

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-0235-PST-E TCEQ ID: RN102435484 AND RN102270162 CASE NO.: 32643

RESPONDENT NAME: NED H. WARD

| | | |
|---|---|--|
| 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 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: right of the D&D Feed Store behind the Gulf Station near 11th Street and North Highway 83, Aspermont, Stonewall County ("Facility 1"); and at Broadway and 3rd Street, Aspermont, Stonewall County ("Facility 2").

TYPE OF OPERATION: two inactive convenience stores with underground storage tanks.

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional enforcement actions pending against these facility locations.

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 June 22, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Tracy Chandler, Litigation Division, MC 175, (512) 239-0629
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Ms. Cheryl Thompson, Water Enforcement Section, MC R-4, (817) 588-5886

TCEQ Regional Contact: Mr. Mike Taylor, Abilene Regional Office, MC R-3; (325) 698-6122

Respondent: Mr. Ned H. Ward, P.O. Box D, Aspermont, Texas 79502

Respondent's Attorney: Mr. Raymond A. Hollabaugh, Attorney at Law, P.O. Box 1176, Stamford, Texas 79553

| 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: January 24, 2007</p> <p>Date of NOE Relating to this Case: January 31, 2007</p> <p>Background Facts: The EDRP was filed January 15, 2008. The Respondent filed an Answer and the case was referred to SOAH. The parties engaged in discovery and an evidentiary hearing, originally set for May 13, 2009. The agreed order was signed May 7, 2009.</p> <p>Current Compliance Status: Not yet in compliance.</p> <p>PST: Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, ten USTs (at two separate Facilities) for which any applicable component of the system is not brought into timely compliance with the upgrade requirements [30 TEX. ADMIN. CODE § 334.47(a)(2)].</p> | <p>Total Assessed: \$5,250</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 Paid/Due to General Revenue: \$350/\$4,900</p> <p>The Respondent paid \$350 of the administrative penalty. The remaining amount of \$4,900 shall be payable in 35 monthly payments of \$140 each.</p> <p><u>Facility 1:</u> 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><u>Facility 2:</u> 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 Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Within 30 days, permanently remove from service all USTs at each Facility. 2. Within 45 days, submit written certification demonstrating compliance. |



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision December 8, 2006

| | | | | |
|-------|----------|------------|-----------|------------|
| DATES | Assigned | 5-Feb-2007 | | |
| | PCW | 1-May-2009 | Screening | 9-Feb-2007 |
| | | | EPA Due | |

| | |
|---------------------------------|-------------|
| RESPONDENT/FACILITY INFORMATION | |
| Respondent | Ned H. Ward |
| Reg. Ent. Ref. No. | RN102435484 |
| Facility/Site Region | 3-Abilene |
| Major/Minor Source | Minor |

| | | | | |
|-------------------|------------------------|-------------------|-----------------|----------|
| CASE INFORMATION | | | | |
| Enf./Case ID No. | 32643 | No. of Violations | 2 | |
| Docket No. | 2007-0235-PST-E | Order Type | 1660 | |
| Media Program(s) | Petroleum Storage Tank | Enf. Coordinator | Cheryl Thompson | |
| Multi-Media | | EC's Team | 3 | |
| Admin. Penalty \$ | Limit Minimum | \$0 | Maximum | \$10,000 |

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1:** \$2,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 5% Enhancement **Subtotals 2, 3, & 7:** \$125

Notes: Enhancement for one NOV with same or similar violations.

Culpability No 0% Enhancement **Subtotal 4:** \$0

Notes: The respondent does not meet the culpability criteria.

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

Total EB Amounts \$2,216 0% Enhancement **Subtotal 6:** \$0
 Approx. Cost of Compliance \$5,000 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal:** \$2,625

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment: \$0

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

Notes:

Final Penalty Amount: \$2,625

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty:** \$2,625

DEFERRAL 0% Reduction **Adjustment:** \$0

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 \$2,625

A

Screening Date 9-Feb-2007

Docket No. 2007-0235-PST-E

PCW

Respondent Ned H. Ward

Policy Revision 2 (September 2002)

Case ID No. 32843

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN102435484

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Cheryl Thompson

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% |

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) 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 for one NOV with same or similar violations.

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

Screening Date 9-Feb-2007

Docket No. 2007-0235-PST-E

PCW

Respondent Ned H. Ward

Policy Revision 2 (September 2002)

Case ID No. 32643

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN102435484

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Cheryl Thompson

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 334.47(a)(2)

Violation Description

Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, two USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

| Release | Harm | | | Percent |
|-----------|-------|----------|-------|---------|
| | Major | Moderate | Minor | |
| Actual | | | | 25% |
| Potential | X | | | |

>> 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 16

| | |
|--------------|---|
| daily | |
| monthly | X |
| quarterly | |
| semiannual | |
| annual | |
| single event | |

mark only one with an x

Violation Base Penalty \$2,500

One monthly event is recommended per UST system.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2,216

Violation Final Penalty Total \$2,625

This violation Final Assessed Penalty (adjusted for limits) \$2,625

Economic Benefit Worksheet

Respondent: Ned H. Ward
Case ID No.: 32643
Reg. Ent. Reference No.: RN102435484
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 |
|--------------------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| <small>No commas or \$</small> | | | | | | | |

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) | \$5,000 | 22-Dec-1998 | 1-Nov-2007 | 8.9 | \$2,216 | n/a | \$2,216 |

Notes for DELAYED costs

Estimated expense to permanently remove the UST system from service. The Date Required is the date when the respondent was required to upgrade the UST system and the Final Date is based on the estimated compliance date.

Avoided Costs

ANNUALIZE [4] 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 \$5,000

TOTAL \$2,216

Compliance History Report

Customer/Respondent/Owner-Operator: CN601207145 WARD, NED H Classification: AVERAGE Rating: 1.00
Regulated Entity: RN102435484 NED H WARD Classification: AVERAGE Site Rating: 1.00

ID Number(s):

Location: LOCATED TO THE RIGHT OF THE D&D FEED STORE &
RIGHT BEHIND THE GULF STATION NEAR 11TH ST &
NORTH HWY 83

TCEQ Region: REGION 03 - ABILENE

Date Compliance History Prepared: May 11, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: March 13, 2002 to March 13, 2007

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

Name: Cheryl Thompson Phone: (817) 588-5886

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
2. Has there been a (known) change in ownership/operator of the site during the compliance period?
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator 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 11/22/2006 (519127)
N/A
2 01/31/2007 (537827)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 12/10/2006 (519127) CN601207145
N/A
Self NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)
Description: Failure to upgrade tanks to meet all technical standards.
 - 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

A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision December 8, 2006

| | | | | |
|----------|------------|-----------|------------|---------|
| Assigned | 5-Feb-2007 | | | |
| PCW | 1-May-2009 | Screening | 9-Feb-2007 | EPA Due |

| | | | | |
|----------------------|--|-------------|--------------------|-------|
| Respondent | | Ned H. Ward | | |
| Reg. Ent. Ref. No. | | RN102270162 | | |
| Facility/Site Region | | 3-Abilene | Major/Minor Source | Minor |

| | | | |
|-------------------|------------------------|-------------------|-----------------|
| Enf./Case ID No. | 32643 | No. of Violations | 1 |
| Docket No. | 2007-0235-PST-E | Order Type | 1660 |
| Media Program(s) | Petroleum Storage Tank | Enf. Coordinator | Cheryl Thompson |
| Multi-Media | | EC's Team | 3 |
| Admin. Penalty \$ | Limit Minimum \$0 | Maximum | \$10,000 |

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 **\$2,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 5% Enhancement Subtotals 2, 3, & 7 **\$125**

Notes Enhancement for one NOV with same or similar violations.

Culpability No 0% Enhancement Subtotal 4 **\$0**

Notes The respondent does not meet the culpability criteria.

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

| | Before NOV | NOV to EDRP/Settlement Offer |
|---------------|------------|------------------------------|
| Extraordinary | | |
| Ordinary | | |
| N/A | X | (mark with x) |

Notes The respondent does not meet the good faith criteria.

Total EB Amounts \$8,866 *Capped at the Total EB \$ Amount
Approx. Cost of Compliance \$20,000
0% Enhancement Subtotal 6 **\$0**

SUM OF SUBTOTALS 1-7 Final Subtotal **\$2,625**

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment **\$0**

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

Notes

Final Penalty Amount **\$2,625**

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty **\$2,625**

DEFERRAL 0% Reduction Adjustment **\$0**

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 **\$2,625**

B

Screening Date 9-Feb-2007

Docket No. 2007-0235-PST-E

PCW

Respondent Ned H. Ward

Policy Revision 2 (September 2002)

Case ID No. 32643

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN102270162

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Cheryl Thompson

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% |

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) 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 for one NOV with same or similar violations.

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

Screening Date: 9-Feb-2007

Docket No. 2007-0235-PST-E

PCW

Respondent: Ned H. Ward

Policy Revision 2 (September 2002)

Case ID No. 32643

PCW Revision December 8, 2006

Reg. Ent. Reference No.: RN102270162

Media [Statute]: Petroleum Storage Tank

Enf. Coordinator: Cheryl Thompson

Violation Number: 1

Rule Cite(s)

30 Tex. Admin. Code § 334.47(a)(2)

Violation Description

Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, eight USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.

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 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

16 Number of violation days

mark only one with an x

| | |
|--------------|---|
| daily | |
| monthly | X |
| quarterly | |
| semiannual | |
| annual | |
| single event | |

Violation Base Penalty: \$2,500

One monthly event is recommended per UST system.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount: \$8,866

Violation Final Penalty Total: \$2,625

This violation Final Assessed Penalty (adjusted for limits): \$2,625

Economic Benefit Worksheet

Respondent: Ned H. Ward
 Case ID No. 32643
 Reg. Ent. Reference No. RN102270162
 Media: Petroleum Storage Tank
 Violation No. 1

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

| Item Description | Item Cost <small>No commas or \$</small> | 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) | \$20,000 | 22-Dec-1998 | 1-Nov-2007 | 8.9 | \$8,866 | n/a | \$8,866 |

Notes for DELAYED costs: Estimated expense to permanently remove the UST system from service. The Date Required is the date when the respondent was required to upgrade the UST system and the Final Date is based on the estimated compliance date.

| Item Description | ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs) | Yrs | Interest Saved | Onetime Costs | EB Amount |
|-------------------------------|--|-----|----------------|---------------|-----------|
| Avoided Costs | | | | | |
| Disposal | | 0.0 | \$0 | \$0 | \$0 |
| Personnel | | 0.0 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling | | 0.0 | \$0 | \$0 | \$0 |
| Supplies/equipment | | 0.0 | \$0 | \$0 | \$0 |
| Financial Assurance [2] | | 0.0 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3] | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | | 0.0 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs:

Approx. Cost of Compliance: \$20,000 TOTAL: \$8,866

Compliance History

| | | | |
|---|---|---------------------------------------|--|
| Customer/Respondent/Owner-Operator: | CN601207145 WARD, NED H | Classification: AVERAGE BY DEFAULT | Rating: 3.01 |
| Regulated Entity: | RN102270162 NED WARD | Classification: AVERAGE BY DEFAULT | Site Rating: 3.01 |
| ID Number(s): | PETROLEUM STORAGE TANK REGISTRATION 60005 | | |
| Location: | BROADWAY & 3RD ST, ASPERMONT, TX, 79502 | | Rating Date: 9/1/2006 Repeat Violator: NO |
| TCEQ Region: | REGION 03 - ABILENE | | |
| Date Compliance History Prepared: | February 07, 2007 | | |
| Agency Decision Requiring Compliance History: | Enforcement | | |
| Compliance Period: | February 07, 2002 to February 07, 2007 | | |

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

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)

| | | |
|---|------------|----------|
| 1 | 01/31/2007 | (537782) |
| 2 | 11/22/2006 | (519088) |
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

| | | |
|-----------------|---|----------|
| Date: | 12/10/2006 | (519088) |
| Self Report? | NO | |
| Citation: | 30 TAC Chapter 334, SubChapter C 334.47(a)(2) | |
| Description: | Failure to upgrade tanks to meet all technical standards. | |
| Classification: | Moderate | |
 - 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

B

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
NED H. WARD,
RN102435484 AND RN102270162

§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2007-0235-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Ned H. Ward ("Mr. Ward") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Ward represented by attorney Raymond A. Hollabaugh, appear before the Commission and together stipulate that:

1. Mr. Ward owns two inactive convenience stores with underground storage tanks ("USTs") (jointly referred to as "the Facilities"). One of the Facilities is located to the right of the D&D Feed Store and right behind the Gulf Station near 11th Street and North Highway 83, Aspermont, Stonewall County, Texas ("Facility 1"). The other facility is located at Broadway and 3rd Street in Aspermont, Stonewall County, Texas ("Facility 2").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and Mr. Ward agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Ward is subject to the Commission's jurisdiction.
4. Mr. Ward received notice of the violation alleged in Section II ("Allegations") on or about February 5, 2007.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Ward of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of five thousand two hundred fifty dollars (\$5,250.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Ward paid three hundred fifty dollars (\$350.00) of the administrative penalty. The remaining amount of four thousand nine hundred dollars (\$4,900.00) of the administrative penalty shall be payable in 35 monthly payments of one hundred forty dollars (\$140.00) each, pursuant to 30 TEX. ADMIN. CODE § 70.9(a). The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Mr. Ward fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his 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, Mr. Ward's failure to meet the payment schedule of this Agreed Order constitutes the failure by Mr. Ward to timely and satisfactorily comply with all of 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 Mr. Ward agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Mr. Ward has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

During investigations conducted on January 24, 2007, a TCEQ Abilene Regional Office investigator documented that Mr. Ward violated 30 TEX. ADMIN. CODE § 334.47(a)(2) by

failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, the Facilities' ten USTs for which any applicable component of the system is not brought into timely compliance.

III. DENIALS

Mr. Ward generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Ward pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Ward's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Ned H. Ward, Docket No. 2007-0235-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. Mr. Ward shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, Mr. Ward shall permanently remove all USTs at the Facilities from service, in accordance with 30 TEX. ADMIN. CODE § 334.55.
 - b. Within 45 days after the effective date of this Order, Mr. Ward shall submit written certification and detailed supporting documentation, including photographs, receipts, and 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.”

Mr. Ward shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision No. 2.a. to:

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

and

Mike Taylor, Air/Waste Section Manager
Texas Commission on Environmental Quality
Abilene Regional Office
1977 Industrial Blvd.
Abilene, Texas 79602-7833

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Ward. Mr. Ward is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facilities operations referenced in this Agreed Order.
4. If Mr. Ward 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, Mr. Ward's failure to comply is not a violation of this Agreed Order. Mr. Ward shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Ward shall notify the Executive Director within seven days after Mr. Ward 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 Mr. Ward shall be made in writing to the Executive Director. Extensions are not effective until Mr. Ward 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 Mr. Ward 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 Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order 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) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Mr. Ward, or three days after the date on which the Commission mails notice of the Order to Mr. Ward, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Ned H. Ward
Docket No. 2007-0235-PST-F
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

[Handwritten Signature]

For the Executive Director

5/20/2009

Date

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

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

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

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

[Handwritten Signature]
Signature

5/7/09
Date

[Handwritten Signature]
Name (Printed or typed)
Authorized representative of
Ned H. Ward

Attorney
Title