warehouse 210100		
Reg. Ent. Ref. No.	RN102249653		
Facility/Site Region	8-San Angelo	Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	32844	No. of Violations	1
Docket No.	2007-0311-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Shontay Wilcher
Multi-Media		EC's Team	EnforcementTeam 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1:** \$5,000

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History** **Subtotals 2, 3, & 7:** \$0

0% Enhancement

Notes: No adjustment due to compliance history.

**Culpability** **Subtotal 4:** \$0

0% Enhancement

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply** **Subtotal 5:** \$0

0% Reduction

Before NOV      NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	X	(mark with x)

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

**Total EB Amounts** **Subtotal 6:** \$0

Approx. Cost of Compliance \$20,000

0% Enhancement\*      \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal:** \$5,000

**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:** \$5,000

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty:** \$5,000

**DEFERRAL** **Adjustment:** \$0

0% Reduction

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

Notes:

This is not an expedited case.

**PAYABLE PENALTY** **\$5,000**

PCW-A

Screening Date 17-Sep-2007

Docket No. 2007-0311-PST-E

PCW

Respondent West Texas Gas, Inc. dba WTG San Angelo Warehouse

Policy Revision 2 (September 2002)

Case ID No. 32844

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN102249653

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Shontay Wilcher

### Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

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

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment due to compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 17-Sep-2007

Docket No. 2007-0311-PST-E

PCW

Respondent West Texas Gas, Inc. dba WTG San Angelo Warehouse 210100

Policy Revision 2 (September 2002)

Case ID No. 32844

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN102249653

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Shontay Wilcher

Violation Number 1

Rule Cite(s) Tex. Water Code §§ 26.121(a) and 26.266(a)

Violation Description Failed to immediately undertake all reasonable actions to abate and remove a discharge or spill. Specifically, stained soils were observed at the bulk fuel dispensers. Petroleum hydrocarbons were also observed in a pool at the northwest corner of the warehouse at the storm water outfall. At the time of the investigation, a TCEQ investigator documented six soil samples were taken from soil areas near the concrete of the bulk fuel dispensers, the parking lot, the warehouse, and the storm water conveyance system. Soil samples revealed total petroleum hydrocarbons ("TPH") at levels of 44,300 mg/kg, 34,000 mg/kg, 21,400 mg/kg, 19,700 mg/kg, 30,400 mg/kg, and 26,100 mg/kg respectively.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes The environment has been exposed to significant amount of pollutants which do not 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 2 Number of violation days 60

mark only one with an x	daily	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$5,000

Two monthly events are recommended from the July 19, 2007 investigation date to the September 17, 2007 screening date.

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount \$836

Violation Final Penalty Total \$5,000

This violation Final Assessed Penalty (adjusted for limits) \$5,000

## Economic Benefit Worksheet

**Respondent** West Texas Gas, Inc. dba WTG San Angelo Warehouse 210100

**Case ID No.** 32844

**Reg. Ent. Reference No.** RN102249653

**Media** Petroleum Storage Tank

**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.0	\$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	\$20,000	19-Jul-2007	19-May-2008	0.8	\$836	n/a	\$836
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost for assessment and remediation. The Date Required is the date of the investigation and the Final Date is the expected 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

\$20,000

**TOTAL**

\$836



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision January 9, 2007

**TCEQ**

<b>DATES</b>	Assigned	27-Feb-2007		
	PCW	4-Mar-2008	Screening	1-Mar-2007
			EPA Due	

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	West Texas Gas, Inc. dba WTG San Angelo Warehouse 210100
Reg. Ent. Ref. No.	RN102249653
Facility/Site Region	8-San Angelo
Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	32844	No. of Violations	1
Docket No.	2007-0311-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Shontay Wilcher
Multi-Media		EC's Team	EnforcementTeam 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## 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**  Reduction **Subtotal 5**

Before NOV      NOV to EDRP/Settlement Offer

Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/> X	(mark with x)

Notes

**Total EB Amounts**  **Subtotal 6**   
 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. (Enter number only; e.g. -30 for -30%.)

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**

PCW-B

Screening Date 1-Mar-2007

Docket No. 2007-0311-PST-E

PCW

Respondent West Texas Gas, Inc. dba WTG San Angelo Warehouse

Policy Revision 2 (September 2002)

Case ID No. 32844

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN102249653

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Shontay Wilcher

### Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<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) 0%

>> 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

No adjustment due to compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 1-Mar-2007

Docket No. 2007-0311-PST-E

PCW

Respondent West Texas Gas, Inc. dba WTG San Angelo Warehouse 210100

Policy Revision 2 (September 2002)

Case ID No. 32844

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN102249653

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Shontay Wilcher

Violation Number 1

Rule Cite(s) Tex. Water Code §§ 26.121(a) and 26.266(a)

Violation Description

Failed to complete the remediation of a previous release of petroleum hydrocarbons. Specifically, all remediation activities ceased on November 15, 2005. At the time of the investigation, a TCEQ investigator documented 12 inches of Phase Separated Hydrocarbon (PSH) in Monitoring Well No. 7 and a slight amount of PSH in Monitoring Well No. 3. In addition, a strong hydrocarbon odor was present at Monitoring Well No. 12 and a faint hydrocarbon odor was present at Monitoring Well No. 11. The respondent also failed to prevent an unauthorized discharge of hydrocarbons into or adjacent to waters in the State and to implement the required investigations and corrective actions. Specifically, a TCEQ investigator observed stained soils adjacent to the Jet A above ground storage tank and the warehouse during an investigation conducted in August 2006.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		X	
Potential			

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

The environment has been exposed to significant amount of pollutants which do not 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 10

840 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$25,000

Ten quarterly events are recommended from the November 15, 2005 activity cease date to the March 4, 2008 settlement date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2,041

Violation Final Penalty Total \$25,000

This violation Final Assessed Penalty (adjusted for limits) \$25,000

## Economic Benefit Worksheet

**Respondent:** West Texas Gas, Inc. dba WTG San Angelo Warehouse 210100  
**Case ID No.:** 32844  
**Reg. Ent. Reference No.:** RN102249653  
**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				0.0	\$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	\$20,000	15-Nov-2005	30-Nov-2007	2.0	\$2,041	n/a	\$2,041
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost for assessment and remediation. The Date Required is the date remediation assessment activities ceased 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				0.0	\$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

\$20,000

**TOTAL**

\$2,041

# Compliance History

Customer/Respondent/Owner-Operator:	CN601509946 West Texas Gas, Inc.	Classification: AVERAGE	Rating: 3.18
Regulated Entity:	RN102249653 WTG SAN ANGELO WAREHOUSE 210100	Classification: HIGH	Site Rating: 0.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		51769
	LEAKING PETROLEUM STORAGE TANKS REMEDICATION	ID NUMBER	109976
Location:	4006 S CHADBOURNE ST, SAN ANGELO, TX, 76904		Rating Date: 9/1/2007 Repeat Violator: NO
TCEQ Region:	REGION 08 - SAN ANGELO		
Date Compliance History Prepared:	September 28, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	September 28, 2002 to September 28, 2007		

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

Name: Shontay Wilcher Phone: (512) 239-2136

## 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?   | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)?  | <u>N/A</u> |
| 5. When did the change(s) in ownership occur?  | <u>N/A</u> |

### 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	11/25/2002	(17084)
2	07/25/2003	(143899)
3	02/23/2007	(540371)
4	07/06/2007	(559892)
5	09/07/2007	(593733)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
  - F. Environmental audits.  
N/A
  - G. Type of environmental management systems (EMSs).  
N/A
  - H. Voluntary on-site compliance assessment dates.  
N/A
  - I. Participation in a voluntary pollution reduction program.  
N/A
  - J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
WEST TEXAS GAS, INC. DBA  
WTG SAN ANGELO  
WAREHOUSE 210100  
RN102249653**

§  
§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2007-0311-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 West Texas Gas, Inc. dba WTG San Angelo Warehouse 210100 ("West Texas Gas") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and West Texas Gas represented by G. William Fowler, appear before the Commission and together stipulate that:

1. West Texas Gas owns and operates a petroleum and bulk storage facility with retail and wholesale sales of petroleum products, such as gasoline, diesel, kerosene, and aviation gasoline located at 4006 South Chadbourne Street, San Angelo, Tom Green 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 West Texas Gas agree that the Commission has jurisdiction to enter this Agreed Order, and that West Texas Gas is subject to the Commission's jurisdiction.
4. West Texas Gas received notice of the violations alleged in Section II ("Allegations") on or about February 23, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by West Texas Gas of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of thirty thousand dollars (\$30,000.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). West Texas Gas has paid fifteen thousand dollars (\$15,000.00) of the administrative penalty. Fifteen thousand dollars (\$15,000.00) of the administrative penalty shall be conditionally offset by West Texas Gas'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 West Texas Gas 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 West Texas Gas 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

West Texas Gas is alleged to have violated:

1. TEX. WATER CODE §§ 26.121(a) and 26.266(a), by failing to immediately undertake all reasonable actions to abate and remove a discharge or spill as documented on July 19, 2007. Specifically, stained soils were observed at the bulk fuel dispensers. A sheen of petroleum hydrocarbons were also observed in a puddle at the northwest corner of the warehouse at the storm water outfall. At the time of the investigation, a TCEQ investigator documented six soil samples were taken from soil areas near the concrete of the bulk fuel dispensers, the parking lot, the warehouse, and the storm water conveyance system. Soil samples revealed total petroleum hydrocarbons ("THP") at levels of 44,300 mg/kg, 34,000 mg/kg, 21,400 mg/kg, 19,700 mg/kg, 30,400 mg/kg, and 26,100 mg/kg respectively; and
2. TEX. WATER CODE §§ 26.121(a) and 26.266(a), by failing to complete the remediation of a previous release of petroleum hydrocarbons. Specifically, all remediation activities ceased on November 15, 2005. At the time of the investigation, a TCEQ investigator documented 12 inches of Phase Separated Hydrocarbon (PSH) in Monitoring Well No. 7 and a slight amount

of PSH in Monitoring Well No. 3. In addition, a strong hydrocarbon odor was present at Monitoring Well No. 12 and a faint hydrocarbon odor was present at Monitoring Well No. 11. The respondent also failed to prevent an unauthorized discharge of hydrocarbons into or adjacent to waters in the State and to implement the required investigations and corrective actions. Specifically, a TCEQ investigator observed stained soils adjacent to the Jet A above ground storage tank and the warehouse during an investigation conducted in August 2006.

### III. DENIALS

West Texas Gas generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that West Texas Gas pay an administrative penalty as set forth in Section I, Paragraph 6, above. The payment of this administrative penalty and West Texas Gas'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. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: West Texas Gas, Inc. dba WTG San Angelo Warehouse 210100, Docket No. 2007-0311-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. West Texas Gas shall implement and complete a Supplemental Environmental Project (SEP) in accordance with Tex. Water Code § 7.067. As set forth in paragraph 6 above, fifteen thousand dollars (\$15,000.00) of the assessed administrative penalty shall be offset with the condition that West Texas Gas implement the SEP defined in Attachment A, incorporated herein by reference. West Texas Gas'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. West Texas Gas shall undertake the following technical requirements:
  - a. Continue to conduct corrective action of the UST release designated as LPST # 109976, as directed by TCEQ Remediation Division, in accordance with section 30 TEX. ADMIN. CODE §§ 334.76 through 334.81;

- b. Within 45 days after the effective date of this Agreed Order, West Texas Gas shall conduct and report removal of non-aqueous phase liquids pursuant to 30 TEX. ADMIN. CODE § 334.79, and thereafter report further NAPL removal on a schedule set by the Remediation Division;
- c. Additionally, West Texas Gas shall submit groundwater monitoring data on a schedule indicated by the Remediation Division. Contingent on those results, the Remediation Division may require additional delineation of the contamination plume by installation of monitoring wells pursuant to 30 TEX. ADMIN. CODE §§ 334.78 and 334.80; those wells must be drilled and sampled within 90 days of a Remediation Request.
- d. Within 60 days after the effective date of this Order, West Texas Gas shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.c. 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.”

West Texas Gas shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.c. to:

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

and

Mr. Mark Newman, Waste Section Manager  
Texas Commission on Environmental Quality  
San Angelo Regional Office  
622 South Oakes, Suite K  
San Angelo, Texas 76903-7035

4. The provisions of this Agreed Order shall apply to and be binding upon West Texas Gas. West Texas Gas 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.
5. If West Texas Gas 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, West Texas Gas's failure to comply is not a violation of this Agreed Order. West Texas Gas shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. West Texas Gas shall notify the Executive Director within seven days after West Texas Gas becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. 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 West Texas Gas shall be made in writing to the Executive Director. Extensions are not effective until West Texas Gas receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against West Texas Gas 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.
8. 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.
9. 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 West Texas Gas, or three days after the date on which the Commission mails notice of the Order to West Texas Gas, 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



\_\_\_\_\_  
For the Executive Director

12/9/2008

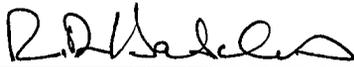
\_\_\_\_\_  
Date

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 West Texas Gas's failure to timely pay the penalty amount, may result in:

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

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution



\_\_\_\_\_  
Signature

10/27/2008

\_\_\_\_\_  
Date

Richard D. Hatchett

\_\_\_\_\_  
Name (Printed or typed)

Vice President

\_\_\_\_\_  
Title

Authorized representative of  
West Texas Gas, Inc. dba WTG San Angelo Warehouse

**Attachment A**  
**Docket Number: 2007-0311-PST-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Respondent:** West Texas Gas, Inc. dba WTG San Angelo Warehouse 210100  
**Penalty Amount:** Thirty thousand dollars (\$30,000)  
**SEP Amount:** Fifteen thousand dollars (\$15,000)  
**Type of SEP:** Pre-approved  
**Third-Party Recipient:** San Angelo Friends of the Environment (S.A.F.E.) - *Recycling Program for Electronics, Glass, Plastics*  
**Location of SEP:** Tom Green County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

A. Project

The Respondent shall contribute to the San Angelo Friends of the Environment (S.A.F.E.) - *Recycling Program for Electronics, Glass, Plastics*. Specifically, the contribution will be used in accordance with the ***Supplemental Environmental Project Agreement between the San Angelo Friends of the Environment and the Texas Commission on Environmental Quality***. SEP funds will be used for the direct cost of purchasing recycling equipment, for labor costs, and for other for disposal and recycling costs associated with this project. All dollars contributed will be used solely for the direct cost of the project, and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that there is no prior commitment to make this contribution and that it is being done solely in an effort to settle this enforcement action.

B. Environmental Benefit

According to our most recent report from the state's landfills, Texans disposed of almost 30 million tons of solid waste in 2004. That amounts to more than a ton for every person in the state (population—22.5 million), or more than 7 lbs per person per day. The cost of putting this waste in a landfill is more than \$750 million. Including the costs of collection and transportation to landfills, solid-waste disposal costs Texans more than \$1 billion annually. Recycling our wastes rather than disposing of them in landfills creates the following environmental benefits:

- Recycling conserves both renewable and non-renewable natural resources, and reduces the energy consumption, waste, and pollution created by mining and harvesting these resources.
- Manufacturing new products from recycled materials requires less energy than making them from virgin resources. This reduces manufacturing costs and the cost of new products, reduces the need to burn fossil fuels for energy, and reduces the waste and pollution created by manufacturing processes.

This SEP will provide a discernible environmental benefit by resulting in less glass and other recyclable materials going into landfills in Tom Green County, as well as a reduction in the manufacture of new glass.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

San Angelo Friends of the Environment  
Terri Calderon, Executive Director  
702 Warehouse Road  
San Angelo, Texas 76903

**3. Records and Reporting**

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Litigation Division  
Attention: SEP Coordinator, MC 175  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**4. Failure to Fully Perform**

If Respondent does not perform its obligations under this SEP in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Offset Amount.

In the event of incomplete performance, the Respondent shall include on the check the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. The Respondent shall make the payment for the amount due to "Texas Commission on Environmental Quality" and mail it to:

West Texas Gas, Inc. dba WTG San Angelo Warehouse 210100  
Agreed Order – Attachment A Docket No. 2007-0311-PST-E

Litigation Division  
Attention: SEP Coordinator, MC 175  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**5. Publicity**

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

**6. Clean Texas Program**

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

**7. Other SEPs by TCEQ or Other Agencies**

The SEP identified in this Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.