

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1664-PST-E **TCEQ ID:** RN101533800 **CASE NO.:** 36686

RESPONDENT NAME: RG Holdings Inc. dba Allen Shell

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: Allen Shell, 1106 East Bethany Drive, Allen, Collin County</p> <p>TYPE OF OPERATION: Convenience store with retail sales of gasoline</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 March 23, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Mike Pace, Enforcement Division, Enforcement Team 6, MC R-04, (817) 588-5933; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Richard J. Gomez, President, RG Holdings Inc., 1106 East Bethany Drive, Allen, Texas 75002 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: September 25, 2008</p> <p>Date of NOV/NOE Relating to this Case: October 9, 2008 (NOE)</p> <p>Background Facts: This was a routine investigation</p> <p>WASTE</p> <p>1) Failure to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel. Specifically, records not available for review included a copy of the California Air Resource Board ("CARB") Executive Order, daily inspection log, Stage II station representative and employee training records [30 TEX. ADMIN. CODE § 115.246(1), (6) and (7)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2) Failure to maintain the interstitial space between the protected component and the secondary containment device free of any soil, backfill material, groundwater, or other substances, and test the protected component for electrical isolation. Specifically, the submersible containment sump pumps were full of water [30 TEX. ADMIN. CODE § 334.49(b)(3)(B) and TEX. WATER CODE § 26.3475(d)].</p> <p>3) Failure to conduct effective manual or automatic inventory control procedures for all underground storage tanks ("USTs") involved in the retail sales of petroleum substances used as a motor fuel [30 TEX. ADMIN. CODE § 334.48(c)].</p>	<p>Total Assessed: \$5,875</p> <p>Total Deferred: \$1,175 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$150 (remaining \$4,550 due in 35 monthly payments of \$130 each)</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Station:</p> <p>a. As of October 20, 2008 the TCEQ DFW Regional Office received documentation verifying that all Stage II records including a copy of the CARB Executive Order, daily inspection log, Stage II station representative and employee training records are being maintained at the station; and</p> <p>b. The TCEQ DFW Regional Office received documentation verifying that the Respondent began conducting proper inventory control procedures on October 7, 2008.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to;</p> <p>a. Within 30 days after the effective date of this Agreed Order, ensure that all of the submersible containment sumps are vacuumed, and the contents properly disposed of, and begin maintaining the corrosion protection system including interstitial space between the protected component and the secondary containment device free of any soil, backfill material, groundwater, or other substances; and</p> <p>b. 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 Provision a.</p>

Additional ID No(s): PST 73842



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision October 30, 2008

DATES	Assigned	13-Oct-2008	Screening	20-Oct-2008	EPA Due	
	PCW	20-Oct-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	RG Holdings Inc. dba Allen Shell
Reg. Ent. Ref. No.	RN101533800
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36686	No. of Violations	3
Docket No.	2008-1664-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Mike Pace
		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 <input type="text" value="\$6,000"/>
ADJUSTMENTS (+/-) TO SUBTOTAL 1	
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>	
Compliance History	Subtotals 2, 3, & 7 <input type="text" value="\$600"/>
Notes	Enhancement for two NOVs with same or similar violations.
Culpability	Subtotal 4 <input type="text" value="\$0"/>
Notes	The Respondent does not meet the culpability criteria.
Good Faith Effort to Comply Total Adjustments	Subtotal 5 <input type="text" value="\$725"/>
Economic Benefit	Subtotal 6 <input type="text" value="\$0"/>
Total EB Amounts <input type="text" value="\$21"/>	<small>*Capped at the Total EB \$ Amount</small>
Approx. Cost of Compliance <input type="text" value="\$1,500"/>	
SUM OF SUBTOTALS 1-7	Final Subtotal <input type="text" value="\$5,875"/>
OTHER FACTORS AS JUSTICE MAY REQUIRE	Adjustment <input type="text" value="\$0"/>
Notes	
	Final Penalty Amount <input type="text" value="\$5,875"/>
STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty <input type="text" value="\$5,875"/>
DEFERRAL	Adjustment <input type="text" value="-\$1,175"/>
Notes	Deferral offered for expedited settlement.
PAYABLE PENALTY	<input type="text" value="\$4,700"/>

Screening Date 20-Oct-2008

Docket No. 2008-1664-PST-E

PCW

Respondent RG Holdings Inc. dba Allen Shell

Policy Revision 2 (September 2002)

Case ID No. 36686

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101533800

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Mike Pace

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)	2	10%
	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 judgments 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) 10%

>> **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 for two NOVs with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 10%

Screening Date 20-Oct-2008	Docket No. 2008-1664-PST-E	PCW		
Respondent RG Holdings Inc. dba Allen Shell	<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 36686	<i>PCW Revision October 30, 2008</i>			
Reg. Ent. Reference No. RN101533800				
Media [Statute] Petroleum Storage Tank				
Enf. Coordinator Mike Pace				
Violation Number <input type="text" value="1"/>				
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 115.246(1), (6) and (7)(A) and Tex. Health & Safety Code § 382.085(b)"/>			
Violation Description	<input and="" carb")="" daily="" employee="" executive="" ii="" inspection="" log,="" order,="" records."="" representative="" stage="" station="" training="" type="text" value="Failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel. Specifically, records not available for review included a copy of the California Air Resources Board ("/>			
Base Penalty		<input type="text" value="\$10,000"/>		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
		Percent	<input type="text" value="0%"/>	
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	x	<input type="text"/>	<input type="text"/>
		Percent	<input type="text" value="10%"/>	
Matrix Notes	<input type="text" value="100% of the rule requirement was not met."/>			
Adjustment		<input type="text" value="\$9,000"/>		
		<input type="text" value="\$1,000"/>		
Violation Events				
Number of Violation Events		<input type="text" value="1"/>	<input type="text" value="25"/> Number of violation days	
<i>mark only one with an x</i>	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$1,000"/>	
	weekly	<input type="text"/>		
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	x		
<input type="text" value="One single event is recommended based on documentation of the violation during the September 25, 2008 investigation."/>				
Good Faith Efforts to Comply		10.0% Reduction	<input type="text" value="\$100"/>	
		Before NOV NOV to EDPRP/Settlement Offer		
Extraordinary	<input type="text"/>	<input type="text"/>		
Ordinary	<input type="text"/>	x		
N/A	<input type="text"/>	(mark with x)		
Notes	<input type="text" value="The Respondent came into compliance on October 20, 2008."/>			
Violation Subtotal		<input type="text" value="\$900"/>		
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount <input type="text" value="\$2"/>		Violation Final Penalty Total <input type="text" value="\$1,000"/>		
		This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,000"/>		

Economic Benefit Worksheet

Respondent RG Holdings Inc. dba Allen Shell
Case ID No. 36686
Reg. Ent. Reference No. RN101533800
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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	25-Sep-2008	20-Oct-2008	0.07	\$2	n/a	\$2
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 of maintaining Stage II records at the Station. The date required is the investigation date and the final date is the date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance	\$500	TOTAL	\$2
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Screening Date 20-Oct-2008	Docket No. 2008-1664-PST-E	PCW				
Respondent RG Holdings Inc. dba Allen Shell	<small>Policy Revision 2 (September 2002)</small>					
Case ID No. 36686	<small>PCW Revision October 30, 2008</small>					
Reg. Ent. Reference No. RN101533800						
Media [Statute] Petroleum Storage Tank						
Enf. Coordinator Mike Pace						
Violation Number <input type="text" value="2"/>						
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 334.49(b)(3)(B) and Tex. Water Code § 26.3475(d)"/>					
Violation Description	<input type="text" value="Failed to maintain the interstitial space between the protected component and the secondary containment device free of any soil, backfill material, groundwater, or other substances, and test the protected component for electrical isolation. Specifically, the submersible containment sump pumps were full of water."/>					
Base Penalty		<input type="text" value="\$10,000"/>				
>> Environmental, Property and Human Health Matrix						
OR	Harm					
	Release	Major	Moderate	Minor		
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>		
Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>			
		Percent	<input type="text" value="25%"/>			
>> Programmatic Matrix						
		Falsification	Major	Moderate	Minor	
		<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
					Percent	<input type="text" value="0%"/>
Matrix Notes	<input type="text" value="Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation."/>					
Adjustment					<input type="text" value="\$7,500"/>	
					<input type="text" value="\$2,500"/>	
Violation Events						
Number of Violation Events		<input type="text" value="1"/>	Number of violation days			
		<input type="text" value="25"/>				
<small>mark only one with an x</small>	daily	<input type="text"/>				
	weekly	<input type="text"/>				
	monthly	<input type="text" value="x"/>				
	quarterly	<input type="text"/>				
	semiannual	<input type="text"/>				
	annual	<input type="text"/>				
	single event	<input type="text"/>				
Violation Base Penalty					<input type="text" value="\$2,500"/>	
<input type="text" value="One monthly event is recommended based on documentation of the violation during the September 25, 2008 investigation to the October 20, 2008 screening date."/>						
Good Faith Efforts to Comply						
		0.0%	Reduction		<input type="text" value="\$0"/>	
		<small>Before NOV NOV to EDP RP/Settlement Offer</small>				
Extraordinary	<input type="text"/>	<input type="text"/>				
Ordinary	<input type="text"/>	<input type="text"/>				
N/A	<input type="text" value="x"/>	<input type="text" value="(mark with x)"/>				
Notes	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>					
Violation Subtotal					<input type="text" value="\$2,500"/>	
Economic Benefit (EB) for this violation			Statutory Limit Test			
Estimated EB Amount		<input type="text" value="\$19"/>	Violation Final Penalty Total		<input type="text" value="\$2,750"/>	
This violation Final Assessed Penalty (adjusted for limits)					<input type="text" value="\$2,750"/>	

Economic Benefit Worksheet

Respondent RG Holdings Inc. dba Allen Shell
Case ID No. 36686
Reg. Ent. Reference No. RN101533800
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description 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)	\$500	25-Sep-2008	25-Jun-2009	0.75	\$19	n/a	\$19

Notes for DELAYED costs

Estimated cost to maintain the interstitial space between the protected component and the secondary containment device free of water. The date required is the investigation date and the final date is the date of expected compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance \$500

TOTAL \$19

Screening Date 20-Oct-2008	Docket No. 2008-1664-PST-E	PCW			
Respondent RG Holdings Inc. dba Allen Shell	<i>Policy Revision 2 (September 2002)</i>				
Case ID No. 36686	<i>PCW Revision October 30, 2008</i>				
Reg. Ent. Reference No. RN101533800					
Media [Statute] Petroleum Storage Tank					
Enf. Coordinator Mike Pace					
Violation Number <input type="text" value="3"/>					
Rule Cite(s)	30 Tex. Admin. Code § 334.48(c)				
Violation Description	Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sales of petroleum substances used as a motor fuel.				
Base Penalty		\$10,000			
>> Environmental, Property and Human Health Matrix					
OR	Harm				
	Release	Major	Moderate	Minor	
	Actual				
Potential	x				
		Percent	25%		
>> Programmatic Matrix					
		Falsification	Major	Moderate	Minor
				Percent	0%
Matrix Notes	Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.				
Adjustment				\$7,500	\$2,500
Violation Events					
		Number of Violation Events	1	Number of violation days	12
<i>mark only one with an x</i>	daily				
	weekly				
	monthly	x			
	quarterly				
	semiannual				
	annual				
	single event				
				Violation Base Penalty	\$2,500
One monthly event is recommended based on documentation of the violation during the September 25, 2008 investigation to the October 7, 2008 compliance date.					
Good Faith Efforts to Comply		25.0% Reduction			\$625
		<small>Before NOV</small>	<small>NOV to EDPRP/Settlement Offer</small>		
Extraordinary					
Ordinary	x				
N/A		<small>(mark with x)</small>			
Notes	The Respondent came into compliance on October 7, 2008.				
Violation Subtotal				\$1,875	
Economic Benefit (EB) for this violation			Statutory Limit Test		
Estimated EB Amount		\$1	Violation Final Penalty Total		\$2,125
This violation Final Assessed Penalty (adjusted for limits)				\$2,125	

Economic Benefit Worksheet

Respondent RG Holdings Inc. dba Allen Shell
Case ID No. 36686
Reg. Ent. Reference No. RN101533800
Media Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	25-Sep-2008	7-Oct-2008	0.03	\$1	n/a	\$1
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to conduct proper inventory control procedures. The date required is the investigation date and the final date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$1

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603347634 RG Holdings Inc.	Classification: AVERAGE	Rating: 6.75
Regulated Entity:	RN101533800 Allen Shell	Classification: AVERAGE	Site Rating: 6.75
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	73842
Location:	1106 E BETHANY DR, ALLEN, TX, 75002	Rating Date: 9/1/2008	Repeat Violator: NO
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	October 13, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	October 13, 2003 to October 13, 2008		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Mike Pace	Phone:	588-5933

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? | <u>RG Holdings Inc.</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>Saga Investments, LLC</u> |
| 5. When did the change(s) in ownership occur? | <u>03/01/2008</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 | 04/14/2005 | (377485) |
| 2 | 06/02/2005 | (394158) |
| 3 | 04/24/2008 | (653925) |
| 4 | 10/09/2008 | (704817) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | |
|--------------|---|----------|--------------------------|
| Date: | 04/15/2005 | (377485) | |
| Self Report? | NO | | Classification: Minor |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.246(6) | | |
| Description: | Failure to maintain a record of the results of the daily inspections conducted at the motor vehicle fuel dispensing facility in accordance with the provisions specified in §115.244 of this title (relating to Inspection Requirements). | | |
| Self Report? | NO | | Classification: Minor |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.246(1) | | |
| Description: | failure to maintain a copy of the California Air Resources Board (CARB) Executive Order(s) for the Stage II vapor recovery system and any related components installed at the facility. | | |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.244(3) | | |
| Description: | Failure to conduct monthly inspections of the components listed in §115.242(3)(J) of this title. | | |
| Self Report? | NO | | Classification: Moderate |

Citation: 30 TAC Chapter 115, SubChapter C 115.248(2)
Description: failure to ensure that if the facility representative who received the approved training is no longer employed at that facility, another facility representative must successfully complete approved training within three months of the departure of the previously trained employee.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.222(1)
Description: failure to ensure that fuel container (fill pipe) is equipped with a submerged fill pipe as defined in 30 TAC 115.010.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.222(3)
30 TAC Chapter 115, SubChapter C 115.242(4)
Description: failure to ensure that no gasoline leaks, as detected by sampling, sight, sound, or smell exist anywhere in the dispensing equipment or Stage II vapor recovery system.

Date: 04/24/2008 (653925)

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(7)(A)
Description: Failure to maintain records on-site at facilities ordinarily manned during business hours, and made immediately available for review upon request by authorized representatives of the Texas Commission on Environmental Quality (TCEQ), EPA, or any local air pollution control program.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(1)(C)
Description: Failure to update a vacuum assist Stage II vapor recovery system to be onboard refueling vapor recovery (ORVR) compatible.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.222(3)
30 TAC Chapter 115, SubChapter C 115.242(4)
Description: Failure to eliminate any avoidable gasoline leaks, as detected by sight, sound, or smell, exist anywhere in the liquid transfer or vapor balance system.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.49(b)(3)(B)
Description: Failure to maintain the interstitial space between the protected component and the secondary containment device shall be free of any soil, backfill material, groundwater, or other substances, and the protected component shall be regularly inspected or tested for electrical isolation in accordance with the provisions in subsection (d)(1).

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.48(c)
Description: Failure to conduct inventory control for all underground storage tanks involved in the retail sale of petroleum substances used as a motor fuel each operating day.

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
RG HOLDINGS INC. DBA ALLEN
SHELL
RN101533800

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2008-1664-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 RG Holdings Inc. dba Allen Shell ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a convenience store with retail sales of gasoline at 1106 East Bethany Drive in Allen, Collin County, Texas (the "Station").
2. The Respondent's two underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
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 October 14, 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 Eight Hundred Seventy-Five Dollars (\$5,875) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Hundred Fifty Dollars (\$150) of the administrative penalty and One Thousand One Hundred Seventy-Five Dollars (\$1,175) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Four Thousand Five Hundred Fifty Dollars (\$4,550) of the administrative penalty shall be payable in 35 monthly payments of One Hundred Thirty Dollars (\$130) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Station:
 - a. As of October 20, 2008 the TCEQ Dallas/Fort Worth Regional Office received documentation verifying that all Stage II records including a copy of the California Air Resources Board ("CARB") Executive Order, daily inspection log, Stage II station representative and employee training records are being maintained at the Station; and
 - b. The TCEQ Dallas/Fort Worth Regional Office received documentation verifying that the Respondent began conducting proper inventory control procedures on October 7, 2008.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

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

1. Failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 115.246(1), (6) and (7)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on September 25, 2008. Specifically, records not available for review included a copy of the CARB Executive Order, daily inspection log, Stage II station representative and employee training records.
2. Failed to maintain the interstitial space between the protected component and the secondary containment device free of any soil, backfill material, groundwater, or other substances, and test the protected component for electrical isolation, in violation of 30 TEX. ADMIN. CODE § 334.49(b)(3)(B) and TEX WATER CODE § 26.3475(d), as documented during an investigation conducted on September 25, 2008. Specifically, the submersible containment sump pumps were full of water.
3. Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sales of petroleum substances used as a motor fuel, in violation of 30 TEX. ADMIN. CODE § 334.48(c), as documented during an investigation conducted on September 25, 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: RG Holdings Inc. dba Allen Shell, Docket No. 2008-1664-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. Within 30 days after the effective date of this Agreed Order, ensure that all of the submersible containment sumps are vacuumed, and the contents properly disposed of, and begin maintaining the corrosion protection system including interstitial space between the protected component and the secondary containment device free of any soil, backfill material, groundwater, or other substances, in accordance with 30 TEX. ADMIN. CODE § 334.49; and
 - b. 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 No. 2.a. 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:

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
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth Texas 76118-6951

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 Station 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. Allen
For the Executive Director

2/16/2009
Date

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

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

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

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

[Signature]
Signature

1-5-09
Date

Richard J. Gomez

President

Name (Printed or typed)

Title

Authorized Representative of
RG Holdings Inc. dba Allen Shell

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.

