

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-0393-PST-E **TCEQ ID:** RN101533529 **CASE NO.:** 37319

RESPONDENT NAME: Dallas Texas Properties, Inc. dba Howdy Doody #11

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: Howdy Doody #11, 6201 Matlock Road, Arlington, Tarrant 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 July 13, 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-04, (817) 588-5825; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Nick Dato, President, Dallas Texas Properties, Inc., 6201 Matlock Road, Suite 101, Arlington, Texas 76002-2763 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: February 18, 2009</p> <p>Date of NOV/NOE Relating to this Case: March 9, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>1) Failure to ensure that at least one Station representative received training in the operation and maintenance of the Stage II vapor recovery system, and each current employee receives in-house Stage II vapor recovery training regarding the purpose and operation of the vapor recovery system [30 TEX. ADMIN. CODE § 115.248(1) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2) Failure to verify proper operation of the Stage II equipment at least once every 12 months. Specifically, the Stage II annual system compliance testing due date passed and the system had not been tested since the ownership change date of June 19, 2008 [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>3) Failure to ensure that all underground storage tanks ("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 ("ATG") 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>Total Assessed: \$10,621</p> <p>Total Deferred: \$2,124 <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: \$237 (remaining \$8,260 due in 35 monthly payments of \$236 each)</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Station:</p> <p>a. The TCEQ DFW Regional Office received documentation verifying that the Station representative and employee Stage II training was completed on February 28, 2009;</p> <p>b. The TCEQ DFW Regional Office received documentation verifying that the Stage II annual system compliance testing was successfully conducted on February 23, 2009;</p> <p>c. On February 24, 2009, the TCEQ DFW Regional Office received documentation verifying that all USTs are being monitored, reconciliation of inventory control records is being conducted, and inventory volume measurements are being recorded daily;</p> <p>d. The TCEQ DFW Regional Office received documentation verifying that the Respondent successfully conducted the required piping tightness and line leak detector tests on February 18, 2009;</p> <p>e. On February 24, 2009, the TCEQ DFW Regional Office received documentation verifying that the Respondent began conducting proper inventory control procedures for all USTs at the Station; and</p> <p>f. The TCEQ DFW Regional Office received documentation verifying that all shear valves were properly anchored on March 3, 2009.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, ensure that corrosion protection is in place for all underground components of the UST system; and</p>

<p>4) 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>5) Failure to test the line leak detectors at least once per year for performance and operational reliability [30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a)].</p> <p>6) Failure to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons [30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>7) Failure to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day [30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1)].</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 install an emergency shutoff valve (also known as shear or impact valve) on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser. Specifically, the shear valves under dispenser nos. 1, 2, 3 and 4 were not properly anchored [30 TEX. ADMIN. CODE § 334.45(c)(3)(A)].</p> <p>10) Failure to provide corrosion protection to all underground components of a UST system which is designed or used to convey, contain, or store regulated substances. Specifically, the metal components on the UST system, sump pumps and dispenser sumps were not electrically isolated [30 TEX. ADMIN. CODE § 334.49(b)(2) and TEX. WATER CODE § 26.3475(d)].</p>		<p>b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.</p>
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Additional ID No(s): PST No. 44820



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	16-Mar-2009	Screening	17-Mar-2009	EPA Due	
	PCW	18-Mar-2009				

RESPONDENT/FACILITY INFORMATION			
Respondent	Dallas Texas Properties, Inc. dba Howdy Doody #11		
Reg. Ent. Ref. No.	RN101533529		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	37319	No. of Violations	6
Docket No.	2009-0393-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**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability Enhancement **Subtotal 4**

Notes

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit Enhancement* **Subtotal 6**

Total EB Amounts
Approx. Cost of Compliance *Capped at the Total EB \$ Amount

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

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 17-Mar-2009

Docket No. 2009-0393-PST-E

PCW

Respondent Dallas Texas Properties, Inc. dba Howdy Doody #11

Policy Revision 2 (September 2002)

Case ID No. 37319

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101533529

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 (number of NOVs meeting criteria)	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 2%

>> **Repeat Violator (Subtotal 3)**

No

Adjustment Percentage (Subtotal 3) 0%

>> **Compliance History Person Classification (Subtotal 7)**

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for one prior dissimilar NOV.

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

Screening Date 17-Mar-2009	Docket No. 2009-0393-PST-E	PCW			
Respondent Dallas Texas Properties, Inc. dba Howdy Doody #11		<small>Policy Revision 2 (September 2002)</small>			
Case ID No. 37319		<small>PCW Revision October 30, 2008</small>			
Reg. Ent. Reference No. RN101533529					
Media [Statute] Petroleum Storage Tank					
Enf. Coordinator Judy Kluge					
Violation Number	1				
Rule Cite(s)	30 Tex. Admin. Code § 115.248(1) and Tex. Health & Safety Code § 382.085(b)				
Violation Description	Failed to ensure that at least one Station representative received training in the operation and maintenance of the Stage II vapor recovery system, and each current employee receives in-house Stage II vapor recovery training regarding the purpose and operation of the vapor recovery system.				
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"/>	x	<input type="text"/>	
				Percent <input type="text" value="10%"/>	
>> 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	Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.				
Adjustment				\$9,000	
				\$1,000	
Violation Events					
Number of Violation Events		<input type="text" value="1"/>	Number of violation days		
		<input type="text" value="10"/>			
<small>mark only one with an x</small>	daily	<input type="text"/>			
	weekly	<input type="text"/>			
	monthly	<input type="text"/>			
	quarterly	x			
	semiannual	<input type="text"/>			
	annual	<input type="text"/>			
	single event	<input type="text"/>			
Violation Base Penalty				\$1,000	
One quarterly event is recommended based on documentation of the violation during the February 18, 2009 investigation to the February 28, 2009 compliance date.					
Good Faith Efforts to Comply		25.0% Reduction	\$250		
		Before NOV	NOV to EDPRP/Settlement Offer		
Extraordinary	<input type="text"/>				
Ordinary	x				
N/A	<input type="text"/>		<small>(mark with x)</small>		
Notes	The Respondent came into compliance on February 28, 2009.				
Violation Subtotal				\$750	
Economic Benefit (EB) for this violation			Statutory Limit Test		
Estimated EB Amount		<input type="text" value="\$1"/>	Violation Final Penalty Total		
			\$829		
This violation Final Assessed Penalty (adjusted for limits)				\$829	

Economic Benefit Worksheet

Respondent Dallas Texas Properties, Inc. dba Howdy Doody #11
Case ID No. 37319
Reg. Ent. Reference No. RN101533529
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
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
Representative Training	\$500	18-Feb-2009	28-Feb-2009	0.03	\$1	n/a	\$1
Employee Training				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost of training a Stage II Station representative and in-house employee Stage II training. The date required is the investigation date and the final date is the compliance date.

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 17-Mar-2009	Docket No. 2009-0393-PST-E	PCW		
Respondent Dallas Texas Properties, Inc. dba Howdy Doody #11		<i>Policy Revision 2 (September 2002)</i>		
Case ID No. 37319		<i>PCW Revision October 30, 2008</i>		
Reg. Ent. Reference No. RN101533529				
Media [Statute] Petroleum Storage Tank				
Enf. Coordinator Judy Kluge				
Violation Number	2			
Rule Cite(s)	30 Tex. Admin. Code § 115.245(2) and Tex. Health & Safety Code § 382.085(b)			
Violation Description	Failed to verify proper operation of the Stage II equipment at least once every 12 months. Specifically, the Stage II annual system compliance testing due date passed and the system had not been tested since the ownership change date of June 19, 2008.			
Base Penalty		\$10,000		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		Percent	25%	
>>Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		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	
		250		
<i>mark only one with an x</i>	daily	<input type="checkbox"/>		
	weekly	<input type="checkbox"/>		
	monthly	<input type="checkbox"/>		
	quarterly	<input type="checkbox"/>		
	semiannual	<input type="checkbox"/>		
	annual	<input checked="" type="checkbox"/>		
	single event	<input type="checkbox"/>		
				Violation Base Penalty
				\$2,500
One annual event is recommended for the period preceding the February 18, 2009 investigation.				
Good Faith Efforts to Comply		25.0%	Reduction	\$625
		Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>		
Ordinary	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
N/A	<input type="checkbox"/>	(mark with x)		
Notes	The Respondent came into compliance on February 23, 2009.			
				Violation Subtotal
				\$1,875
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount		\$351	Violation Final Penalty Total	
				\$2,073
		This violation Final Assessed Penalty (adjusted for limits)		\$2,073

Economic Benefit Worksheet

Respondent Dallas Texas Properties, Inc. dba Howdy Doody #11
Case ID No. 37319
Reg. Ent. Reference No. RN101533529
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

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]	\$325	19-Jun-2008	23-Feb-2009	1.60	\$26	\$325	\$351
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost for annual testing to verify proper operation of the Stage II equipment. The date required is the date of ownership change and the final date is the compliance date.

Approx. Cost of Compliance

\$325

TOTAL

\$351

Screening Date 17-Mar-2009	Docket No. 2009-0393-PST-E	PCW		
Respondent Dallas Texas Properties, Inc. dba Howdy Doody #11		<i>Policy Revision 2 (September 2002)</i>		
Case ID No. 37319		<i>PCW Revision October 30, 2008</i>		
Reg. Ent. Reference No. RN101533529				
Media [Statute] Petroleum Storage Tank				
Enf. Coordinator Judy Kluge				
Violation Number	3			
Rule Cite(s)	30 Tex. Admin. Code § 334.50(b)(1)(A), (b)(2), (b)(2)(A)(i)(III), (d)(1)(B)(ii), and (d)(1)(B)(iii)(I) 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 ATG 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. Failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons. Failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day.			
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	x	<input type="text"/>	<input type="text"/>
Percent		25%		
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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		
		6		
		Number of violation days		
<i>mark only one with an x</i>	daily	<input type="text"/>		
	weekly	<input type="text"/>		
	monthly	x		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input type="text"/>		
Violation Base Penalty		\$2,500		
One monthly event is recommended based on documentation of the violation during the February 18, 2009 investigation to the February 24, 2009 compliance date.				
Good Faith Efforts to Comply		25.0% Reduction		
		Before NOV NOV to EDPRP/Settlement Offer		
Extraordinary	<input type="text"/>		Violation Base Penalty	
Ordinary	x			
N/A	<input type="text"/> (mark with x)			
Notes	The Respondent came into compliance on February 24, 2009.			
Violation Subtotal		\$1,875		
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount	\$406		Violation Final Penalty Total	
		\$2,073		
This violation Final Assessed Penalty (adjusted for limits)		\$2,073		

Economic Benefit Worksheet

Respondent Dallas Texas Properties, Inc. dba Howdy Doody #11
Case ID No. 37319
Reg. Ent. Reference No. RN101533529
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
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)	\$1,500	18-Feb-2009	24-Feb-2009	0.02	\$1	n/a	\$1

Notes for DELAYED costs

The estimated cost to monitor USTs for releases including recording daily inventory volume measurement, and monthly reconciliation of inventory control records. 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]	\$375	19-Jun-2008	18-Feb-2009	1.59	\$30	\$375	\$405
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost for piping tightness and line leak detector tests. The date required is the date of ownership change and the final date is the compliance date.

Approx. Cost of Compliance

\$1,875

TOTAL

\$406

Screening Date 17-Mar-2009	Docket No. 2009-0393-PST-E	PCW		
Respondent Dallas Texas Properties, Inc. dba Howdy Doody #11		<i>Policy Revision 2 (September 2002)</i>		
Case ID No. 37319		<i>PCW Revision October 30, 2008</i>		
Reg. Ent. Reference No. RN101533529				
Media [Statute] Petroleum Storage Tank				
Enf. Coordinator Judy Kluge				
Violation Number	<input type="text" value="4"/>			
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 334.48(c)"/>			
Violation Description	<input type="text" value="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."/>			
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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		Percent	<input type="text" value="25%"/>	
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
		Percent	<input type="text" value="0%"/>	
Matrix Notes	<input type="text" value="Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation."/>			
Adjustment		<input type="text" value="\$7,500"/>		
		<input type="text" value="\$2,500"/>		
Violation Events				
Number of Violation Events		<input type="text" value="1"/>	Number of violation days	
		<input type="text" value="6"/>		
<i>mark only one with an x</i>	daily	<input type="text"/>	Violation Base Penalty	
	weekly	<input type="text"/>		
	monthly	<input checked="" type="checkbox"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input type="text"/>		
<input type="text" value="One monthly event is recommended based on documentation of the violation during the February 18, 2009 investigation to the February 24, 2009 compliance date."/>				
Good Faith Efforts to Comply		<input type="text" value="25.0%"/> Reduction	<input type="text" value="\$625"/>	
		Before NOV NOV to EDPRP/Settlement Offer		
Extraordinary	<input type="text"/>	<input type="text"/>		
Ordinary	<input checked="" type="checkbox"/>	<input type="text"/>		
N/A	<input type="text"/>	(mark with x)		
Notes	<input type="text" value="The Respondent came into compliance on February 24, 2009."/>			
Violation Subtotal		<input type="text" value="\$1,875"/>		
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="\$2,073"/>	
		This violation Final Assessed Penalty (adjusted for limits)		
		<input type="text" value="\$2,073"/>		

Economic Benefit Worksheet

Respondent Dallas Texas Properties, Inc. dba Howdy Doody #11
Case ID No. 37319
Reg. Ent. Reference No. RN101533529
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
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	18-Feb-2009	24-Feb-2009	0.02	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated 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

\$0

Screening Date 17-Mar-2009	Docket No. 2009-0393-PST-E	PCW	
Respondent Dallas Texas Properties, Inc. dba Howdy Doody #11		<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 37319		<i>PCW Revision October 30, 2008</i>	
Reg. Ent. Reference No. RN101533529			
Media [Statute] Petroleum Storage Tank			
Enf. Coordinator Judy Kluge			
Violation Number	5		
Rule Cite(s)	30 Tex. Admin. Code § 334.45(c)(3)(A)		
Violation Description	Failed to install an emergency shutoff valve (also known as shear or impact valve) on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser. Specifically, the shear valves under dispensers 1 and 2, and 3 and 4 were not properly anchored.		
Base Penalty		\$10,000	
>> Environmental, Property and Human Health Matrix			
OR	Harm		
	Major	Moderate	Minor
	Actual	Potential	Percent
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			10%
>> Programmatic Matrix			
	Falsification	Major	Moderate
	Minor		
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>		
			Percent
			0%
Matrix Notes	Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.		
Adjustment		\$9,000	
		\$1,000	
Violation Events			
Number of Violation Events		Number of violation days	
1		13	
<i>mark only one with an x</i>	daily	<input type="checkbox"/>	
	weekly	<input type="checkbox"/>	
	monthly	<input type="checkbox"/>	
	quarterly	<input checked="" type="checkbox"/>	
	semiannual	<input type="checkbox"/>	
	annual	<input type="checkbox"/>	
	single event	<input type="checkbox"/>	
Violation Base Penalty		\$1,000	
One quarterly event is recommended based on documentation of the violation during the February 18, 2009 investigation to the March 3, 2009 compliance date.			
Good Faith Efforts to Comply		25.0% Reduction	
		Before NOV NOV to EDPRP/Settlement Offer	
Extraordinary	<input type="checkbox"/>		
Ordinary	<input checked="" type="checkbox"/>		
N/A	<input type="checkbox"/>	(mark with x)	
Notes	The Respondent came into compliance on March 3, 2009.		
Violation Subtotal		\$750	
Economic Benefit (EB) for this violation		Statutory Limit Test	
Estimated EB Amount		Violation Final Penalty Total	
\$1		\$829	
		This violation Final Assessed Penalty (adjusted for limits)	
		\$829	

Economic Benefit Worksheet

Respondent Dallas Texas Properties, Inc. dba Howdy Doody #11
Case ID No. 37319
Reg. Ent. Reference No. RN101533529
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
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No commas or \$

Delayed Costs

Equipment	\$500	18-Feb-2009	3-Mar-2009	0.04	\$0	\$1	\$1
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to anchor the shear valves. The date required is the investigation date and the final date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance \$500

TOTAL \$1

Screening Date 17-Mar-2009	Docket No. 2009-0393-PST-E	PCW		
Respondent Dallas Texas Properties, Inc. dba Howdy Doody #11		<i>Policy Revision 2 (September 2002)</i>		
Case ID No. 37319		<i>PCW Revision October 30, 2008</i>		
Reg. Ent. Reference No. RN101533529				
Media [Statute] Petroleum Storage Tank				
Enf. Coordinator Judy Kluge				
Violation Number	6			
Rule Cite(s)	30 Tex. Admin. Code § 334.49(b)(2) and Tex. Water Code § 26.3475(d)			
Violation Description	Failed to provide corrosion protection to all underground components of an UST system which is designed or used to convey, contain, or store regulated substances. Specifically, the metal components on the UST system, sump pumps, and dispenser sumps were not electrically isolated.			
Base Penalty		\$10,000		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual			
	Potential	x		
		Percent	25%	
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
		Percent	0%	
Matrix Notes	Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.			
Adjustment		\$7,500		
		\$2,500		
Violation Events				
Number of Violation Events		1	Number of violation days	
		27		
<i>mark only one with an x</i>	daily		Violation Base Penalty	
	weekly			
	monthly	x		
	quarterly			
	semiannual			
	annual			
	single event			
		\$2,500		
One monthly event is recommended based on documentation of the violation during the February 18, 2009 investigation to the March 17, 2009 screening date.				
Good Faith Efforts to Comply		\$0		
		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		Violation Final Penalty Total		
\$56		\$2,745		
This violation Final Assessed Penalty (adjusted for limits)		\$2,745		

Economic Benefit Worksheet

Respondent Dallas Texas Properties, Inc. dba Howdy Doody #11
Case ID No. 37319
Reg. Ent. Reference No. RN101533529
Media Petroleum Storage Tank
Violation No. 6

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	18-Feb-2009	17-Nov-2009	0.75	\$56	n/a	\$56

Notes for DELAYED costs

Estimated cost to provide cathodic protection to all underground metal components of the UST system. The date required is the date of the investigation 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

\$1,500

TOTAL

\$56

Compliance History Report

Customer/Respondent/Owner-Operator: CN603449869 Dallas Texas Properties, Inc. Classification: AVERAGE Rating: 30.00
Regulated Entity: RN101533529 Howdy Doody #11 Classification: AVERAGE Site Rating: 30.00
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 44820
Location: 6201 MATLOCK RD, ARLINGTON, TX, 76002
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: March 17, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: March 17, 2004 to March 17, 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? Yes
3. If Yes, who is the current owner? Dallas Texas Properties, Inc.
4. If Yes, who was/were the prior owner(s)? AI - Dattoo, Inc.
5. When did the change(s) in ownership occur? 06/19/2008
6. Rating Date: 9/1/2008 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the state of Texas and the federal government.
See addendum for information regarding federal actions.
- 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 11/04/2004 (290979)
 - 2 03/09/2009 (735926)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 02/18/2009 (735926)
Self Report? NO Classification: Moderate
Citation: 30 TAC § 115.244(3)
Description: Failure to conduct the monthly inspections of the Stage II vapor recovery system.
Self Report? NO Classification: Minor
Citation: 30 TAC § 115.246(1)
Description: Failure to have a current copy of the CARB Executive Order on-site.
- 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
DALLAS TEXAS PROPERTIES, INC.
DBA HOWDY DOODY #11
RN101533529**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2009-0393-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 Dallas Texas Properties, Inc. dba Howdy Doody #11 ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a convenience store with retail sales of gasoline at 6201 Matlock Road in Arlington, Tarrant County, Texas (the "Station").
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. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about March 14, 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 Ten Thousand Six Hundred Twenty-One Dollars (\$10,621) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Hundred Thirty-Seven Dollars (\$237) of the administrative penalty and Two Thousand One Hundred Twenty-Four Dollars (\$2,124) 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 Eight Thousand Two Hundred Sixty Dollars (\$8,260) of the administrative penalty shall be payable in 35 monthly payments of Two Hundred Thirty-Six Dollars (\$236) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Station:
 - a. The TCEQ Dallas/Fort Worth Regional Office received documentation verifying that the Station representative and employee Stage II training was completed on February 28, 2009;
 - b. The TCEQ Dallas/Fort Worth Regional Office received documentation verifying that the Stage II annual system compliance testing was successfully conducted on February 23, 2009;
 - c. On February 24, 2009, the TCEQ Dallas/Fort Worth Regional Office received documentation verifying that all USTs are being monitored, reconciliation of inventory control records is being conducted, and inventory volume measurements are being recorded daily;
 - d. The TCEQ Dallas/Fort Worth Regional Office received documentation verifying that the Respondent successfully conducted the required piping tightness and line leak detector tests on February 18, 2009;

- e. On February 24, 2009, the TCEQ Dallas/Fort Worth Regional Office received documentation verifying that the Respondent began conducting proper inventory control procedures for all USTs at the Station; and
 - f. The TCEQ Dallas/Fort Worth Regional Office received documentation verifying that all shear valves were properly anchored on March 3, 2009.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
 11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
 12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

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

1. Failed to ensure that at least one Station representative received training in the operation and maintenance of the Stage II vapor recovery system, and each current employee receives in-house Stage II vapor recovery training regarding the purpose and operation of the vapor recovery system, in violation of 30 TEX. ADMIN. CODE § 115.248(1) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on February 18, 2009.
2. Failed to verify proper operation of the Stage II equipment at least once every 12 months, in violation of 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on February 18, 2009. Specifically, the Stage II annual system compliance testing due date passed and the system had not been tested since the ownership change date of June 19, 2008.
3. 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 February 18, 2009. Specifically, the automatic tank gauge ("ATG") was not being put into test mode monthly.
4. 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 February 18, 2009.
5. 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 February 18, 2009.

6. Failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on February 18, 2009.
7. Failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on February 18, 2009.
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 February 18, 2009.
9. Failed to install an emergency shutoff valve (also known as shear or impact valve) on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser, in violation of 30 TEX. ADMIN. CODE § 334.45(c)(3)(A), as documented during an investigation conducted on February 18, 2009. Specifically, the shear valves under dispenser nos. 1, 2, 3 and 4 were not properly anchored.
10. Failed to provide corrosion protection to all underground components of a UST system which is designed or used to convey, contain, or store regulated substances, in violation of 30 TEX. ADMIN. CODE § 334.49(b)(2) and TEX. WATER CODE § 26.3475(d), as documented during an investigation conducted on February 18, 2009. Specifically, the metal components on the UST system, sump pumps and dispenser sumps were not electrically isolated.

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: Dallas Texas Properties, Inc. dba Howdy Doody #11, Docket No. 2009-0393-PST-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
- a. Within 30 days after the effective date of this Agreed Order, ensure that corrosion protection is in place for all underground components of the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.49; and
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

The certification shall be submitted to:

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

with a copy to:

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

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Station operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This 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 S. Zoller
For the Executive Director

6/18/2009
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.

Nick Datz
Signature

5/6/09
Date

NICK DATZ / President
Name (Printed or typed)
Authorized Representative of
Dallas Texas Properties, Inc. dba Howdy Doody #11

President
Title

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.

