

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-0061-PST-E TCEQ ID: RN102060779 CASE NO.: 35232

RESPONDENT NAME: DWIGHT PRICE DBA A1 TOWING & RECOVERY

| | | |
|--|--|--|
| ORDER TYPE: | | |
| <input type="checkbox"/> 1660 AGREED ORDER | <input type="checkbox"/> FINDINGS AGREED ORDER | <input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING |
| <input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER | <input checked="" 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 |

SITE WHERE VIOLATION(S) OCCURRED: 1601 South Seventh Street, Corsicana, Navarro County

TYPE OF OPERATION: Automotive shop that provides towing and storage services

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 expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired May 4, 2009. 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:** Ms. Elvia Maske, Waste Enforcement Section, MC 149, (512) 239-0789
- TCEQ Regional Contact:** Mr. Sam Barrett, DFW Regional Office, MC R-4, (817) 588-5903
- Respondent:** Mr. Dwight Price, Owner, A1 Towing & Recovery, 4865 FM 1129, Powell, Texas 75153
- Respondent's Attorney:** Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

| VIOLATION INFORMATION | PENALTY CONSIDERATIONS | CORRECTIVE ACTIONS TAKEN/REQUIRED |
|---|---|---|
| <p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: December 18, 2007</p> <p>Date of NOE Relating to this Case: January 2, 2008</p> <p>Background Facts: The EDPRP was filed March 25, 2008, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned. An EDFARP was filed January 7, 2009, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned. The Notice of Intent to order the USTs at the Facility shut down and removed from service was mailed to the Respondent February 9, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned. The Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Not yet in compliance.</p> <p>PST:</p> <p>1. Failed to provide an amended registration for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)].</p> <p>2. Failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years [30 TEX. ADMIN. CODE § 334.49(c)(4)(C) and TEX. WATER CODE § 26.3475(d)].</p> | <p>Total Assessed: \$4,675</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$4,675</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</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>Ordering Provision(s):</p> <p>The Respondent's UST fuel delivery certificate is revoked immediately. The Respondent may submit an application for a new fuel delivery certificate only after the Respondent has complied with all of the requirements set forth in this Order.</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Immediately: <ol style="list-style-type: none"> a. Cease dispensing fuel from the USTs; b. Cease receiving deliveries of regulated substances into the USTs; c. Padlock the dispensers; d. Empty the USTs of all regulated substances; and e. Temporarily remove the USTs from service. 2. Within 10 days, send his UST fuel delivery certificate to the TCEQ. 3. Within 15 days, submit a written report documenting the steps taken to comply with Ordering Provision Nos. 1.a. through 1.e. and 2. 4. The Respondent's USTs shall remain out of service until such time as the Respondent demonstrates that he has corrected the violations. 5. Prior to receiving deliveries of gasoline: <ol style="list-style-type: none"> a. Submit amended registration to indicate the current ownership of the UST system; and b. Obtain a new fuel delivery certificate. 6. Prior to resuming retail sales of gasoline, conduct triennial testing of the cathodic protection system. 7. Within 10 days of resuming retail sales of gasoline, submit written certification to demonstrate compliance with Ordering Provisions 5 and 6. 8. Upon obtaining a new delivery certificate, post the delivery certificate in a location where the document is clearly visible at all times. 9. If the Respondent elects to permanently remove from service any UST systems at the Facility: <ol style="list-style-type: none"> a. Immediately, permanently remove those UST systems from service; and b. Within 15 days, submit to TCEQ a written report documenting compliance. |

Compliance History

| | | | |
|---|--|---|-------------------|
| Customer/Respondent/Owner-Operator: | CN601114721 PRICE, DWIGHT | Classification: AVERAGE | Rating: 2.00 |
| Regulated Entity: | RN102060779 A1 TOWING & RECOVERY | Classification: AVERAGE | Site Rating: 2.00 |
| ID Number(s): | PETROLEUM STORAGE TANK REGISTRATION | REGISTRATION | 13661 |
| Location: | 1601 S 7TH ST, CORSICANA, TX, 75110 | Rating Date: 9/1/2007 Repeat Violator: NO | |
| TCEQ Region: | REGION 04 - DFW METROPLEX | | |
| Date Compliance History Prepared: | January 17, 2008 | | |
| Agency Decision Requiring Compliance History: | Enforcement | | |
| Compliance Period: | January 17, 2003 to January 17, 2008 | | |

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

Name: Philip DeFrancesco Phone: (817) 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? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- | | | | |
|---|------------|----------|--|
| 1 | 06/22/2007 | (565204) | |
| 2 | 01/03/2008 | (612568) | |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | |
|--------------|---|----------|--------------------------|
| Date: | 06/22/2007 | (565204) | |
| Self Report? | NO | | Classification: Minor |
| Citation: | 30 TAC Chapter 334, SubChapter A 334.7(d)(3) | | |
| Description: | Failure to provide amended registration for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first became aware of the change or addition, as applicable. | | |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 334, SubChapter C 334.49(c)(4)(C) 30 TAC Chapter 334, SubChapter C 334.54(c)(1) | | |
| Description: | Failure to perform an operability test on a cathodic protection system within 3 to 6 months after installation and at a subsequent frequency of at least once every 3 years. | | |
- 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

Penalty Calculation Worksheet (PCW)
 Policy Revision 2 (September 2002) PCW Revision November 6, 2007

TCEQ

| | | | | | | |
|-------|----------|-------------|-----------|-------------|---------|--|
| DATES | Assigned | 7-Jan-2008 | Screening | 14-Jan-2008 | EPA Due | |
| | PCW | 17-Jan-2008 | | | | |

RESPONDENT/FACILITY INFORMATION

| | | | |
|----------------------|---------------------------------------|--------------------|-------|
| Respondent | Dwight Price dba A1 Towing & Recovery | | |
| Reg. Ent. Ref. No. | RN102060779 | | |
| Facility/Site Region | 4-Dallas/Fort Worth | Major/Minor Source | Minor |

CASE INFORMATION

| | | | |
|-------------------|------------------------|-------------------|--------------------|
| Enf./Case ID No. | 35232 | No. of Violations | 2 |
| Docket No. | 2008-0061-PST-E | Order Type | 1660 |
| Media Program(s) | Petroleum Storage Tank | Enf. Coordinator | Philip DeFrancesco |
| Multi-Media | | EC's Team | Enforcement Team 6 |
| Admin. Penalty \$ | Limit Minimum \$0 | Maximum | \$10,000 |

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1**

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**

5% Enhancement

Notes: Enhancement due to one prior NOV with same or similar violations.

Culpability **Subtotal 4**

No 0% Enhancement

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply **Subtotal 5**

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.

0% Enhancement* **Subtotal 6**

*Capped at the Total EB \$ Amount

| | |
|----------------------------|---------|
| Total EB Amounts | \$1,200 |
| Approx. Cost of Compliance | \$1,100 |

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

27% Reduction

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with violation no. 2.

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL **Adjustment**

0% Reduction

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

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY

Screening Date 14-Jan-2008

Docket No. 2008-0061-PST-E

PCW

Respondent Dwight Price dba A1 Towing & Recovery

Policy Revision 2 (September 2002)

Case ID No. 35232

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN102060779

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Philip DeFrancesco

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) | 1 | 5% |
| | 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) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement due to one prior NOV with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

| | | |
|---|--|---|
| Screening Date 14-Jan-2008 | Docket No. 2008-0061-PST-E | PCW |
| Respondent Dwight Price dba A1 Towing & Recovery | | <i>Policy Revision 2 (September 2002)</i> |
| Case ID No. 35232 | | <i>PCW Revision November 6, 2007</i> |
| Reg. Ent. Reference No. RN102060779 | | |
| Media [Statute] Petroleum Storage Tank | | |
| Enf. Coordinator Philip DeFrancesco | | |
| Violation Number | 1 | |
| Rule Cite(s) | 30 Tex. Admin. Code § 334.7(d)(3) | |
| Violation Description | Failed to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition. Specifically, registration was not updated to reflect the current ownership of the USTs. | |
| Base Penalty | | \$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"/> | <input checked="" type="text" value="x"/> | <input type="text"/> | <input type="text"/> | |
| | | | | | |
| Matrix Notes | 100% of the rule requirement was not met. | | | | |

Adjustment

Violation Events

Number of Violation Events **Number of violation days**

| | | |
|--------------------------------|--------------|---|
| <i>mark only one with an x</i> | daily | <input type="text"/> |
| | monthly | <input type="text"/> |
| | quarterly | <input type="text"/> |
| | semiannual | <input type="text"/> |
| | annual | <input type="text"/> |
| | single event | <input checked="" type="text" value="x"/> |

Violation Base Penalty

One single event is recommended based on documentation of the violation during the December 18, 2007 investigation.

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount **Violation Final Penalty Total**

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Dwight Price dba A1 Towing & Recovery
Case ID No. 35232
Reg. Ent. Reference No. RN102060779
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 | | | | 0.0 | \$0 | n/a | \$0 |
| Permit Costs | | | | 0.0 | \$0 | n/a | \$0 |
| Other (as needed) | \$100 | 18-Dec-2007 | 17-Sep-2008 | 0.8 | \$4 | n/a | \$4 |

Notes for DELAYED costs

Estimated cost to submit an amended UST registration form to the TCEQ. The date required is the investigation date 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

\$100

TOTAL

\$4

Screening Date 14-Jan-2008 **Docket No.** 2008-0061-PST-E **PCW**
Respondent Dwight Price dba A1 Towing & Recovery *Policy Revision 2 (September 2002)*
Case ID No. 35232 *PCW Revision November 6, 2007*
Reg. Ent. Reference No. RN102060779
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Philip DeFrancesco
Violation Number
Rule Cite(s)
Violation Description
Base Penalty

>> Environmental, Property and Human Health Matrix

| | | | | | |
|-----------|-------------------------------------|--------------------------|--------------------------|----------------------|--|
| OR | | Harm | | | |
| | Release | Major | Moderate | Minor | |
| | Actual | <input type="text"/> | <input type="text"/> | <input type="text"/> | Percent <input type="text" value="25%"/> |
| Potential | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | | |

>> Programmatic Matrix

| | | | | | |
|--|----------------------|----------------------|----------------------|----------------------|---|
| | Falsification | Major | Moderate | Minor | Percent <input type="text" value="0%"/> |
| | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> | |

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

| | | |
|-------------------------|--------------|-------------------------------------|
| mark only one with an x | daily | <input type="text"/> |
| | monthly | <input type="text"/> |
| | quarterly | <input checked="" type="checkbox"/> |
| | semiannual | <input type="text"/> |
| | annual | <input type="text"/> |
| | single event | <input type="text"/> |

Violation Base Penalty

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Dwight Price dba A1 Towing & Recovery

Case ID No. 35232

Reg. Ent. Reference No. RN102060779

Media Petroleum Storage Tank

Violation No. 2

| | |
|-------------------------|------------------------------|
| Percent Interest | Years of Depreciation |
| 5.0 | 15 |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|--------------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| Delayed Costs | | | | | | | |
| Equipment | | | | 0.0 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |
| Engineering/construction | | | | 0.0 | \$0 | \$0 | \$0 |
| Land | | | | 0.0 | \$0 | n/a | \$0 |
| Record Keeping System | | | | 0.0 | \$0 | n/a | \$0 |
| Training/Sampling | | | | 0.0 | \$0 | n/a | \$0 |
| Remediation/Disposal | | | | 0.0 | \$0 | n/a | \$0 |
| Permit Costs | | | | 0.0 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | n/a | \$0 |

Notes for DELAYED costs

Avoided Costs

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

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|-------------------------------|-----------|---------------|-------------|-----|----------------|---------------|-----------|
| Disposal | | | | 0.0 | \$0 | \$0 | \$0 |
| Personnel | | | | 0.0 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling | | | | 0.0 | \$0 | \$0 | \$0 |
| Supplies/equipment | | | | 0.0 | \$0 | \$0 | \$0 |
| Financial Assurance [2] | | | | 0.0 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3] | \$1,000 | 18-Dec-2004 | 18-Dec-2007 | 3.9 | \$196 | \$1,000 | \$1,196 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Avoided cost for completing the triennial test. The date required is three years prior to the investigation date and the final date is the investigation date.

Approx. Cost of Compliance

\$1,000

TOTAL

\$1,196

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



| | | |
|---|---|------------------------------|
| IN THE MATTER OF AN | § | BEFORE THE |
| ENFORCEMENT ACTION | § | |
| CONCERNING | § | TEXAS COMMISSION ON |
| DWIGHT PRICE DBA A1 TOWING & | § | |
| RECOVERY; | § | ENVIRONMENTAL QUALITY |
| RN102060779 | § | |

DEFAULT AND SHUTDOWN ORDER

DOCKET NO. 2008-0061-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality (“Commission” or “TCEQ”) considered the Executive Director’s First Amended Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty, corrective action of the respondent, and revocation of the respondent’s fuel delivery certificate. The Commission also considered the Executive Director’s Motion requesting entry of an Order requiring the respondent, Dwight Price dba A1 Towing & Recovery (“Mr. Price”), to shutdown or remove from service the Underground Storage Tanks (“USTs”) at the A1 Towing & Recovery facility, located at 1601 South Seventh Street, Corsicana, Navarro County, Texas.

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Mr. Price owns and operates an automotive shop that provides towing and storage services, located at 1601 South Seventh Street, Corsicana, Navarro County, Texas (the “Facility”).
2. The UST at the Facility contains regulated substances as defined in the Commission’s rules. The UST is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. On December 18, 2007, an investigator from the TCEQ Dallas / Fort Worth Regional Office documented that Mr. Price:
 - a. Failed to provide an amended registration for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current ownership of the UST; and

- b. Failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years. Specifically, the triennial test had not been conducted.
4. By letter dated January 3, 2008, the TCEQ Dallas / Fort Worth Regional Office provided Mr. Price with notice of the violations and the TCEQ's authority to shut down and remove from service USTs not in compliance with release detection, spill and/or overfill prevention, corrosion protection, and/or financial assurance regulations if the violations were not corrected.
5. Mr. Price received notice of the violations on or about January 8, 2008.
6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Dwight Price dba A1 Towing & Recovery" (the "EDPRP") in the TCEQ Chief Clerk's office on March 25, 2008.
7. By letter dated March 25, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Price with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Mr. Price received notice of the EDPRP.
8. More than 20 days have elapsed since Mr. Price received notice of the EDPRP, provided by the Executive Director. Mr. Price failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.
9. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Dwight Price dba A1 Towing & Recovery" (the "EDFARP") in the TCEQ Chief Clerk's office on January 7, 2009.
10. By letter dated January 7, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Price with notice of the EDFARP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Mr. Price received notice of the EDFARP.

11. More than 20 days have elapsed since Mr. Price received notice of the EDFARP, provided by the Executive Director. Mr. Price failed to file an answer to the EDFARP, failed to request a hearing, and failed to schedule a settlement conference.
12. By letter dated February 9, 2009, TCEQ provided Mr. Price with notice of TCEQ's intent to order the USTs at the Facility shut down and removed from service if Mr. Price failed to correct the corrosion protection violation within 30 days after Mr. Price's receipt of the notice.
13. As of the date of entry of this Order, Mr. Price has not corrected the violations noted during the December 18, 2007, investigation.
14. The UST at the Facility does not have corrosion protection, specifically a cathodic protection system, as required by 30 TEX. ADMIN. CODE § 334.49(c)(4)(C) and TEX. WATER CODE § 26.3475(d) and may be releasing petroleum products to the environment without the knowledge of the tank owner or operator. Therefore, conditions at the Facility constitute an imminent peril to public health, safety, and welfare.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Price's UST is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, and the rules of the Commission.
2. As evidenced by Finding of Fact Number 3.a., Mr. Price violated 30 TEX. ADMIN. CODE § 334.7(d)(3) by failing to provide an amended registration for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition.
3. As evidenced by Finding of Fact Number 3.b., Mr. Price violated 30 TEX. ADMIN. CODE § 334.49(c)(4)(C) and TEX. WATER CODE § 26.3475(d) by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years.
4. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director timely served Mr. Price with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
5. As evidenced by Finding of Fact No. 8, Mr. Price failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Price and assess the penalty recommended by the Executive Director.

6. As evidenced by Finding of Fact Nos. 9 and 10, the Executive Director timely served Mr. Price with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
7. As evidenced by Finding of Fact No. 11, Mr. Price failed to file a timely answer to the EDFARP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Price and assess the penalty recommended by the Executive Director.
8. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Price for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
9. An administrative penalty in the amount of four thousand six hundred seventy-five dollars (\$4,675.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
10. As evidenced by Finding of Fact Nos. 3, 5, 12, and 13, Mr. Price failed to correct documented violations of Commission requirements within 30 days after Mr. Price received notice of the violations and notice of the Executive Director's intent to shut down the Facility.
11. TEX. WATER CODE §§ 26.3475(e) and 26.352(i) authorize the Commission to order a UST owner or operator to shut down a UST system if, within 30 days after receiving notice of the violations, the owner or operator fails to correct violations of Commission regulatory requirements relating to release detection for tanks and/or piping, spill and overflow protection for tanks, corrosion protection for tanks and piping, and/or acceptable financial assurance.
12. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.
13. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Mr. Price's UST delivery certificate if the Commission finds that good cause exists.
14. Good cause for revocation of Mr. Price's UST delivery certificate exists as justified by Findings of Fact Nos. 3 through 12 and Conclusions of Law Nos. 2 through 7 and No. 10.

15. As evidenced by Finding of Fact Number 14, current conditions at the Facility constitute an imminent peril to public health, safety and welfare. Therefore, pursuant to the Administrative Procedure Act, TEX. GOV'T CODE § 2001.144(a)(3), this Order is final and effective on the date rendered.

ORDERING PROVISIONS

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. Immediately upon the effective date of this Order, Mr. Price shall take the following steps to shut down operations of all USTs at the Facility:
 - a. Cease dispensing fuel from the USTs;
 - b. Cease receiving deliveries of regulated substances into the USTs;
 - c. Padlock the dispensers;
 - d. Empty the USTs of all regulated substances in accordance with 30 TEX. ADMIN. CODE § 334.54(d); and
 - e. Temporarily remove the USTs from service in accordance with 30 TEX. ADMIN. CODE § 334.54.
2. Mr. Price's UST delivery certificate is revoked immediately upon the effective date of this Order. Mr. Price may submit an application for a new delivery certificate only after Mr. Price has complied with all of the requirements set forth in these Ordering Provisions.
3. Within 10 days after the effective date of this Order, Mr. Price shall send his UST delivery certificate to:

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

4. Within 15 days after the effective date of this Order, Mr. Price shall submit to the Executive Director a detailed written report documenting the steps it has taken to comply with Ordering Provision Nos. 1.a. through 1.e. and 3. Mr. Price shall submit the report to:

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

and

Mr. Sam Barrett, Waste Section Manager
Texas Commission on Environmental Quality
Dallas / Fort Worth Regional Office
P.O. Box 13087
Austin, Texas 78711-3087

5. If Mr. Price elects to permanently remove from service any USTs at the Facility, Mr. Price shall immediately and permanently remove the UST system in accordance with 30 TEX. ADMIN. CODE § 334.55. If Mr. Price permanently removes any portion of the UST system from service, Mr. Price shall, within 15 days after the effective date of this order, submit to the Commission a written report documenting compliance with 30 TEX. ADMIN. CODE § 334.55. Mr. Price shall submit the written report to:

Petroleum Storage Tank Registration Team, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

6. Mr. Price is assessed an administrative penalty in the amount of four thousand six hundred seventy-five dollars (\$4,675.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Mr. Price's compliance with all the terms and conditions set forth in this Order completely resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Dwight Price dba A1 Towing & Recovery; Docket No. 2008-0061-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

7. Mr. Price's USTs shall remain out of service, pursuant to TEX. WATER CODE § 26.3475 and as directed by Ordering Provision Nos. 1.a. through 1.e., until such time as Mr. Price demonstrates to the satisfaction of the Executive Director that he has corrected the violations noted in Finding of Fact Nos. 3.a. through 3.b. and Conclusion of Law Nos. 2 through 3 as listed herein.
8. Prior to resuming retail sales of gasoline, Mr. Price shall conduct triennial testing of the cathodic protection system, in accordance with 30 TEX. ADMIN. CODE § 334.49.
9. Prior to receiving deliveries of gasoline, Mr. Price shall:
 - a. Submit amended registration to indicate the current ownership of the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

Permitting and Reporting Section
Permitting & Registration Support Division, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
 - b. Obtain a new delivery certificate.
10. Within 10 days of resuming retail sales of gasoline, Mr. Price shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 8 and 9. The written 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

and

Mr. Sam Barrett, Waste Section Manager
Texas Commission on Environmental Quality
Dallas / Fort Worth Regional Office
P.O. Box 13087
Austin, Texas 78711-3087

11. Upon obtaining a new delivery certificate, Mr. Price shall post the delivery certificate in a location where the document is clearly visible at all times, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii).
12. All relief not expressly granted in this Order is denied.
13. The provisions of this Order shall apply to and be binding upon Mr. Price, and Mr. Price is ordered to give notice of this Order to personnel who maintain day to day control of the USTs at the Facility.
14. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Mr. Price if the Executive Director determines that Mr. Price is noncompliant with or in violation of any of the terms and conditions set forth in this Order.
15. This Order shall terminate five years from its effective date or when Mr. Price demonstrates to the satisfaction of the Executive Director that it has corrected all of the violations noted herein.
16. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order is the date this decision was rendered, pursuant to TEX. GOV'T CODE § 2001.144(a)(3).

Dwight Price dba A1 Towing & Recovery
TCEQ Docket No. 2008-0061-PST-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF BARHAM A. RICHARD

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Barham A. Richard. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Dwight Price dba A1 Towing & Recovery” (the “EDPRP”) was filed with the Office of the Chief Clerk on March 25, 2008.

The EDPRP was mailed to Mr. Price at its last known address on March 25, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Mr. Price received notice of the EDPRP.

More than 20 days have elapsed since Mr. Price received notice of the EDPRP. Mr. Price failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Dwight Price dba A1 Towing & Recovery” (the “EDFARP”) was filed with the Office of the Chief Clerk on January 7, 2009.

The EDFARP was mailed to Mr. Price at its last known address on January 7, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Mr. Price received notice of the EDFARP.

More than 20 days have elapsed since Mr. Price received notice of the EDFARP. Mr. Price failed to file an answer to the EDFARP, failed to request a hearing, and failed to schedule a settlement conference.

By letter dated February 9, 2009, sent via first class mail and certified mail, return receipt

requested article no. 7108 2133 3934 5603 2637, I provided Mr. Price with notice of the TCEQ's intent to order the USTs at the Facility shut down and removed from service if the violations pertaining to corrosion protection, specifically the cathodic protection system, were not corrected within 30 days of Mr. Price's receipt of the letter. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that the Respondent received the Notice of Intent to Shutdown.

As of the date of this affidavit, I am not aware of any evidence that indicates that Mr. Price has corrected the violations noted during the December 18, 2007, investigation."



Barham A. Richard, Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Barham A. Richard, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 31st day of March, A.D., 2009.


Notary Signature