

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

Page 1 of 3

DOCKET NO.: 2009-0054-PST-E **TCEQ ID:** RN100814524 **CASE NO.:** 37028**RESPONDENT NAME:** M & O SERVICES, L.L.C. dba Shell Super Stop 10

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Shell Super Stop 10, 3600 Montana Avenue, El Paso, El Paso County</p> <p>TYPE OF OPERATION: Convenience store with retail sales of gasoline</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on May 25, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Judy Kluge, Enforcement Division, Enforcement Team 6, MC R-4, (817) 588-5825; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Mike Yardeni, Member, M & O SERVICES, L.L.C., 8201 Lockheed Drive, Suite 235, El Paso, Texas 77925 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: December 19, 2008</p> <p>Date of NOV/NOE Relating to this Case: January 12, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>1) Failure to timely renew a previously issued underground storage tank ("UST") delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date. Specifically, the delivery certificate expired on May 31, 2008 [30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)].</p> <p>2) Failure to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, the Respondent received twelve deliveries of fuel without having a current delivery certificate [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)].</p> <p>3) Failure to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are functioning as designed. Specifically, bimonthly inspections of the impressed current cathodic protection system were not being conducted [30 TEX. ADMIN. CODE § 334.49(c)(2)(C) and TEX. WATER CODE § 26.3475(d)].</p> <p>4) Failure to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency</p>	<p>Total Assessed: \$19,499</p> <p>Total Deferred: \$3,899 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$445 (remaining \$15,155 due in 35 monthly payments of \$433 each)</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a) Began conducting bimonthly inspections of the rectifier and other system components on December 27, 2008;</p> <p>b) Submitted documentation verifying that the triennial test for the cathodic protection system was successfully conducted on December 27, 2008;</p> <p>c) Successfully conducted the required piping tightness and line leak detector tests on December 22, 2008;</p> <p>d) Began conducting proper inventory control procedures for all USTs on December 30, 2008; and</p> <p>e) On January 6, 2009, the TCEQ El Paso Regional Office received documentation verifying that the USTs were properly marked according to the UST registration and self-certification form.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a) Immediately upon the effective date of this Agreed Order, cease accepting fuel until such time as a valid UST delivery certificate is obtained from the TCEQ by submitting a properly completed registration and self-certification form, in accordance with 30 TEX. ADMIN. CODE § 334.8;</p> <p>b) Within 30 days after the effective date of this Agreed Order, install and implement a release detection method for all USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.50; and</p> <p>c) Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including</p>

<p>of at least once every three years. Specifically, the triennial test had not been conducted [30 TEX. ADMIN. CODE § 334.49(c)(4) and TEX. WATER CODE § 26.3475(d)].</p> <p>5) Failure to ensure that all USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring). Specifically, the automatic tank gauge was not being put into test mode monthly [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>6) Failure to provide release detection for the piping associated with the USTs [30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a)].</p> <p>7) Failure to test the line leak detectors at least once per year for performance and operational reliability. Specifically, the line leak detectors had not been performance tested annually [30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a)].</p> <p>8) Failure to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel [30 TEX. ADMIN. CODE § 334.48(c)].</p> <p>9) Failure to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form [30 TEX. ADMIN. CODE § 334.8(c)(5)(C)].</p>		<p>photographs, receipts, and/or other records to demonstrate compliance.</p>
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Additional ID No(s): PST No. 45233



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	12-Jan-2009	Screening	14-Jan-2009	EPA Due	
	PCW	15-Jan-2009				

RESPONDENT/FACILITY INFORMATION			
Respondent	M & O SERVICES, L.L.C. dba Shell Super Stop 10		
Reg. Ent. Ref. No.	RN100814524		
Facility/Site Region	6-El Paso	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	37028	No. of Violations	6
Docket No.	2009-0054-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Judy Kluge
		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	\$15,500
ADJUSTMENTS (+/-) TO SUBTOTAL 1			
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.			
Compliance History	20.0% Enhancement	Subtotals 2, 3, & 7	\$3,100
Notes	Enhancement for one previous 1660-style order.		
Culpability	No	0.0% Enhancement	Subtotal 4
Notes	The Respondent does not meet the culpability criteria.		
Good Faith Effort to Comply Total Adjustments		Subtotal 5	\$1,500
Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$2,442	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$4,300		
SUM OF SUBTOTALS 1-7		Final Subtotal	\$17,100
OTHER FACTORS AS JUSTICE MAY REQUIRE		14.0%	Adjustment
Reduces or enhances the Final Subtotal by the indicated percentage.			
Notes	Recommended enhancement to capture the avoided cost of compliance associated with violation nos. 3 and 4.		
			Final Penalty Amount
			\$19,499
STATUTORY LIMIT ADJUSTMENT		Final Assessed Penalty	\$19,499
DEFERRAL	20.0%	Reduction	Adjustment
Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)			
Notes	Deferral offered for expedited settlement.		
PAYABLE PENALTY			\$15,600

Screening Date 14-Jan-2009	Docket No. 2009-0054-PST-E	PCW
Respondent M & O SERVICES, L.L.C. dba Shell Super Stop 10	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 37028	<i>PCW Revision October 30, 2008</i>	
Reg. Ent. Reference No. RN100814524		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Judy Kluge		

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 <i>(number of NOVs meeting criteria)</i>	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	1	20%
	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 <i>(number of judgements or consent decrees meeting criteria)</i>	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 <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	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 <i>(number of audits for which notices were submitted)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	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) 20%

>> **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 previous 1660-style order.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 20%

Screening Date 14-Jan-2009

Docket No. 2009-0054-PST-E

PCW

Respondent M & O SERVICES, L.L.C. dba Shell Super Stop 10

Policy Revision 2 (September 2002)

Case ID No. 37028

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100814524

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Harm				Percent <input type="text" value="0%"/>
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>		

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent <input type="text" value="10%"/>
	<input type="text"/>	<input checked="" type="text" value="X"/>	<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"/>
	weekly	<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

Good Faith Efforts to Comply

Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="X"/>	(mark with x)

Notes

Violation Subtotal

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 M & O SERVICES, L.L.C. dba Shell Super Stop 10
Case ID No. 37028
Reg. Ent. Reference No. RN100814524
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				0.00	\$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)	\$100	1-May-2008	14-Jul-2009	1.20	\$6	n/a	\$6

Notes for DELAYED costs

The delayed cost includes the estimated amount required to timely renew a previously issued delivery certificate by submitting a properly completed UST registration and self-certification form. The date required is 30 days before the expiration 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				0.00	\$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

\$100

TOTAL

\$6

Screening Date 14-Jan-2009	Docket No. 2009-0054-PST-E	PCW				
Respondent M & O SERVICES, L.L.C. dba Shell Super Stop 10	<i>Policy Revision 2 (September 2002)</i>					
Case ID No. 37028	<i>PCW Revision October 30, 2008</i>					
Reg. Ent. Reference No. RN100814524						
Media [Statute] Petroleum Storage Tank						
Enf. Coordinator Judy Kluge						
Violation Number <input type="text" value="2"/>						
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 334.8(c)(5)(A)(i) and Tex. Water Code 26.3467(a)"/>					
Violation Description	<input type="text" value="Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, the Respondent received twelve deliveries of fuel without having a current delivery certificate."/>					
Base Penalty		<input type="text" value="\$10,000"/>				
>> Environmental, Property and Human Health Matrix						
OR	Harm					
	Release	Major	Moderate	Minor		
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>		
	Potential	<input type="text"/>	<input type="text"/>	x		
		Percent	<input type="text" value="5%"/>			
>> Programmatic Matrix						
		Falsification	Major	Moderate	Minor	
		<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
					Percent	<input type="text" value="0%"/>
Matrix Notes	<input type="text" value="Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation."/>					
		Adjustment		<input type="text" value="\$9,500"/>		
				<input type="text" value="\$500"/>		
Violation Events						
Number of Violation Events		<input type="text" value="12"/>	Number of violation days			
		<input type="text" value="12"/>				
<i>mark only one with an x</i>	daily	<input type="text"/>				
	weekly	<input type="text"/>				
	monthly	<input type="text"/>				
	quarterly	<input type="text"/>				
	semiannual	<input type="text"/>				
	annual	<input type="text"/>				
	single event	x				
		Violation Base Penalty		<input type="text" value="\$6,000"/>		
<input type="text" value="Twelve single events are recommended for accepting twelve deliveries of fuel."/>						
Good Faith Efforts to Comply		0.0% Reduction				
		Before NOV	NOV to EDRP/Settlement Offer			
Extraordinary	<input type="text"/>	<input type="text"/>				
Ordinary	<input type="text"/>	<input type="text"/>				
N/A	x	(mark with x)				
Notes	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>					
		Violation Subtotal		<input type="text" value="\$6,000"/>		
Economic Benefit (EB) for this violation			Statutory Limit Test			
Estimated EB Amount		<input type="text" value="\$0"/>	Violation Final Penalty Total		<input type="text" value="\$8,210"/>	
				This violation Final Assessed Penalty (adjusted for limits)		
				<input type="text" value="\$8,210"/>		

Economic Benefit Worksheet

Respondent M & O SERVICES, L.L.C. dba Shell Super Stop 10
Case ID No. 37028
Reg. Ent. Reference No. RN100814524
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
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				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

Economic benefit calculated in violation no. 1.

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

\$0

TOTAL

\$0

Screening Date 14-Jan-2009		Docket No. 2009-0054-PST-E		PCW	
Respondent M & O SERVICES, L.L.C. dba Shell Super Stop 10			<small>Policy Revision 2 (September 2002)</small>		
Case ID No. 37028			<small>PCW Revision October 30, 2008</small>		
Reg. Ent. Reference No. RN100814524					
Media [Statute] Petroleum Storage Tank					
Enf. Coordinator Judy Kluge					
Violation Number		<input type="text" value="3"/>			
Rule Cite(s)		30 Tex. Admin. Code § 334.49(c)(2)(C) and (c)(4) and Tex. Water Code § 26.3475(d)			
Violation Description		Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are functioning as designed. Specifically, bimonthly inspections of the impressed current cathodic protection system were not being conducted. 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.			
Base Penalty				<input type="text" value="\$10,000"/>	
>> Environmental, Property and Human Health Matrix					
Harm					
OR	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Potential	x	<input type="text"/>	<input type="text"/>	<input type="text"/>	
>> Programmatic Matrix					
Falsification					
Major Moderate Minor					
<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>					
Percent <input type="text" value="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				<input type="text" value="\$7,500"/>	
				<input type="text" value="\$2,500"/>	
Violation Events					
Number of Violation Events		<input type="text" value="1"/>	Number of violation days		
		<input type="text" value="8"/>			
<small>mark only one with an x</small>	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$2,500"/>		
	weekly	<input type="text"/>			
	monthly	x			
	quarterly	<input type="text"/>			
	semiannual	<input type="text"/>			
	annual	<input type="text"/>			
single event	<input type="text"/>				
One monthly event is recommended based on the documentation of the violation during the December 19, 2008 investigation to the December 27, 2008 compliance date.					
Good Faith Efforts to Comply					
		25.0%	Reduction		
		<small>Before NOV</small>	<small>NOV to EDRP/Settlement Offer</small>		
Extraordinary	<input type="text"/>	<input type="text"/>			
Ordinary	x	<input type="text"/>			
N/A	<input type="text"/>	<small>(mark with x)</small>			
Notes		The Respondent came into compliance on December 27, 2008.			
Violation Subtotal				<input type="text" value="\$1,875"/>	
Economic Benefit (EB) for this violation					
Statutory Limit Test					
Estimated EB Amount		<input type="text" value="\$1,303"/>	Violation Final Penalty Total <input type="text" value="\$2,708"/>		
This violation Final Assessed Penalty (adjusted for limits)				<input type="text" value="\$2,708"/>	

Economic Benefit Worksheet

Respondent: M & O SERVICES, L.L.C. dba Shell Super Stop 10

Case ID No.: 37028

Reg. Ent. Reference No.: RN100814524

Media: Petroleum Storage Tank

Violation No.: 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				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)

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
Triennial Testing	\$1,000	19-Dec-2005	27-Dec-2008	3.94	\$197	\$1,000	\$1,197
Bimonthly Inspections	\$100	19-Oct-2008	27-Dec-2008	1.11	\$6	\$100	\$106

Notes for AVOIDED costs

Avoided cost for conducting bimonthly inspections and completing the triennial testing. The dates required are 60 days before the investigation and three years before the investigation respectively and the final date is the compliance date.

Approx. Cost of Compliance

\$1,100

TOTAL

\$1,303

Screening Date 14-Jan-2009	Docket No. 2009-0054-PST-E	PCW																			
Respondent M & O SERVICES, L.L.C. dba Shell Super Stop 10	<small>Policy Revision 2 (September 2002)</small>																				
Case ID No. 37028	<small>PCW Revision October 30, 2008</small>																				
Reg. Ent. Reference No. RN100814524																					
Media [Statute] Petroleum Storage Tank																					
Enf. Coordinator Judy Kluge																					
Violation Number	4																				
Rule Cite(s)	30 Tex. Admin. Code § 334.50(b)(1)(A), (b)(2), and (b)(2)(A)(i)(III) and Tex. Water Code § 26.3475(a) and (c)(1)																				
Violation Description	Failed to ensure that all USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring). Specifically, the automatic tank gauge was not being put into test mode monthly. Failed to provide release detection for the piping associated with the USTs. Failed to test the line leak detectors at least once per year for performance and operational reliability. Specifically, the line leak detectors had not been performance tested annually.																				
Base Penalty	\$10,000																				
>> Environmental, Property and Human Health Matrix																					
OR	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <th colspan="3">Harm</th> <td></td> </tr> <tr> <td></td> <th>Major</th> <th>Moderate</th> <th>Minor</th> <td></td> </tr> <tr> <td>Actual</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Potential</td> <td style="text-align: center;">x</td> <td></td> <td></td> <td style="text-align: right;">Percent 25%</td> </tr> </table>		Harm					Major	Moderate	Minor		Actual					Potential	x			Percent 25%
	Harm																				
	Major	Moderate	Minor																		
Actual																					
Potential	x			Percent 25%																	
>> Programmatic Matrix																					
	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <th>Major</th> <th>Moderate</th> <th>Minor</th> <td></td> </tr> <tr> <td>Falsification</td> <td></td> <td></td> <td></td> <td style="text-align: right;">Percent 0%</td> </tr> </table>		Major	Moderate	Minor		Falsification				Percent 0%										
	Major	Moderate	Minor																		
Falsification				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																					
	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td>Number of Violation Events</td> <td style="text-align: center;">1</td> <td style="text-align: center;">26</td> <td>Number of violation days</td> </tr> </table>	Number of Violation Events	1	26	Number of violation days																
Number of Violation Events	1	26	Number of violation days																		
mark only one with an x	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr><td>daily</td><td></td></tr> <tr><td>weekly</td><td></td></tr> <tr><td>monthly</td><td style="text-align: center;">x</td></tr> <tr><td>quarterly</td><td></td></tr> <tr><td>semiannual</td><td></td></tr> <tr><td>annual</td><td></td></tr> <tr><td>single event</td><td></td></tr> </table>	daily		weekly		monthly	x	quarterly		semiannual		annual		single event		Violation Base Penalty	\$2,500				
daily																					
weekly																					
monthly	x																				
quarterly																					
semiannual																					
annual																					
single event																					
One monthly event is recommended based on documentation of the violation during the December 19, 2008 investigation to the January 14, 2009 screening date.																					
Good Faith Efforts to Comply			\$0																		
	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <th colspan="2">0.0% Reduction</th> </tr> <tr> <td></td> <th>Before NOV</th> <th>NOV to EDPRP/Settlement Offer</th> </tr> <tr> <td>Extraordinary</td> <td></td> <td></td> </tr> <tr> <td>Ordinary</td> <td></td> <td></td> </tr> <tr> <td>N/A</td> <td style="text-align: center;">x</td> <td style="text-align: center;">(mark with x)</td> </tr> </table>		0.0% Reduction			Before NOV	NOV to EDPRP/Settlement Offer	Extraordinary			Ordinary			N/A	x	(mark with x)					
	0.0% Reduction																				
	Before NOV	NOV to EDPRP/Settlement Offer																			
Extraordinary																					
Ordinary																					
N/A	x	(mark with x)																			
Notes	The Respondent does not meet the good faith criteria for this violation.																				
Violation Subtotal			\$2,500																		
Economic Benefit (EB) for this violation			Statutory Limit Test																		
Estimated EB Amount	\$1,133	Violation Final Penalty Total	\$3,421																		
This violation Final Assessed Penalty (adjusted for limits)			\$3,421																		

Economic Benefit Worksheet

Respondent M & O SERVICES, L.L.C. dba Shell Super Stop 10
Case ID No. 37028
Reg. Ent. Reference No. RN100814524
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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				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	19-Dec-2008	14-Jun-2009	0.48	\$36	n/a	\$36

Notes for DELAYED costs

The estimated cost to monitor USTs for releases. The date required is the investigation date and the final date is expected date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$1,000	19-Dec-2007	22-Dec-2008	1.93	\$96	\$1,000	\$1,096
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Avoided costs for conducting annual piping tightness and line leak detector tests. The date required is one year prior to the investigation date and the final date is the date of compliance.

Approx. Cost of Compliance

\$2,500

TOTAL

\$1,133

Economic Benefit Worksheet

Respondent M & O SERVICES, L.L.C. dba Shell Super Stop 10
Case ID No. 37028
Reg. Ent. Reference No. RN100814524
Media Petroleum Storage Tank
Violation No. 5

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	\$500	19-Dec-2008	30-Dec-2008	0.03	\$1	n/a	\$1
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to conduct inventory control for all USTs involved in the retail sale of petroleum substances used as motor fuel. The date required is the date of the investigation and final date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs.

Approx. Cost of Compliance

\$500

TOTAL

\$1

Screening Date 14-Jan-2009	Docket No. 2009-0054-PST-E	PCW			
Respondent M & O SERVICES, L.L.C. dba Shell Super Stop 10	<small>Policy Revision 2 (September 2002)</small>				
Case ID No. 37028	<small>PCW Revision October 30, 2008</small>				
Reg. Ent. Reference No. RN100814524					
Media [Statute] Petroleum Storage Tank					
Enf. Coordinator Judy Kluge					
Violation Number	6				
Rule Cite(s)	30 Tex. Admin. Code § 334.8(c)(5)(C)				
Violation Description	Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form.				
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"/>
				Percent <input type="text" value="10%"/>	
Matrix Notes	100% of the rule requirement was not met.				
Adjustment				\$9,000	
				\$1,000	
Violation Events					
Number of Violation Events		<input type="text" value="1"/>	Number of violation days		
		<input type="text" value="18"/>			
<small>mark only one with an x</small>	daily	<input type="text"/>			
	weekly	<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 <input type="text" value="\$1,000"/>	
One single event is recommended based on documentation of the violation during the December 19, 2008 investigation.					
Good Faith Efforts to Comply		<input type="text" value="25.0%"/>	Reduction		
		<input type="text"/>			
		<input type="text"/>			
		<input checked="" type="text" value="x"/>			
		<input type="text"/>			
		<input type="text"/>			
		<input type="text"/>			
		<input type="text"/>			
Notes		The Respondent came into compliance on January 6, 2009.			
Violation Subtotal				\$750	
Economic Benefit (EB) for this violation			Statutory Limit Test		
Estimated EB Amount		<input type="text" value="\$0"/>	Violation Final Penalty Total <input type="text" value="\$1,083"/>		
This violation Final Assessed Penalty (adjusted for limits)				\$1,083	

Economic Benefit Worksheet

Respondent M & O SERVICES, L.L.C. dba Shell Super Stop 10
Case ID No. 37028
Reg. Ent. Reference No. RN100814524
Media Petroleum Storage Tank
Violation No. 6

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				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)	\$100	19-Dec-2008	6-Jan-2009	0.05	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost includes the amount required to permanently affix a metal label to each UST fill tube. The date required is the investigation date and the final date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$0

Compliance History Report

Customer/Respondent/Owner-Operator: CN600497382 M & O SERVICES, L.L.C. Classification: AVERAGE Rating: 18.75
Regulated Entity: RN100814524 Shell Super Stop 10 Classification: AVERAGE Site Rating: 18.75
ID Number(s): AIR NEW SOURCE PERMITS ACCOUNT NUMBER EE0944B
PETROLEUM STORAGE TANK REGISTRATION 45233
REGISTRATION
Location: 3600 MONTANA AVE, EL PASO, TX, 79903
TCEQ Region: REGION 06 - EL PASO
Date Compliance History Prepared: January 14, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: January 14, 2004 to January 14, 2009
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Judy Kluge Phone: 817-588-5825

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.

Effective Date: 08/28/2006

ADMINORDER 2004-2077-AIR-E

Classification: Moderate

Citation: 30 TAC Chapter 114, SubChapter D 114.100(a)

5C THC Chapter 382, SubChapter A 382.085(b)

Description: Offered for sale gasoline for use as motor vehicle fuel in El Paso County with an oxygen content lower than 2.7% by wieght.

- 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 07/16/2004 (276878)

2 11/24/2004 (342192)

3 07/12/2006 (483572)

4 10/03/2008 (704067)

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

N/A

- F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
M & O SERVICES, L.L.C. DBA SHELL
SUPER STOP 10
RN100814524

§
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§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2009-0054-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 M & O SERVICES, L.L.C. dba Shell Super Stop 10 ("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 convenience store with retail sales of gasoline at 3600 Montana Avenue in El Paso, El Paso County, Texas (the "Facility").
2. The Respondent's three 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 January 17, 2009.
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 Nineteen Thousand Four Hundred Ninety-Nine Dollars (\$19,499) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Four Hundred Forty-Five Dollars (\$445) of the

administrative penalty and Three Thousand Eight Hundred Ninety-Nine Dollars (\$3,899) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Fifteen Thousand One Hundred Fifty-Five Dollars (\$15,155) of the administrative penalty shall be payable in 35 monthly payments of Four Hundred Thirty-Three Dollars (\$433) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. Began conducting bimonthly inspections of the rectifier and other system components on December 27, 2008;
 - b. Submitted documentation verifying that the triennial test for the cathodic protection system was successfully conducted on December 27, 2008;
 - c. Successfully conducted the required piping tightness and line leak detector tests on December 22, 2008;
 - d. Began conducting proper inventory control procedures for all USTs on December 30, 2008; and
 - e. On January 6, 2009, the TCEQ El Paso Regional Office received documentation verifying that the USTs were properly marked according to the UST registration and self-certification form.
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 timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii), as documented during an investigation conducted on December 19, 2008. Specifically, the delivery certificate expired on May 31, 2008.
2. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a), as documented during an investigation conducted on December 19, 2008. Specifically, the Respondent received twelve deliveries of fuel without having a current delivery certificate.
3. Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are functioning as designed, in violation of 30 TEX. ADMIN. CODE § 334.49(c)(2)(C) and TEX. WATER CODE § 26.3475(d), as documented during an investigation conducted on December 19, 2008. Specifically, bimonthly inspections of the impressed current cathodic protection system were not being conducted.
4. 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, in violation of 30 TEX. ADMIN. CODE § 334.49(c)(4) and TEX. WATER CODE § 26.3475(d), as documented during an investigation conducted on December 19, 2008. Specifically, the triennial test had not been conducted.
5. Failed to ensure that all USTs are monitored in a manner which will detect a release at a frequency of at least once every 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 December 19, 2008. Specifically, the automatic tank gauge was not being put into test mode monthly.
6. Failed to provide release detection for the piping associated with the USTs, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a), as documented during an investigation conducted on December 19, 2008.
7. Failed to test the line leak detectors at least once per year for performance and operational reliability, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a), as documented during an investigation conducted on December 19, 2008. Specifically, the line leak detectors had not been performance tested annually.

8. Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel, in violation of 30 TEX. ADMIN. CODE § 334.48(c), as documented during an investigation conducted on December 19, 2008.
9. Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(C), as documented during an investigation conducted on December 19, 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: M & O SERVICES, L.L.C. dba Shell Super Stop 10, Docket No. 2009-0054-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. Immediately upon the effective date of this Agreed Order, cease accepting fuel until such time as a valid UST delivery certificate is obtained from the TCEQ by submitting a properly completed registration and self-certification form, in accordance with 30 TEX. ADMIN. CODE § 334.8;
 - b. Within 30 days after the effective date of this Agreed Order, install and implement a release detection method for all USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.50; and
 - c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering

Provision Nos. 2.a. and 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Waste Section Manager
El Paso Regional Office
Texas Commission on Environmental Quality
401 East Franklin Avenue, Suite 560
El Paso, Texas 79901-1206

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

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Sedler
For the Executive Director

4/29/2009
Date

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

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

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

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

[Signature]
Signature

3/25/09
Date

Mike Garderi
Name (Printed or typed)

MGR
Title

Authorized Representative of

M & O SERVICES, L.L.C. dba Shell Super Stop 10

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.

