

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO. 2009-0874-PST-E      RN101259067      CASE NO. 37764**  
**RESPONDENT NAME: THOMSON ENTERPRISES, INC. d/b/a BENDER TEXACO**  
**AND AFZAL SHEKHANI d/b/a BENDER TEXACO**

<b>ORDER TYPE:</b>		
<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 checked="" type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	

<b>CASE TYPE:</b>		
<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:** 2002 Aldine Bender Road, Houston, Harris County

**TYPE OF OPERATION:** convenience store with retail sales of gasoline

**SMALL BUSINESS:**  Yes       No

**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 or Respondents expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired September 20, 2010. No comments were received.

**CONTACTS AND MAILING LIST:**  
**TCEQ Attorney:** Mr. Rudy Calderon, Litigation Division, MC 175, (512) 239-0205  
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400  
**TCEQ Enforcement Coordinator:** Mr. Rajesh Acharya, Enforcement Section, MC 128, (512) 239-0577  
**TCEQ Regional Contact:** Ms. Nicole Bealle, Waste Section, Houston Regional Office, MC R-12, (713) 767-3623  
**Respondent:** Mr. Afzal Shekhani, President, Thomson Enterprises, Inc., 2002 Aldine Bender Road, Houston, Texas 77032  
**Respondent's Attorney:** Not represented by counsel on this enforcement matter.

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> April 28, 2009</p> <p><b>Date of NOE Relating to this Case:</b> May 28, 2009</p> <p><b>Background Facts:</b>                      The EDPRP was filed on December 7, 2009, and mailed to Respondents via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondents received notice of the EDPRP on December 9, 2009. The EDFARP was filed on March 19, 2010, and mailed to Respondents via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondents received notice of the EDFARP on March 22, 2010. Respondents failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference. (Note - Respondent Afzal Shekhani is the President, Director, sole shareholder, and Registered Agent for Respondent Thomson Enterprises, Inc.)</p> <p>A Notice of Intent ("NOI") to shut down the USTs was mailed to Respondents on July 22, 2010. According to the return receipt "green card," Respondents received the NOI on July 24, 2010. As of the date of the entry of this order, Respondents have not provided the ED with documentation demonstrating that the corrosion protection and release detection violations have been corrected.</p> <p><b>Current Compliance Status:</b>                      Respondents' delivery certificate expires on April 30, 2011, but will be revoked upon entry of this order.</p> <p><b>PST</b></p> <ol style="list-style-type: none"> <li>Failed to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifold and dynamic back pressure at least once every 36 months or upon major system replacement or modification [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</li> <li>Failed to ensure that a corrosion protection system is designed, installed, operated, and maintained in a manner that will ensure corrosion protection is continuously provided to all underground metal components of the</li> </ol>	<p><b>Total Assessed:</b> \$20,116</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$20,116</p> <p>This is a Default Order. Respondents have not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p><b>Site Compliance History Classification:</b>  <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification (Both Respondents):</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that Respondents successfully conducted the required annual and triennial testing of the Stage II equipment on May 20, 2009 (violation no. 1).</p> <p><b>Ordering Provisions:</b></p> <p>Respondents shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Immediately take the following steps to shut down operations of all USTs at the Facility:                         <ol style="list-style-type: none"> <li>Cease dispensing fuel from the USTs;</li> <li>Cease receiving deliveries of regulated substances into the USTs;</li> <li>Padlock the dispensers;</li> <li>Empty the USTs of all regulated substances; and</li> <li>Temporarily remove the USTs from service.</li> </ol> </li> <li>Respondent's USTs shall remain out of service until such time as Respondent demonstrates to the satisfaction of the Executive Director that the release detection violation has been corrected.</li> <li>If Respondents elect to permanently remove from service any portion of the UST system at the Facility, Respondents shall, immediately permanently remove the UST system from service, and within 15 days, submit a written report documenting compliance.</li> <li>Respondent's UST fuel delivery certificate is revoked immediately. Respondents shall cease accepting fuel until such time as a valid delivery certificate is obtained. Respondents may submit an application for a new fuel delivery certificate only after Respondents have complied with all of the requirements set forth in this Order.</li> <li>Within 10 days, Respondents shall send their UST fuel delivery certificate to TCEQ.</li> <li>Within 15 days, Respondents shall submit a detailed written report documenting the steps taken to comply with Ordering Provision Nos. 1.a. through 1.e. and 5.</li> </ol>

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>UST system; failed to inspect and test the cathodic protection system for operability and adequacy of protection at a frequency of at least once every three years [30 TEX. ADMIN. CODE § 334.49(a)(2) and (c)(4) and TEX. WATER CODE § 26.3475(d)].</p> <p>3. Failed to monitor the UST system for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 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 as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; failed to record the 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(b)(1)(A), (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)].</p> <p>4. Failed to conduct effective manual or automatic inventory control procedures for all USTs at the Station [30 TEX. ADMIN. CODE § 334.48(c)].</p> <p>5. Failed to timely renew a previously issued TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date [30 TEX. ADMIN. CODE § 334.8(c)(5)(B)(ii)].</p> <p>6. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)].</p>		<p>7. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline, Respondents shall:</p> <ul style="list-style-type: none"> <li>a. Begin conducting proper inventory control procedures for all USTs at the Station;</li> <li>b. Begin conducting bimonthly inspections of the cathodic protection system to ensure that the rectifier and other system components are functioning as designed to provide corrosion protection continuously to all underground metal components of the UST system, and conduct the required triennial testing of the cathodic protection system;</li> <li>c. Install and implement a release detection method for the USTs, test the line leak detectors for performance and operational reliability, begin reconciling inventory control records, and begin recording inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; and</li> <li>d. Obtain a new delivery certificate.</li> </ul> <p>8. Upon obtaining a new delivery certificate, post the delivery certificate in a location where the document is clearly visible at all times.</p> <p>9. Within 10 days of resuming retail sales of gasoline, submit written certification to demonstrate compliance with Ordering Provisions Nos. 7 and 8.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	1-Jun-2009			
	<b>PCW</b>	1-Dec-2009	<b>Screening</b>	9-Jun-2009	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>					
<b>Respondent</b>	Thomson Enterprises, Inc. d/b/a Bender Texaco and Afzal Shekhani d/b/a Bender Texaco				
<b>Reg. Ent. Ref. No.</b>	RN101259067				
<b>Facility/Site Region</b>	12-Houston	<b>Major/Minor Source</b>	Minor		

<b>CASE INFORMATION</b>					
<b>Enf./Case ID No.</b>	37764	<b>No. of Violations</b>	6		
<b>Docket No.</b>	2009-0874-PST-E	<b>Order Type</b>	1660		
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Government/Non-Profit</b>	No		
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Rajesh Acharya		
		<b>EC's Team</b>	Enforcement Team 6		
<b>Admin. Penalty \$ Limit</b>	<b>Minimum</b>	\$0	<b>Maximum</b>	\$10,000	

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$13,500
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	25.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$3,375
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Notes: Enhancement for one prior enforcement default order without a denial of liability.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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Notes: The Respondents do not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts: \$3,399  
 Approx. Cost of Compliance: \$6,400  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$16,875
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	19.2%	<b>Adjustment</b>	\$3,241
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with violation nos. 1, 2, 3 and 5.

<b>Final Penalty Amount</b>	\$20,116
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$20,116
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$0
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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.

<b>PAYABLE PENALTY</b>	\$20,116
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Screening Date 9-Jun-2009

Docket No. 2009-0874-PST-E

PCW

Respondent Thomson Enterprises, Inc. d/b/a Bender Texaco and Afz

Policy Revision 2 (September 2002)

Case ID No. 37764

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101259067

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

### 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	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	1	25%
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) 25%

#### >> 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 enforcement default order without a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 25%

**Screening Date** 9-Jun-2009 **Docket No.** 2009-0874-PST-E **PCW**  
**Respondent** Thomson Enterprises, Inc. d/b/a Bender Texaco and Afzal Shekha *Policy Revision 2 (September 2002)*  
**Case ID No.** 37764 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN101259067  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Rajesh Acharya

**Violation Number**

**Rule Cite(s)**

**Violation Description**

**Base Penalty**

**>> Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="25%"/>
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

**>> Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

*mark only one with an x*

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text" value="x"/>

**Violation Base Penalty**

**Good Faith Efforts to Comply**

Reduction

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

**Notes**

**Violation Subtotal**

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount**

**Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** Thomson Enterprises, Inc. d/b/a Bender Texaco and Afzal Shekhani d/b/a Bender Texaco  
**Case ID No.** 37764  
**Reg. Ent. Reference No.** RN101259067  
**Media** Petroleum Storage Tank  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				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]	\$600	28-Apr-2006	28-Apr-2009	3.92	\$118	\$600	\$718
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Actual avoided cost for annual and triennial testing to verify proper operation of the Stage II equipment. Date Required is three years prior to the investigation date. Final Date is the investigation date.

Approx. Cost of Compliance

\$600

**TOTAL**

\$718

**Screening Date** 9-Jun-2009 **Docket No.** 2009-0874-PST-E **PCW**  
**Respondent** Thomson Enterprises, Inc. d/b/a Bender Texaco and Afzal Shekhai *Policy Revision 2 (September 2002)*  
**Case ID No.** 37764 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN101259067  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Rajesh Acharya

**Violation Number** 2

**Rule Cite(s)** 30 Tex. Admin. Code § 334.49(a)(2) and (c)(4) and Tex. Water Code § 26.3475(d)

**Violation Description**  
 Failed to ensure that a corrosion protection system is designed, installed, operated, and maintained in a manner that will ensure corrosion protection is continuously provided to all underground metal components of the UST system. Also, failed to inspect and test the cathodic protection system for operability and adequacy of protection at a frequency of at least once every three years.

**Base Penalty** \$10,000

**>> Environmental, Property and Human Health Matrix**

OR	<b>Harm</b>				
	Release	Major	Moderate		Minor
	Actual				
	Potential	x			<b>Percent</b> 25%

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
					<b>Percent</b> 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 42 Number of violation days

*mark only one with an x*

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

**Violation Base Penalty** \$2,500

One quarterly event is recommended based on the documentation of the violation during the April 28, 2009 investigation to the June 09, 2009 screening date.

**Good Faith Efforts to Comply** 0.0% Reduction \$0

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

**Notes**  
 The Respondents do not meet the good faith criteria for this violation.

**Violation Subtotal** \$2,500

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount** \$1,275 **Violation Final Penalty Total** \$3,725

**This violation Final Assessed Penalty (adjusted for limits)** \$3,725

## Economic Benefit Worksheet

**Respondent** Thomson Enterprises, Inc. d/b/a Bender Texaco and Afzal Shekhani d/b/a Bender Texaco  
**Case ID No.** 37764  
**Reg. Ent. Reference No.** RN101259067  
**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
No commas or \$							

### Delayed Costs

Equipment	\$1,500	28-Apr-2009	28-Jan-2010	0.75	\$4	\$75	\$79
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 provide corrosion protection to the UST system. Date Required is the investigation date. Final Date is the estimated 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]	\$1,000	28-Apr-2006	28-Apr-2009	3.92	\$196	\$1,000	\$1,196
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost for completing the triennial test. Date Required is three years prior to the investigation date. Final Date is the investigation date.

Approx. Cost of Compliance

\$2,500

**TOTAL**

\$1,275

**Screening Date** 9-Jun-2009 **Docket No.** 2009-0874-PST-E **PCW**  
**Respondent** Thomson Enterprises, Inc. d/b/a Bender Texaco and Afzal Shekhan *Policy Revision 2 (September 2002)*  
**Case ID No.** 37764 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN101259067  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Rajesh Acharya

**Violation Number** 3

**Rule Cite(s)**

30 Tex. Admin. Code § 334.50(b)(1)(A), 334.50(b)(2)(A)(i)(III), 334.50(d)(1)(B)(ii), and 334.50(d)(1)(B)(iii)(I) and Tex. Water Code § 26.3475(a) and (c)(1)

**Violation Description**

Failed to monitor the UST system for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). 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 as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons. Also, failed to record the 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	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				25%
	Potential	x			

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
					0%

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

**Adjustment** \$7,500

\$2,500

**Violation Events**

Number of Violation Events 1 42 Number of violation days

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 the documentation of the violation during the April 28, 2009 investigation to the June 09, 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 Respondents do not meet the good faith criteria for this violation.

**Violation Subtotal** \$2,500

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount** \$1,152 **Violation Final Penalty Total** \$3,725

**This violation Final Assessed Penalty (adjusted for limits)** \$3,725

## Economic Benefit Worksheet

**Respondent** Thomson Enterprises, Inc. d/b/a Bender Texaco and Afzal Shekhani d/b/a Bender Texaco  
**Case ID No.** 37764  
**Reg. Ent. Reference No.** RN101259067  
**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	28-Apr-2009	28-Jan-2010	0.75	\$57	n/a	\$57

Notes for DELAYED costs

Estimated cost to provide release detection for the UST system including volume measurement and reconciliation of inventory controls. Date Required is the date of investigation. Final Date is the estimated 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]	\$1,000	28-Apr-2008	28-Apr-2009	1.92	\$96	\$1,000	\$1,096
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost for conducting line leak detector tests. Date Required is one year prior to the investigation date. Final Date is the date of investigation.

Approx. Cost of Compliance

\$2,500

**TOTAL**

\$1,152

**Screening Date** 9-Jun-2009 **Docket No.** 2009-0874-PST-E **PCW**  
**Respondent** Thomson Enterprises, Inc. d/b/a Bender Texaco and Afzal Shekhai *Policy Revision 2 (September 2002)*  
**Case ID No.** 37764 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN101259067  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Rajesh Acharya

**Violation Number** 4  
**Rule Cite(s)** 30 Tex. Admin. Code § 334.48(c)  
**Violation Description** Failed to conduct effective manual or automatic inventory control procedures for all USTs at the Station.

**Base Penalty** \$10,000

**>> Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				25%
	Potential	x			

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
					0%

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

**Adjustment** \$7,500

\$2,500

**Violation Events**

Number of Violation Events 1 42 Number of violation days

*mark only one with an x*

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

**Violation Base Penalty** \$2,500

One quarterly event is recommended based on the documentation of the violation during the April 28, 2009 investigation to the June 09, 2009 screening date.

**Good Faith Efforts to Comply** 0.0% Reduction \$0

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

**Notes** The Respondents do 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** \$19 **Violation Final Penalty Total** \$3,725

**This violation Final Assessed Penalty (adjusted for limits)** \$3,725

## Economic Benefit Worksheet

**Respondent** Thomson Enterprises, Inc. d/b/a Bender Texaco and Afzal Shekhani d/b/a Bender Texaco  
**Case ID No.** 37764  
**Reg. Ent. Reference No.** RN101259067  
**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	28-Apr-2009	28-Jan-2010	0.75	\$19	n/a	\$19
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 proper inventory control procedures for all USTs. Date Required is the investigation date. Final Date is the estimated 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**

\$19

**Screening Date** 9-Jun-2009 **Docket No.** 2009-0874-PST-E **PCW**  
**Respondent** Thomson Enterprises, Inc. d/b/a Bender Texaco and Afzal Shekhai *Policy Revision 2 (September 2002)*  
**Case ID No.** 37764 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN101259067  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Rajesh Acharya

**Violation Number** 5

**Rule Cite(s)** 30 Tex. Admin. Code § 334.8(c)(5)(B)(ii)

**Violation Description** Failed to timely renew a previously issued TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date. Specifically, the delivery certificate expired on April 30, 2007.

**Base Penalty** \$10,000

**>> Environmental, Property and Human Health Matrix**

OR	<b>Harm</b>				<b>Percent</b> 0%
	<b>Release</b>	Major	Moderate	Minor	
	Actual				
	Potential				

**>> Programmatic Matrix**

	<b>Falsification</b>	Major	Moderate	Minor	<b>Percent</b> 10%
		x			

**Matrix Notes** 100% of the rule requirement was not met.

**Adjustment** \$9,000

\$1,000

**Violation Events**

Number of Violation Events 3 771 Number of violation days

*mark only one with an x*

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	x
single event	

**Violation Base Penalty** \$3,000

Three annual events are recommended based on documentation of the violation during the April 28, 2009 investigation.

**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 Respondents do 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** \$235 **Violation Final Penalty Total** \$4,470

**This violation Final Assessed Penalty (adjusted for limits)** \$4,470

## Economic Benefit Worksheet

**Respondent** Thomson Enterprises, Inc. d/b/a Bender Texaco and Afzal Shekhani d/b/a Bender Texaco  
**Case ID No.** 37764  
**Reg. Ent. Reference No.** RN101259067  
**Media** Petroleum Storage Tank  
**Violation No.** 5

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	28-Apr-2009	31-Mar-2010	0.92	\$5	n/a	\$5

#### Notes for DELAYED costs

Estimated cost to renew a delivery certificate by submitting a properly completed UST registration and self-certification form. Date Required is date of the investigation. Final Date is the estimated 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]	\$200	31-Mar-2007	28-Apr-2009	3.00	\$30	\$200	\$230
Other (as needed)				0.00	\$0	\$0	\$0

#### Notes for AVOIDED costs

Estimated avoided cost (\$100 per full year) to accurately prepare and submit an updated UST registration and obtain a TCEQ delivery certificate. Date Required is 30 days prior to the expiration date of the delivery certificate. Final Date is the investigation date.

Approx. Cost of Compliance

\$300

**TOTAL**

\$235

**Screening Date** 9-Jun-2009 **Docket No.** 2009-0874-PST-E **PCW**  
**Respondent** Thomson Enterprises, Inc. d/b/a Bender Texaco and Afzal Shekhai *Policy Revision 2 (September 2002)*  
**Case ID No.** 37764 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN101259067  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Rajesh Acharya

**Violation Number** 6

**Rule Cite(s)** 30 Tex. Admin. Code § 334.8(c)(5)(A)(i) and Tex. Water Code § 26.3467(a)

**Violation Description** Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, one fuel delivery was accepted without a delivery certificate.

**Base Penalty** \$10,000

**>> Environmental, Property and Human Health Matrix**

OR	<b>Harm</b>			<b>Percent</b> 5%	
	<b>Release</b>	Major	Moderate		Minor
	Actual				
	Potential		x		

**>> Programmatic Matrix**

<b>Falsification</b>	Major	Moderate	Minor	<b>Percent</b> 0%

**Matrix Notes** Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

**Adjustment** \$9,500

\$500

**Violation Events**

Number of Violation Events 1 1 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

**Violation Base Penalty** \$500

One single event is recommended for accepting one delivery of fuel.

**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 do not meet the good faith criteria for this violation.

**Violation Subtotal** \$500

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount** \$0 **Violation Final Penalty Total** \$745

**This violation Final Assessed Penalty (adjusted for limits)** \$745

## Economic Benefit Worksheet

**Respondent** Thomson Enterprises, Inc. d/b/a Bender Texaco and Afzal Shekhani d/b/a Bender Texaco  
**Case ID No.** 37764  
**Reg. Ent. Reference No.** RN101259067  
**Media** Petroleum Storage Tank  
**Violation No.** 6

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Economic benefit included in violation no. 5.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

**TOTAL**

\$0

# Compliance History Report

Customer/Respondent/Owner-Operator:	CN601678907	Thomson Enterprises, Inc.	Classification: AVERAGE	Rating: 2.75
Regulated Entity:	RN101259067	Bender Texaco	Classification: HIGH	Site Rating: 0.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	38239
Location:	2002 ALDINE BENDER RD, HOUSTON, TX, 77032			
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	June 09, 2009			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	June 09, 2004 to June 09, 2009			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Rajesh Acharya	Phone:	(512) 239-0577	

## 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? Thomson Enterprises, Inc.
4. If Yes, who was/were the prior owner(s)? Shekhani, Afzal
5. When did the change(s) in ownership occur? 09/20/2006
6. Rating Date: 9/1/2008 Repeat Violator: NO

## Components (Multimedia) for the Site :

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

Effective Date: 04/25/2009 ADMINORDER 2006-1565-PST-E  
Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(d)  
30 TAC Chapter 334, SubChapter C 334.49(c)(2)(C)  
Description: Failure to have rectifier checked every 60 days as required by the TCEQ.  
Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(a)  
2D TWC Chapter 26, SubChapter A 26.3475(c)(1)  
30 TAC Chapter 334, SubChapter C 334.50(b)(2)(A)(i)(III)  
30 TAC Chapter 334, SubChapter C 334.50(d)(1)(B)(ii)  
Description: The facility could not provide proof that their line leak detectors received an annual performance test.  
Classification: Moderate  
Citation: 30 TAC Chapter 334, SubChapter C 334.48(c)  
Description: The facility failed to provide documentation for inventory control when asked during the investigation.  
Classification: Moderate  
Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)  
5C THSC Chapter 382 382.085(b)  
Description: No Stage II Vapor Recovery testing since May 8, 2002.  
Classification: Moderate  
Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(A)  
5C THSC Chapter 382 382.085(b)  
Description: No swivel adapter for the Stage I fill port and dry break connection.

- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A

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

1 08/31/2006 (480890)

2 05/28/2009 (744684)

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

N/A

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

# Compliance History Report

Customer/Respondent/Owner-Operator: CN600691943 Shekhani, Afzal Classification: AVERAGE Rating: 1.37  
Regulated Entity: RN101259067 Bender Texaco Classification: HIGH Site Rating: 0.00

ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 38239  
REGISTRATION

Location: 2002 ALDINE BENDER RD, HOUSTON, TX, 77032

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: June 09, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 09, 2004 to June 09, 2009

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

Name: Rajesh Acharya Phone: (512) 239-0577

## 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.

Effective Date: 04/25/2009

ADMINORDER 2006-1565-PST-E

Classification: Minor

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(d)

30 TAC Chapter 334, SubChapter C 334.49(c)(2)(C)

Description: Failure to have rectifier checked every 60 days as required by the TCEQ.

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(a)

2D TWC Chapter 26, SubChapter A 26.3475(c)(1)

30 TAC Chapter 334, SubChapter C 334.50(b)(2)(A)(i)(III)

30 TAC Chapter 334, SubChapter C 334.50(d)(1)(B)(ii)

Description: The facility could not provide proof that their line leak detectors received an annual performance test.

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.48(c)

Description: The facility failed to provide documentation for inventory control when asked during the investigation.

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)

5C THSC Chapter 382 382.085(b)

Description: No Stage II Vapor Recovery testing since May 8, 2002.

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(A)

5C THSC Chapter 382 382.085(b)

Description: No swivel adapter for the Stage I fill port and dry break connection.

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

N/A

C. Chronic excessive emissions events.

N/A

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

1 08/31/2006 (480890)

2 05/28/2009 (744684)

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

N/A

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



<b>IN THE MATTER OF AN</b>	<b>§</b>	
<b>ENFORCEMENT ACTION</b>	<b>§</b>	<b>BEFORE THE</b>
<b>CONCERNING</b>	<b>§</b>	
<b>THOMSON ENTERPRISES, INC.</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>d/b/a BENDER TEXACO, AND</b>	<b>§</b>	
<b>AFZAL SHEKHANI d/b/a</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>
<b>BENDER TEXACO;</b>	<b>§</b>	
<b>RN101259067</b>	<b>§</b>	

## DEFAULT AND SHUTDOWN ORDER

**DOCKET NO. 2009-0874-PST-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's First Amended Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty, corrective action of the respondents, and revocation of the respondents' fuel delivery certificate. The Commission also considered the Executive Director's Motion requesting entry of an Order requiring the respondents, Thomson Enterprises, Inc. d/b/a Bender Texaco ("Thomson") and Afzal Shekhani d/b/a Bender Texaco ("Mr. Shekhani") (collectively "Respondents"), to shutdown or remove from service the underground storage tanks ("USTs") at the Bender Texaco station, located at 2002 Aldine Bender Road, Houston, Harris County, Texas.

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

### FINDINGS OF FACT

1. Thomson owns and operates, in accordance with 30 TEX. ADMIN. CODE §§ 334.70 and 334.73, and Mr. Shekhani is the fee simple owner of, four USTs and a convenience store with retail sales of gasoline located at 2002 Aldine Bender Road, Houston, Harris County, Texas (the "Station").<sup>1</sup>
2. The USTs at the Station are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contain a regulated petroleum substance as defined in the rules of the TCEQ. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. On April 28, 2009, an investigator from the TCEQ Houston Regional Office documented that Respondents:
  - a. Failed to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months and upon major system replacement

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<sup>1</sup> Mr. Shekhani is also the President, sole shareholder, and Registered Agent of Thomson Enterprises, Inc.

- or modification. Specifically, the Stage II annual and triennial system compliance testing had not been conducted;
- b. Failed to ensure that a corrosion protection system is designed, installed, operated, and maintained in a manner that will ensure corrosion protection is continuously provided to all underground metal components of the UST system; and failed to inspect and test the cathodic protection system for operability and adequacy of protection at a frequency of at least once every three years;
  - c. Failed to monitor the UST system for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 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 as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; and failed to record the inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day;
  - d. Failed to conduct effective manual or automatic inventory control procedures for all USTs at the Station;
  - e. Failed to timely renew a previously issued TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date. Specifically, the delivery certificate expired on April 30, 2007; and
  - f. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, one fuel delivery was accepted without a delivery certificate.
4. By letter dated May 28, 2009, the TCEQ Houston Regional Office provided Respondents with notice of the violations and the TCEQ's authority to shut down and remove from service USTs not in compliance with release detection, spill and/or overfill prevention, corrosion protection, and/or financial assurance requirements if the violations are not corrected.
  5. The Executive Director recognizes that Respondents successfully conducted the required annual and triennial testing of the Stage II equipment on May 20, 2009.
  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 Thomson Enterprises, Inc. d/b/a Bender Texaco, and Afzal Shekhani d/b/a Bender Texaco" (the "EDPRP") in the TCEQ Chief Clerk's office on December 7, 2009.
  7. By letter dated December 7, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondents with notice of the EDPRP. According to the return receipt "green card," Respondents

received notice of the EDPRP on December 9, 2009, as evidenced by the signature on the card.<sup>2</sup>

8. The Executive Director filed the "Executive Director's First Amended 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 Thomson Enterprises, Inc. d/b/a Bender Texaco, and Afzal Shekhani d/b/a Bender Texaco" (the "EDFARP") in the TCEQ Chief Clerk's office on March 19, 2010.
9. By letter dated March 19, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondents with notice of the EDFARP. According to the return receipt "green card," Respondents received notice of the EDFARP on March 22, 2010, as evidenced by the signature on the card.
10. More than 20 days have elapsed since Respondents received notice of the EDPRP and EDFARP, provided by the Executive Director. Respondents failed to file an answer to either the EDPRP or EDFARP, failed to request a hearing, and failed to schedule a settlement conference.
11. By letter dated July 22, 2010, TCEQ provided Respondents with notice of TCEQ's intent to order the USTs at the Station shut down and removed from service if Respondents failed to correct the corrosion protection and release detection violations within 30 days after Respondents' receipt of the notice.
12. As of the date of entry of this Order, Respondents have not provided the Executive Director with documentation demonstrating that the corrosion protection and release detection violations alleged in Findings of Fact Nos. 3.b. and 3.c. have been corrected.
13. The USTs at the Station do not have release detection as required by 30 TEX. ADMIN. CODE § 334.50, and do not have corrosion protection as required by 30 TEX. ADMIN. CODE § 334.49 and may be releasing petroleum products to the environment without the knowledge of the tank owner or operator. Therefore, conditions at the Station constitute an imminent peril to public health, safety, and welfare.

#### **CONCLUSIONS OF LAW**

1. As evidenced by Findings of Fact Nos. 1 and 2, Respondents are subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Respondents violated 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months and upon major system replacement or modification.

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<sup>2</sup> Mr. Shekhani is the Registered Agent for Thomson Enterprises, Inc., thus, both respondents were served at the same address.

3. As evidenced by Finding of Fact No. 3.b., Respondents violated 30 TEX. ADMIN. CODE § 334.49(a)(2) and (c)(4), and TEX. WATER CODE § 26.3475(d), by failing to ensure that a corrosion protection system is designed, installed, operated, and maintained in a manner that will ensure corrosion protection is continuously provided to all underground metal components of the UST system, and by failing to inspect and test the cathodic protection system for operability and adequacy of protection at a frequency of at least once every three years.
4. As evidenced by Finding of Fact No. 3.c., Respondents violated 30 TEX. ADMIN. CODE § 334.50(b)(1)(A), (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), by failing to monitor the UST system for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); failing to test the line leak detectors at least once per year for performance and operational reliability; failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; and failing to record the inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day.
5. As evidenced by Finding of Fact No. 3.d., Respondents violated 30 TEX. ADMIN. CODE § 334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs at the Station.
6. As evidenced by Finding of Fact No. 3.e., Respondents violated 30 TEX. ADMIN. CODE § 334.8(c)(5)(B)(ii), by failing to timely renew a previously issued TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date.
7. As evidenced by Finding of Fact No. 3.f., Respondents violated 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs.
8. As evidenced by Findings of Fact Nos. 6 and 7, the Executive Director timely served Respondents with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
9. As evidenced by Findings of Fact Nos. 8 and 9, the Executive Director timely served Respondents with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
10. As evidenced by Finding of Fact No. 10, Respondents 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 Respondents and assess the penalty recommended by the Executive Director.
11. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondents for violations of state statutes within the

Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

12. An administrative penalty in the amount of twenty thousand one hundred sixteen dollars (\$20,116.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
13. As evidenced by Findings of Fact Nos. 4, 11 and 12, Respondents failed to correct documented violations of Commission requirements regarding corrosion protection and release detection within 30 days after Respondents received notice of the violations and notice of the Executive Director's intent to shut down the Station.
14. TEX. WATER CODE §§ 26.3475(e) and 26.352(i) authorize the Commission to order a UST owner or operator to shut down a UST system if, within 30 days after receiving notice of the violations, the owner or operator fails to correct violations of Commission regulatory requirements relating to release detection for tanks and/or piping, spill and overflow protection for tanks, corrosion protection for tanks and piping, and/or acceptable financial assurance.
15. 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.
16. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Respondents' UST delivery certificate if the Commission finds that good cause exists.
17. Good cause for revocation of Respondents' UST delivery certificate exists as justified by Findings of Fact Nos. 3 and 6 through 10, and Conclusions of Law Nos. 2 through 10.
18. As evidenced by Finding of Fact No. 13, current conditions at the Station constitute an imminent peril to public health, safety and welfare. Therefore, pursuant to the Administrative Procedure Act, TEX. GOV'T CODE § 2001.144(a)(3), this Order is final and effective on the date rendered.

#### **ORDERING PROVISIONS**

NOW, THEREFORE, IT IS ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. Immediately upon the effective date of this Order, Respondents shall take the following steps to shut down operations of all USTs at the Station:
  - a. Cease dispensing fuel from the USTs;
  - b. Cease receiving deliveries of regulated substances into the USTs;
  - c. Padlock the dispensers;

- d. Empty the USTs of all regulated substances in accordance with 30 TEX. ADMIN. CODE § 334.54(d); and
  - e. Temporarily remove the USTs from service in accordance with 30 TEX. ADMIN. CODE § 334.54.
2. Respondent's USTs shall remain out of service, pursuant to TEX. WATER CODE § 26.3475 and as directed by Ordering Provision Nos. 1.a. through 1.e., until such time as Respondents demonstrate to the satisfaction of the Executive Director that the violations noted in Findings of Fact Nos. 3.b. and 3.c. and Conclusions of Law Nos. 3 and 4 have been corrected.
3. If Respondents elects to permanently remove from service any portion of the UST system at the Station, Respondents shall, immediately upon the effective date of this Order, permanently remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.55, and within 15 days after the effective date of this Order, submit a written report documenting compliance with 30 TEX. ADMIN. CODE § 334.55 to:  

Petroleum Storage Tank Registration Team, MC 138  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087
4. Respondents' UST delivery certificate is revoked immediately upon the effective date of this Order. Respondents shall cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ by submitting a properly completed UST registration and self-certification form in accordance with 30 TEX. ADMIN. CODE §§ 334.7 and 334.8. Respondents may submit an application for a new delivery certificate only after Respondents have complied with all the requirements set forth in this Order.
5. Within 10 days after the effective date of this Order, Respondents shall send their UST delivery certificate to:  

Petroleum Storage Tank Registration Team, MC 138  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087
6. Within 15 days after the effective date of this Order, Respondents shall submit to the Executive Director a detailed written report documenting the steps they have taken to comply with Ordering Provision Nos. 1.a. through 1.e. and 5. Respondents shall submit the report to:  

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

and

Nicole Bealle, Waste Section Manager  
Texas Commission on Environmental Quality  
Houston Regional Office  
5425 Polk Ave, Ste. H  
Houston, Texas 77023-1452

7. Respondents are assessed an administrative penalty in the amount of twenty thousand one hundred sixteen dollars (\$20,116.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondents' compliance with all the terms and conditions set forth in this Order completely resolve only 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."
8. 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: Thomson Enterprises, Inc. d/b/a Bender Texaco and Afzal Shekhani d/b/a Bender Texaco; Docket No. 2009-0874-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
9. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline, Respondents shall:
  - a. Begin conducting proper inventory control procedures for all USTs at the Station, in accordance with 30 TEX. ADMIN. CODE § 334.48;
  - b. Begin conducting bimonthly inspections of the cathodic protection system to ensure that the rectifier and other system components are functioning as designed to provide corrosion protection continuously to all underground metal components of the UST system, and conduct the required triennial testing of the cathodic protection system, in accordance with 30 TEX. ADMIN. CODE § 334.49;
  - c. Install and implement a release detection method for the USTs, test the line leak detectors for performance and operational reliability, begin reconciling inventory control records, and begin recording inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day, in accordance with 30 TEX. ADMIN. CODE § 334.50; and
  - d. Obtain a new delivery certificate from the TCEQ.

10. Upon obtaining a new delivery certificate, Respondents shall post the delivery certificate in a location where the document is clearly visible at all times, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii).
11. Within 10 days of resuming retail sales of gasoline at the Station, Respondents shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 9 and 10. The written certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

The certification shall be submitted to:

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

and

Nicole Bealle, Waste Section Manager  
Texas Commission on Environmental Quality  
Houston Regional Office  
5425 Polk Ave, Ste. H  
Houston, Texas 77023-1452

12. All relief not expressly granted in this Order is denied.
13. The provisions of this Order shall apply to and be binding upon Respondents, and Respondents are ordered to give notice of this Order to personnel who maintain day to day control of the USTs at the Station.
14. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Respondents if the Executive Director determines that Respondents are noncompliant with or in violation of any of the terms and conditions set forth in this Order.
15. This Order shall terminate five years from its effective date or when Respondents demonstrate to the satisfaction of the Executive Director that have corrected all of the violations noted herein, whichever is later.
16. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order is the date this decision was rendered, pursuant to TEX. GOV'T CODE § 2001.144(a)(3).

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF RUDY CALDERON**

**STATE OF TEXAS           §**  
**§**  
**COUNTY OF TRAVIS       §**

"My name is Rudy Calderon. 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 Thomson Enterprises, Inc. d/b/a Bender Texaco, and Afzal Shekhani d/b/a Bender Texaco" (the "EDPRP") was filed with the Office of the Chief Clerk on December 7, 2009.

The EDPRP was mailed to Respondents at their last known address on December 7, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondents received notice of the EDPRP on December 9, 2009, as evidenced by the signature on the card.

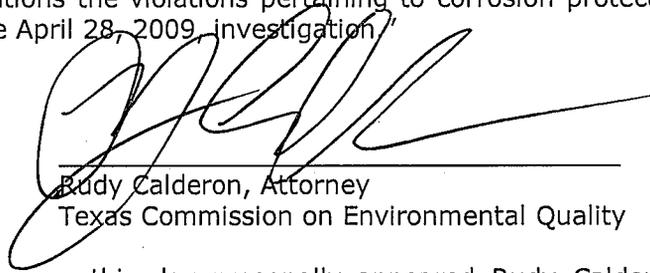
On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Thomson Enterprises, Inc. d/b/a Bender Texaco, and Afzal Shekhani d/b/a Bender Texaco" (the "EDFARP") was filed with the Office of the Chief Clerk on March 19, 2010.

The EDFARP was mailed to Respondents at their last known address on March 19, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondents received notice of the EDFARP on March 22, 2010, as evidenced by the signature on the card.

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

By letter dated July 22, 2010, sent via first class mail and certified mail, return receipt requested article no. 7009 1680 0002 2322 8141, I provided Respondents with notice of the TCEQ's intent to order the USTs at the Station shut down and removed from service if the violations pertaining to corrosion protection and release detection were not corrected within 30 days of Respondents' receipt of the letter. According to the return receipt "green card," Respondents received the notice on July 24, 2010.

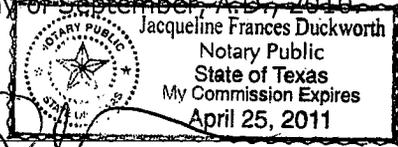
As of the date of this affidavit, I am not aware of any evidence that indicates that Respondents have corrected the violations the violations pertaining to corrosion protection and release detection noted during the April 28, 2009, investigation.



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Rudy Calderon, Attorney  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Rudy Calderon, 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 14<sup>th</sup> day of September, A.D., 2010.



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Notary Signature