

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-0637-PST-E TCEQ ID RN102260007 CASE NO. 37551
RESPONDENT NAME: WE ARE CRAZY, INC. DBA COUNTRY PANTRY 16

| | | |
|--|---|--|
| ORDER TYPE: | | |
| <input type="checkbox"/> 1660 AGREED ORDER | <input type="checkbox"/> FINDINGS AGREED ORDER | <input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING |
| <input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER | <input type="checkbox"/> SHUTDOWN ORDER | <input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER |
| <input type="checkbox"/> AMENDED ORDER | <input type="checkbox"/> EMERGENCY ORDER | |
| CASE TYPE: | | |
| <input type="checkbox"/> AIR | <input type="checkbox"/> MULTI-MEDIA (check all that apply) | <input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE |
| <input type="checkbox"/> PUBLIC WATER SUPPLY | <input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS | <input type="checkbox"/> OCCUPATIONAL CERTIFICATION |
| <input type="checkbox"/> WATER QUALITY | <input type="checkbox"/> SEWAGE SLUDGE | <input type="checkbox"/> UNDERGROUND INJECTION CONTROL |
| <input type="checkbox"/> MUNICIPAL SOLID WASTE | <input type="checkbox"/> RADIOACTIVE WASTE | <input type="checkbox"/> DRY CLEANER REGISTRATION |

SITE WHERE VIOLATION(S) OCCURRED: 3148 Texas Avenue, Bridge City, Orange County

TYPE OF OPERATION: Property with three inactive underground storage tanks

SMALL BUSINESS: Yes No N/A

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired December 21, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Barham A. Richard, Litigation Division, MC 175, (512) 239-0107
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Mr. Wallace Myers, Waste Enforcement Section, MC 128, (512) 239-6580

TCEQ Regional Contact: Mr. Derek Eades, Beaumont Regional Office, MC R-10, (409) 898-3838

Respondent: Mr. Wayne Morse, President, WE ARE CRAZY, INC., 1075 Orange Street, Vidor, Texas 77662

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

VIOLATION SUMMARY CHART:

| VIOLATION INFORMATION | PENALTY CONSIDERATIONS | CORRECTIVE ACTIONS TAKEN/REQUIRED |
|--|---|---|
| <p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: February 25, 2009</p> <p>Date of NOE Relating to this Case: April 19, 2009</p> <p>Background Facts: The EDPRP was filed on September 18, 2009, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on September 21, 2009. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: The Respondent has not yet submitted documentation to certify compliance with the technical requirements. The Respondent's USTs are registered as temporarily out-of-service. The Respondent does not have a delivery certificate.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to maintain all piping, pump, man-ways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; failed to monitor for releases a temporarily out-of-service UST system for which regulated substances have not been removed; failed to provide proper corrosion protection for a temporarily out-of-service UST system; and failed to ensure that any residue from stored regulated substances which remained in the temporarily out-of-service UST system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity [TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.54(b)(2), (c)(1), (c)(2), and (d)(2)]. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)]. | <p>Total Assessed: \$8,873</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$8,873</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> | <p>Corrective Actions Taken:</p> <p>The ED recognizes that on November 11, 2003, Respondent submitted a Notice of Store Closure and UST Registration and Self-Certification Form notifying the TCEQ that the USTs were placed temporarily out-of-service on October 31, 2003, and the dispensers have been removed.</p> <p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Within 30 days, permanently remove the UST system from service. Within 45 days, submit written certification demonstrating compliance with Ordering Provision No. 1. |

VIOLATION SUMMARY CHART:

| VIOLATION INFORMATION | PENALTY CONSIDERATIONS | CORRECTIVE ACTIONS TAKEN/REQUIRED |
|---|-------------------------------|--|
| <p>3. Failed to ensure the spill and overfill prevention equipment is equipped with a liquid-tight lid or cover designed to minimize the entrance of any surface water, groundwater, or other foreign substances into the USTs [TEX. WATER CODE § 26.3475(c)(2) and 30 TEX. ADMIN. CODE § 334.51(b)(2)(B)(ii)].</p> | | |



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

| | | | | |
|--------------|----------|-------------|-----------|-------------|
| TCEQ | | | | |
| DATES | Assigned | 27-Apr-2009 | | |
| | PCW | 13-Aug-2009 | Screening | 28-Apr-2009 |
| | | | EPA Due | |

| | | | |
|--|--|--------------------|-------|
| RESPONDENT/FACILITY INFORMATION | | | |
| Respondent | WE ARE CRAZY, INC. dba Country Pantry 16 | | |
| Reg. Ent. Ref. No. | RN102260007 | | |
| Facility/Site Region | 10-Beaumont | Major/Minor Source | Minor |

| | | | |
|---------------------------------|------------------------|-----------------------|--------------------|
| CASE INFORMATION | | | |
| Enf./Case ID No. | 37551 | No. of Violations | 3 |
| Docket No. | 2009-0637-PST-E | Order Type | 1660 |
| Media Program(s) | Petroleum Storage Tank | Government/Non-Profit | No |
| Multi-Media | | Enf. Coordinator | Wallace Myers |
| | | 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 | \$6,500 |
|---|-------------------|----------------|

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

| | | | |
|---------------------------|------------------|--------------------------------|--------------|
| Compliance History | 5.0% Enhancement | Subtotals 2, 3, & 7 | \$325 |
|---------------------------|------------------|--------------------------------|--------------|

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

| | | | | |
|--------------------|----|------------------|-------------------|------------|
| Culpability | No | 0.0% Enhancement | Subtotal 4 | \$0 |
|--------------------|----|------------------|-------------------|------------|

Notes: The Respondent does not meet the culpability criteria.

| | | |
|--|-------------------|------------|
| Good Faith Effort to Comply Total Adjustments | Subtotal 5 | \$0 |
|--|-------------------|------------|

| | | | |
|-------------------------|-------------------|-------------------|------------|
| Economic Benefit | 0.0% Enhancement* | Subtotal 6 | \$0 |
|-------------------------|-------------------|-------------------|------------|

Total EB Amounts: \$2,172
 Approx. Cost of Compliance: \$4,450
 *Capped at the Total EB \$ Amount

| | | |
|-----------------------------|-----------------------|----------------|
| SUM OF SUBTOTALS 1-7 | Final Subtotal | \$6,825 |
|-----------------------------|-----------------------|----------------|

| | | | |
|---|-------|-------------------|----------------|
| OTHER FACTORS AS JUSTICE MAY REQUIRE | 30.0% | Adjustment | \$2,048 |
|---|-------|-------------------|----------------|

Reduces or enhances the Final Subtotal by the indicated percentage.

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

| | |
|-----------------------------|----------------|
| Final Penalty Amount | \$8,873 |
|-----------------------------|----------------|

| | | |
|-----------------------------------|-------------------------------|----------------|
| STATUTORY LIMIT ADJUSTMENT | Final Assessed Penalty | \$8,873 |
|-----------------------------------|-------------------------------|----------------|

| | | | |
|-----------------|----------------|-------------------|------------|
| DEFERRAL | 0.0% Reduction | Adjustment | \$0 |
|-----------------|----------------|-------------------|------------|

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

Notes: Deferral not offered for non-expedited settlement.

| | |
|------------------------|----------------|
| PAYABLE PENALTY | \$8,873 |
|------------------------|----------------|

Screening Date 28-Apr-2009

Docket No. 2009-0637-PST-E

PCW

Respondent WE ARE CRAZY, INC. dba Country Pantry 16

Policy Revision 2 (September 2002)

Case ID No. 37551

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102260007

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

| Component | Number of... | Enter Number Here | Adjust. |
|-------------------------------|--|-------------------|---------|
| NOVs | Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria) | 1 | 5% |
| | Other written NOVs | 0 | 0% |
| Orders | Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria) | 0 | 0% |
| | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 0 | 0% |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria) | 0 | 0% |
| | Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government | 0 | 0% |
| Convictions | Any criminal convictions of this state or the federal government (number of counts) | 0 | 0% |
| Emissions | Chronic excessive emissions events (number of events) | 0 | 0% |
| Audits | Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted) | 0 | 0% |
| | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed) | 0 | 0% |
| Please Enter Yes or No | | | |
| Other | Environmental management systems in place for one year or more | No | 0% |
| | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program | No | 0% |
| | Participation in a voluntary pollution reduction program | No | 0% |
| | Early compliance with, or offer of a product that meets future state or federal government environmental requirements | No | 0% |

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same or similar violations.

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

Screening Date 28-Apr-2009

Docket No. 2009-0637-PST-E

PCW

Respondent WE ARE CRAZY, INC. dba Country Pantry 16

Policy Revision 2 (September 2002)

Case ID No. 37551

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102260007

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 334.54(b)(2), (c)(1), (c)(2), and (d)(2) and Tex. Water Code § 26.3475(c)(1)

Violation Description

Failed to maintain all piping, pump, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons. Specifically, the UST fill ports and Stage I drybreaks were not locked or secured. Failed to monitor for releases a temporarily out of use UST system for which regulated substances have not been removed. Failed to provide proper corrosion protection for a temporarily out of service UST system. Also failed to ensure that any residue from stored regulated substances which remained in the temporarily out-of-service UST system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity. Specifically, the plus unleaded, regular unleaded, and super unleaded USTs contained approximately 39 inches, 20 inches, and 2 inches of water/product mixture, respectively.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

| Release | Harm | | |
|-----------|-------|----------|-------|
| | Major | Moderate | Minor |
| Actual | | | |
| Potential | X | | |

Percent 25%

>> Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---------------|-------|----------|-------|
| | | | |

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 Number of violation days 62

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

mark only one with an x

Violation Base Penalty \$2,500

One quarterly event is recommended based on documentation of the violation during the February 25, 2009 investigation to the April 28, 2009 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDRP/Settlement Offer

| | | |
|---------------|---|---------------|
| Extraordinary | | |
| Ordinary | | |
| N/A | X | (mark with x) |

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$108

Violation Final Penalty Total \$3,413

This violation Final Assessed Penalty (adjusted for limits) \$3,413

Economic Benefit Worksheet

Respondent WE ARE CRAZY, INC. dba Country Pantry 16

Case ID No. 37551

Reg. Ent. Reference No. RN102260007

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) | \$250 | 25-Feb-2009 | 28-Jan-2010 | 0.92 | \$1 | \$15 | \$16 |
| 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) | \$2,000 | 25-Feb-2009 | 28-Jan-2010 | 0.92 | \$92 | n/a | \$92 |

Notes for DELAYED costs

Estimated cost to lock and secure the fill ports and Stage I drybreaks (\$250) and to remove the water/product from the USTs (\$2,000). The dates required are the date of the investigation and the final dates are the estimated dates 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

\$2,250

TOTAL

\$108

| | | | | | |
|---|--|---|---|---|----------------------|
| Screening Date 28-Apr-2009 | Docket No. 2009-0637-PST-E | PCW | | | |
| Respondent WE ARE CRAZY, INC. dba Country Pantry 16 | <small>Policy Revision 2 (September 2002)</small> | | | | |
| Case ID No. 37551 | <small>PCW Revision October 30, 2008</small> | | | | |
| Reg. Ent. Reference No. RN102260007 | | | | | |
| Media [Statute] Petroleum Storage Tank | | | | | |
| Enf. Coordinator Wallace Myers | | | | | |
| Violation Number 2 | | | | | |
| Rule Cite(s) | 30 Tex. Admin. Code § 37.815(a) and (b) | | | | |
| Violation Description | Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs. | | | | |
| Base Penalty | | \$10,000 | | | |
| >> Environmental, Property and Human Health Matrix | | | | | |
| OR | Harm | | | | |
| | Release | Major | Moderate | Minor | |
| | Actual | <input type="text"/> | <input type="text"/> | <input type="text"/> | |
| | Potential | <input type="text"/> | <input type="text"/> | <input type="text"/> | |
| | | | | Percent <input type="text" value="0%"/> | |
| >> Programmatic Matrix | | | | | |
| | | Falsification | Major | Moderate | Minor |
| | | <input type="text"/> | <input checked="" type="text" value="x"/> | <input type="text"/> | <input type="text"/> |
| | | | | Percent <input type="text" value="10%"/> | |
| Matrix Notes | 100% of the rule requirement was not met. | | | | |
| Adjustment | | | | \$9,000 | |
| | | | | <input type="text" value="\$1,000"/> | |
| Violation Events | | | | | |
| Number of Violation Events <input type="text" value="3"/> | | <input type="text" value="365"/> Number of violation days | | | |
| <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="\$3,000"/> | | | | | |
| Three single events are recommended for the three USTs at the facility. | | | | | |
| Good Faith Efforts to Comply | | <input type="text" value="0.0%"/> Reduction | <input type="text" value="\$0"/> | | |
| | | 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"/> | <input type="text"/> | <small>(mark with x)</small> | | |
| Notes | The Respondent does not meet the good faith criteria for this violation. | | | | |
| Violation Subtotal | | | \$3,000 | | |
| Economic Benefit (EB) for this violation | | Statutory Limit Test | | | |
| Estimated EB Amount <input type="text" value="\$2,048"/> | | Violation Final Penalty Total <input type="text" value="\$4,095"/> | | | |
| This violation Final Assessed Penalty (adjusted for limits) | | <input type="text" value="\$4,095"/> | | | |

Economic Benefit Worksheet

Respondent WE ARE CRAZY, INC. dba Country Pantry 16

Case ID No. 37551

Reg. Ent. Reference No. RN102260007

Media Petroleum Storage Tank

Violation No. 2

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

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|

Delayed Costs

| | | | | | | | |
|--------------------------|--|--|--|------|-----|-----|-----|
| Equipment | | | | 0.00 | \$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] | \$1,950 | 25-Feb-2008 | 25-Feb-2009 | 1.00 | \$98 | \$1,950 | \$2,048 |
| ONE-TIME avoided costs [3] | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Estimated cost to provide financial assurance for three petroleum USTs (\$650 per tank). The date required is one year prior to the investigation date and the final date is the investigation date.

Approx. Cost of Compliance

\$1,950

TOTAL

\$2,048

Screening Date 28-Apr-2009 Docket No. 2009-0637-PST-E PCW

Respondent WE ARE CRAZY, INC. dba Country Pantry 16 Policy Revision 2 (September 2002)
 Case ID No. 37551 PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102260007

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.51(b)(2)(B)(ii) and Tex. Water Code § 26.3475(c)(2)

Violation Description Failed to ensure the spill and overflow prevention equipment is equipped with a liquid-tight lid or cover designed to minimize the entrance of any surface water, groundwater, or other foreign substances into the USTs. Specifically, the spill bucket lid was missing from the southern-most UST.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

| Release | Harm | | | Percent |
|-----------|-------|----------|-------|---------|
| | Major | Moderate | Minor | |
| Actual | | | | 10% |
| Potential | | X | | |

>> Programmatic Matrix

| Falsification | Major | Moderate | Minor | 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 1 Number of violation days 62

mark only one with an x

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

Violation Base Penalty \$1,000

One quarterly event is recommended based on documentation of the violation during the February 25, 2009 investigation to the April 28, 2009 screening date.

Good Faith Efforts to Comply 0.0% Reduction \$0

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

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount \$16 Violation Final Penalty Total \$1,365

This violation Final Assessed Penalty (adjusted for limits) \$1,365

Economic Benefit Worksheet

Respondent: WE ARE CRAZY, INC. dba Country Pantry 16

Case ID No. 37551

Reg. Ent. Reference No. RN102260007

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

| Item | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|--------------------------|-----------|---------------|-------------|------|----------------|---------------|-----------|
| Equipment | \$250 | 25-Feb-2009 | 28-Jan-2010 | 0.92 | \$1 | \$15 | \$16 |
| 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 replace the spill bucket lid. The date required is the date of the investigation and the final date is the estimated date of compliance.

Avoided Costs

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

| Item | 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] | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Approx. Cost of Compliance

\$250

TOTAL

\$16

Compliance History Report

Customer/Respondent/Owner-Operator: CN600924005 WE ARE CRAZY, INC. Classification: AVERAGE Rating: 2.30
Regulated Entity: RN102260007 Country Pantry 16 Classification: AVERAGE Site Rating: 1.00
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 68602
REGISTRATION
Location: 3148 TEXAS AVE, BRIDGE CITY, TX, 77611
TCEQ Region: REGION 10 - BEAUMONT
Date Compliance History Prepared: April 28, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: April 28, 2004 to April 28, 2009

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

Name: Wallace Myers Phone: 512-239-6580

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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2008 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 - 1 06/23/2004 (288652)
 - 2 02/10/2005 (348524)
 - 3 04/24/2009 (742444)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 06/23/2004 (288652) CN600924005
Self NO Classification: Moderate
Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)
30 TAC Chapter 37, SubChapter I 37.815(b)
Description: FAILURE TO PROVIDE ACCEPTABLE FINANCIAL ASSURANCE.
 - 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
WE ARE CRAZY, INC.
DBA
COUNTRY PANTRY 16;
RN102260007

§
§
§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2009-0637-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality, (“Commission” or “TCEQ”) considered the Executive Director’s Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is WE ARE CRAZY, INC. dba Country Pantry 16 (“Crazy”).

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

FINDINGS OF FACT

1. Crazy owns property with three inactive underground storage tanks (“USTs”) located at 3148 Texas Avenue, Bridge City, Orange County, Texas (the “Facility”).
2. Crazy’s three USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Crazy’s USTs contain a regulated substance as defined in the rules of the Commission.
3. During an investigation conducted on February 25, 2009, a TCEQ Beaumont Regional Office investigator documented that Crazy:
 - a. Failed to maintain all piping, pump, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons. Specifically, the UST fill ports and Stage I drybreaks were not locked or secured. Also, failed to monitor for releases a temporarily out-of-service UST system for which regulated substances have not been removed; failed to provide proper corrosion protection for a temporarily out-of-service UST system; and failed to ensure that any residue from stored regulated

substances which remained in the temporarily out-of-service UST system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity. Specifically, the plus unleaded, regular unleaded, and super unleaded USTs contained approximately 39 inches, 20 inches, and 2 inches of water/product mixture, respectively;

- b. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and
 - c. Failed to ensure the spill and overfill prevention equipment is equipped with a liquid-tight lid or cover designed to minimize the entrance of any surface water, groundwater, or other foreign substances into the USTs. Specifically, the spill bucket lid was missing from the southern-most UST.
4. Crazy received notice of the violations on or about April 24, 2009.
 5. The Executive Director recognizes that on November 11, 2003, Crazy submitted a Notice of Store Closure and UST Registration and Self-Certification Form notifying the TCEQ that the USTs were placed temporarily out-of-service on October 31, 2003, and the dispensers have been removed.
 6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of WE ARE CRAZY, INC. dba Country Pantry 16" (the "EDPRP") in the TCEQ Chief Clerk's office on September 18, 2009.
 7. By letter dated September 18, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Crazy with notice of the EDPRP. According to the return receipt "green card," Crazy received notice of the EDPRP on September 21, 2009, as evidenced by the signature on the card.
 8. More than 20 days have elapsed since Crazy received notice of the EDPRP, provided by the Executive Director. Crazy failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Crazy is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.

2. As evidenced by Finding of Fact No. 3.a., Crazy failed to maintain all piping, pump, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; failed to monitor for releases a temporarily out-of-service UST system for which regulated substances have not been removed; failed to provide proper corrosion protection for a temporarily out-of-service UST system; and failed to ensure that any residue from stored regulated substances which remained in the temporarily out-of-service UST system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity, in violation of TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.54(b)(2), (c)(1), (c)(2), and (d)(2).
3. As evidenced by Finding of Fact No. 3.b., Crazy failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b).
4. As evidenced by Finding of Fact No. 3.c., Crazy failed to ensure the spill and overflow prevention equipment is equipped with a liquid-tight lid or cover designed to minimize the entrance of any surface water, groundwater, or other foreign substances into the USTs, in violation of TEX. WATER CODE § 26.3475(c)(2) and 30 TEX. ADMIN. CODE § 334.51(b)(2)(B)(ii).
5. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director timely served Crazy with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
6. As evidenced by Finding of Fact No. 8, Crazy failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Crazy and assess the penalty recommended by the Executive Director.
7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Crazy for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
8. An administrative penalty in the amount of eight thousand eight hundred seventy-three dollars (\$8,873.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

9. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Crazy is assessed an administrative penalty in the amount of eight thousand eight hundred seventy-three dollars (\$8,873.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Crazy's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: WE ARE CRAZY, INC. dba Country Pantry 16; Docket No. 2009-0637-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. Crazy shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order, Crazy shall permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55.
 - b. Within 45 days after the effective date of this Order, Crazy shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted

information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

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

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

with a copy to:

Derek Eades, Waste Section Manager
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1892

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Crazy. Crazy is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. If Crazy fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Crazy's failure to comply is not a violation of this Order. Crazy shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Crazy shall notify the Executive Director within seven days after Crazy becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Crazy shall be made in writing to the Executive Director. Extensions are not effective until Crazy receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Crazy if the Executive Director determines that Crazy has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date this Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

WE ARE CRAZY, INC. dba Country Pantry 16
Docket No. 2009-0637-PST-E
Page 7

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF BARHAM A. RICHARD

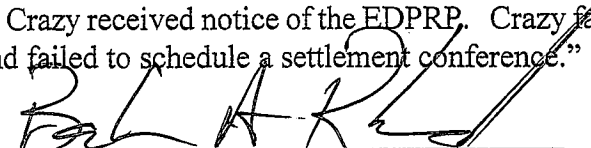
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

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

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of WE ARE CRAZY, INC. dba Country Pantry 16” (the “EDPRP”) was filed with the Office of the Chief Clerk on September 18, 2009

The EDPRP was mailed to Crazy at its last known address on September 18, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Crazy received notice of the EDPRP on September 21, 2009, as evidenced by the signature on the card.

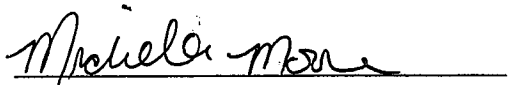
More than 20 days have elapsed since Crazy received notice of the EDPRP. Crazy failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.”



Barham A. Richard, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 2nd day of November, A.D., 2009.



Notary Signature

