EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1911-PST-E **TCEQ ID:** RN102473840 **CASE NO.:** 36902

RESPONDENT NAME: Berry Contracting, L.P. dba Bay LTD

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

SITE WHERE VIOLATION(S) OCCURRED: Bay LTD, 401 Corn Product Road, Corpus Christi, Nueces County

TYPE OF OPERATION: Fleet fueling facility

SMALL BUSINESS: ___ **Yes** __X__ **No**

OTHER SIGNIFICANT MATTERS: There are no complaints. There are no 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 May 4, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Mr. John Muennink, Enforcement Division, Enforcement Team 5, MC R-14, (361) 825-3423; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387

Respondent: Ms. Susan Blair, Environmental Compliance Coordinator, Berry Contracting, L.P., P.O. Box 9908, Corpus Christi, Texas 78469

Mr. Charles A. Vanaman, Vice President, Berry Contracting, L.P., P.O. Box 9908, Corpus Christi, Texas 78469

Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint _X_ Routine __ Enforcement Follow-up __ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** October 1, 2008 **Date of NOV/NOE Relating to this Case:** November 25, 2008 (NOE) **Background Facts:** This was a routine investigation. **WASTE** 1) Failure to ensure that the emergency shutoff valves (also known as shear or impact valves) were securely anchored. Specifically, the valve for dispenser no. 1 was not secured [30 TEX. ADMIN. CODE § 334.45(c)(3)(A)]. 2) Failure to monitor underground storage tanks ("USTs") for releases at least once a month, not to exceed 35 days between each monitoring [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)]. 3) Failure to investigate a suspected release. Specifically, a triennial pipe tightness test was conducted on Tank No. 2 and yielded a result of "inconclusive", and no further action was taken to investigate the suspected release [30 TEX. ADMIN. CODE §§ 334.74 and 334.76]. 4) Failure to report the suspected release associated to the October 18, 2007 triennial pipe tightness test within 24 hours of the test yielding a result of "inconclusive" [30 TEX. ADMIN. CODE § 334.72(3)].	**Total Assessed:** $6,990 **Total Deferred:** $1,398 _X_ Expedited Settlement __ Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $5,592 **Site Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Person Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that the Respondent submitted documentation on October 16, 2008 to demonstrate that an anchor has been installed on the sheer valve for Tank No. 1. **Ordering Provisions:** The Order will require the Respondent to: a. Within 30 days after the effective date of this Agreed Order: i. Begin monthly monitoring of USTs for releases; ii. Investigate the suspected release and take appropriate corrective actions; iii. Implement procedures designed to ensure the proper reporting of suspected releases; and b. Within 45 days after the effective date of this Agreed Order, submit written certification to demonstrate compliance with Ordering Provision a.

Additional ID No(s).: 32082

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision October 30, 2008*

TCEQ

DATES						
Assigned	2-Dec-2008					
PCW	5-Dec-2008	Screening	9-Dec-2008	EPA Due		

RESPONDENT/FACILITY INFORMATION

Respondent	Berry Contracting, L.P. dba Bay LTD		
Reg. Ent. Ref. No.	RN102473840		
Facility/Site Region	14-Corpus Christi	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	36902	No. of Violations	4
Docket No.	2008-1911-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	John Muennink
		EC's Team	Enforcement Team 5

Admin. Penalty $ Limit Minimum $0 Maximum $10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* $7,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 2.0% Enhancement — *Subtotals 2, 3, & 7* $140

Notes: Enhancement due to one NOV with unrelated violations.

Culpability No 0.0% Enhancement — *Subtotal 4* $0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments — *Subtotal 5* $250

Economic Benefit 0.0% Enhancement* — *Subtotal 6* $0

Total EB Amounts $164
Approx. Cost of Compliance $2,300

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $6,890

OTHER FACTORS AS JUSTICE MAY REQUIRE 1.5% — *Adjustment* $100

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement due to the recovery of avoided costs associated with Violation No. 4.

Final Penalty Amount $6,990

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $6,990

DEFERRAL 20.0% Reduction — *Adjustment* -$1,398

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY $5,592

Screening Date 9-Dec-2008 **Docket No.** 2008-1911-PST-E **PCW**

Respondent Berry Contracting, L.P. dba Bay LTD *Policy Revision 2 (September 2002)*

Case ID No. 36902 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN102473840

Media [Statute] Petroleum Storage Tank

Enf. Coordinator John Muennink

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	1	2%
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) 2%

>> **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 NOV with unrelated violations.

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

Screening Date 9-Dec-2008 **Docket No.** 2008-1911-PST-E **PCW**

Respondent Berry Contracting, L.P. dba Bay LTD *Policy Revision 2 (September 2002)*

Case ID No. 36902 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN102473840

Media [Statute] Petroleum Storage Tank

Enf. Coordinator John Muennink

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.45(c)(3)(A)

Violation Description Failed to ensure that the emergency shutoff valves (also known as shear or impact valves) were securely anchored. Specifically, the valve for dispenser no. 1 was not secured.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

Release	Harm: Major	Moderate	Minor
Actual			
Potential		x	

OR

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment could be exposed to a significant amount of pollutants that would not exceed levels protective of human health or environmental receptors.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 1 | 15 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $1,000

One quarterly event is recommended from the October 1, 2008 investigation date to the October 16, 2008 compliance date.

Good Faith Efforts to Comply

25.0% Reduction $250

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

Notes: The Respondent completed corrective measures on October 16, 2008.

Violation Subtotal $750

Economic Benefit (EB) for this violation

Estimated EB Amount $1

Statutory Limit Test

Violation Final Penalty Total $781

This violation Final Assessed Penalty (adjusted for limits) $781

Economic Benefit Worksheet

Respondent Berry Contracting, L.P. dba Bay LTD
Case ID No. 36902
Reg. Ent. Reference No. RN102473840
Media Petroleum Storage Tank
Violation No. 1

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	$200	1-Oct-2008	16-Oct-2008	0.04	$0	$1	$1
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)				0.00	$0	n/a	$0

Notes for DELAYED costs: Estimated expense to install an anchor on the emergency shutoff valve on dispenser no. 1. The Date Required is the date of the investigation. The Final Date is the date that corrective measures were completed.

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: $200

TOTAL: $1

Screening Date 9-Dec-2008 **Docket No.** 2008-1911-PST-E **PCW**

Respondent Berry Contracting, L.P. dba Bay LTD *Policy Revision 2 (September 2002)*

Case ID No. 36902 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN102473840

Media [Statute] Petroleum Storage Tank

Enf. Coordinator John Muennink

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A) and Tex. Water Code § 26.3475(c)(1)

Violation Description Failed to monitor underground storage tanks ("USTs") for releases at least once a month, not to exceed 35 days between each monitoring.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment could be exposed to a significant amount of pollutants that would exceed levels protective of human health or environmental receptors.

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events 1 | 70 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $2,500

One quarterly event is recommended based on the investigation date of October 1, 2008 to the December 9, 2008 screening date.

Good Faith Efforts to Comply

0.0% Reduction $0

	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 for this violation.

Violation Subtotal $2,500

Economic Benefit (EB) for this violation

Estimated EB Amount $50

Statutory Limit Test

Violation Final Penalty Total $2,587

This violation Final Assessed Penalty (adjusted for limits) $2,587

Economic Benefit Worksheet

Respondent Berry Contracting, L.P. dba Bay LTD
Case ID No. 36902
Reg. Ent. Reference No. RN102473840
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)	$1,500	1-Oct-2008	31-May-2009	0.66	$50	n/a	$50

Notes for DELAYED costs: Estimated expense to provide release detection for the USTs at the Facility. The Date Required is the date of the investigation. The Final Date is the estimated date that corrective measures will be completed.

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

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: $1,500

TOTAL: $50

Screening Date 9-Dec-2008 **Docket No.** 2008-1911-PST-E **PCW**

Respondent Berry Contracting, L.P. dba Bay LTD *Policy Revision 2 (September 2002)*

Case ID No. 36902 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN102473840

Media [Statute] Petroleum Storage Tank

Enf. Coordinator John Muennink

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 334.74 and 334.76

Violation Description Failed to investigate a suspected release. Specifically, a triennial pipe tightness test was conducted on Tank No. 2 and yielded a result of "inconclusive", and no further action was taken to investigate the suspected release.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment could be exposed to a significant amount of pollutants that would exceed levels protective of human health or environmental receptors.

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events 1 | 8 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $2,500

One monthly event is recommended based on the release investigation due date of November 17, 2008 to the December 9, 2008 screening date.

Good Faith Efforts to Comply

0.0% Reduction $0

	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 for this violation.

Violation Subtotal $2,500

Economic Benefit (EB) for this violation

Estimated EB Amount $13

Statutory Limit Test

Violation Final Penalty Total $2,587

This violation Final Assessed Penalty (adjusted for limits) $2,587

Economic Benefit Worksheet

Respondent Berry Contracting, L.P. dba Bay LTD
Case ID No. 36902
Reg. Ent. Reference No. RN102473840
Media Petroleum Storage Tank
Violation No. 3

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	$500	17-Nov-2008	31-May-2009	0.53	$13	n/a	$13
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 expense to ensure that suspected releases are properly investigated. The Date Required is the release investigation due date. The Final Date is the estimated date that corrective measures will be completed.

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: $13

Screening Date 9-Dec-2008 **Docket No.** 2008-1911-PST-E **PCW**

Respondent Berry Contracting, L.P. dba Bay LTD *Policy Revision 2 (September 2002)*

Case ID No. 36902 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN102473840

Media [Statute] Petroleum Storage Tank

Enf. Coordinator John Muennink

Violation Number 4

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

Violation Description Failed to report the suspected release associated to the October 18, 2007 triennial pipe tightness test within 24 hours of the test yielding a result of "inconclusive".

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes: The Respondent failed to meet 100% of the rule requirement.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 1 | 1 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $1,000

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction $0

	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 for this violation.

Violation Subtotal $1,000

Economic Benefit (EB) for this violation

Estimated EB Amount $100

Statutory Limit Test

Violation Final Penalty Total $1,035

This violation Final Assessed Penalty (adjusted for limits) $1,035

Economic Benefit Worksheet

Respondent Berry Contracting, L.P. dba Bay LTD
Case ID No. 36902
Reg. Ent. Reference No. RN102473840
Media Petroleum Storage Tank
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
	No commas or $						
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)				0.00	$0	n/a	$0
Notes for DELAYED costs							
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]	$100	18-Oct-2007	19-Oct-2007	0.00	$0	$100	$100
Other (as needed)				0.00	$0	$0	$0
Notes for AVOIDED costs	Estimated costs avoided by not submitting a notification of a suspected release within 24 hours of discovery. The Date Required is the date that the test was conducted. The Final Date is the date the notification was due.						

Approx. Cost of Compliance: $100

TOTAL: $100

Compliance History Report

Customer/Respondent/Owner-Operator:	CN600752448	Berry Contracting, L.P. dba Bay LTD	Classification: AVERAGE	Rating: 2.70
Regulated Entity:	RN102473840	Bay LTD	Classification: AVERAGE	Site Rating: 1.50

ID Number(s):	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	68758
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXD108552225
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	F2023
	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	32082
	STORMWATER	PERMIT	TXR05X767
	STORMWATER	PERMIT	TXRNET881

Location: 401 CORN PRODUCT RD, CORPUS CHRISTI, TX, 78409

TCEQ Region: REGION 14 - CORPUS CHRISTI

Date Compliance History Prepared: December 05, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: December 05, 2003 to December 05, 2008

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

Name: John Muennink Phone: (361) 825-3423

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

6. Rating Date: 9/1/2008 Repeat Violator: NO

Components (Multimedia) for the Site :

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

N/A

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

N/A

C. Chronic excessive emissions events.

N/A

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

1 08/29/2008 (700236)
2 11/25/2008 (706126)
3 11/25/2008 (707989)

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

Date: 08/29/2008 (700236)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 335, SubChapter A 335.4
TWC Chapter 26 26.121
Description: Failure to obtain commission authorization prior to an activity of collection, handling, storage, processing, or disposal of industrial solid waste pursuant to 30 TAC 335.4.

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	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
BERRY CONTRACTING, L.P. DBA	§	
BAY LTD	§	
RN102473840	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2008-1911-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 Berry Contracting, L.P. dba Bay LTD ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a fleet fueling facility at 401 Corn Product Road in Corpus Christi, Nueces County, Texas (the "Facility").

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.

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 November 30, 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 Six Thousand Nine Hundred Ninety Dollars ($6,990) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Five Thousand Five Hundred Ninety-Two Dollars

($5,592) of the administrative penalty and One Thousand Three Hundred Ninety-Eight Dollars ($1,398) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. The Executive Director recognizes that the Respondent submitted documentation on October 16, 2008 to demonstrate that an anchor has been installed on the sheer valve for Tank No. 1.

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 Facility, the Respondent is alleged to have:

1. Failed to ensure that the emergency shutoff valves (also known as shear or impact valves) were securely anchored, in violation of 30 TEX. ADMIN. CODE § 334.45(c)(3)(A), as documented during an investigation conducted on October 1, 2008. Specifically, the valve for dispenser no. 1 was not secured.

2. Failed to monitor underground storage tanks for releases at least once a month, not to exceed 35 days between each monitoring, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on October 1, 2008.

3. Failed to investigate a suspected release, in violation of 30 TEX. ADMIN. CODE §§ 334.74 and 334.76, as documented during an investigation conducted on October 1, 2008. Specifically, a triennial pipe tightness test was conducted on Tank No. 2 and yielded a result of "inconclusive", and no further action was taken to investigate the suspected release.

4. Failed to report the suspected release associated to the October 18, 2007 triennial pipe tightness test within 24 hours of the test yielding a result of "inconclusive", in violation of 30 TEX. ADMIN. CODE § 334.72(3), as documented during an investigation conducted on October 1, 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: Berry Contracting, L.P. dba Bay LTD, Docket No. 2008-1911-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:

      i. Begin monthly monitoring of underground storage tanks for releases, in accordance with 30 TEX. ADMIN. CODE § 334.50(b)(1)(A);

      ii. Investigate the suspected release, in accordance with 30 TEX. ADMIN. CODE § 334.74 and take appropriate corrective actions;

      iii. Implement procedures designed to ensure the proper reporting of suspected releases, in accordance with 30 TEX. ADMIN. CODE § 334.72; and

   b. Within 45 days after the effective date of this Agreed Order, submit written certification to demonstrate compliance with Ordering Provision 2.a.

      The certification shall be notarized by a State of Texas Notary Public and contain the following 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
Corpus Christi Regional Office
Texas Commission on Environmental Quality
6300 Ocean Drive, Suite 1200
Corpus Christi, Texas 78412-5503

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

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

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

_____ 4/2/2009
For the Executive Director 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.

Charles A. Vanaman, Vice President 2/26/09
Signature Date

CHARLES A. VANAMAN, VICE PRESIDENT _____
Name (Printed or typed) Title
Authorized Representative of
Berry Contracting, L.P. dba Bay LTD

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.