

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER** Page 1 of 3  
**DOCKET NO.:** 2009-1109-PST-E **TCEQ ID:** RN102027752 **CASE NO.:** 37952  
**RESPONDENT NAME:** City of Freeport

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Freeport Service Center, 510 Avenue A South, Freeport, Brazoria County</p> <p><b>TYPE OF OPERATION:</b> Fleet refueling facility</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on December 4, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. Wallace Myers, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-6580; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387  <b>Respondent:</b> Mr. B.R. Williams, Street Director, City of Freeport, 200 West 2nd Street, Freeport, Texas 77541  Mr. Jeff Pynco, City Manager, City of Freeport, 200 West 2<sup>nd</sup> Street, Freeport, Texas 77541  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**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(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> May 22, 2009</p> <p><b>Date of NOV/NOE Relating to this Case:</b> June 26, 2009 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>WASTE</b></p> <p>1) Failure to monitor underground storage tanks ("USTs") for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>2) Failure to test the line leak detectors at least once per year for performance and operational reliability [30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a)].</p> <p>3) Failure to equip the tank with a valve or other appropriate device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level no higher than 95% capacity level for the tank. Specifically, overfill prevention equipment was not installed [30 TEX. ADMIN. CODE § 334.51(b)(2)(C) and TEX. WATER CODE § 26.3475(c)(2)].</p> <p>4) Failure to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first. Specifically, the Stage II annual and triennial compliance tests had not been conducted [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p>	<p><b>Total Assessed:</b> \$12,375</p> <p><b>Total Deferred:</b> \$2,475  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$9,900</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</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 the Respondent has implemented the following corrective measures at the Station:</p> <p>a. Implemented a release detection method for all USTs at the Station on May 23, 2009;</p> <p>b. Successfully tested the line leak detectors for performance and operational reliability on May 23, 2009; and</p> <p>c. Successfully conducted the required annual testing of the Stage II equipment on May 23, 2009.</p> <p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order:</p> <p>i. Install an overfill prevention device for the UST system;</p> <p>ii. Ensure that all piping is free of any blockages that may impair the effectiveness of the system;</p> <p>iii. Successfully conduct the required triennial testing of the Stage II equipment; and</p> <p>iv. Establish and implement a process for reporting a suspected release.</p> <p>b. Within 45 days after the effective date of this Agreed Order, conduct an investigation of the suspected release and implement appropriate corrective measures; and</p> <p>c. Within 60 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a. and b.</p>

<p>5) Failure to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system, including but not limited to vapor return lines, including such components as swivels, anti-recirculation valves, and underground piping, that malfunction, are blocked, or are restricted such that the pressure decay and/or dynamic backpressure through the line exceeds the value as certified in the approved system's California Air Resources Board ("CARB") Executive Order(s) or third-party certification. Specifically, the system failed the dynamic back-pressure test [30 TEX. ADMIN. CODE § 115.242(3)(G) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p> <p>6) Failure to report a suspected release to the agency within 24 hours of discovery. Specifically, statistical inventory reconciliation ("SIR") results for the diesel tank for February 2009 indicated a suspected release that was not reported [30 TEX. ADMIN. CODE §§ 334.50(d)(9)(A)(iv) and 334.72].</p> <p>7) Failure to investigate a suspected release of regulated substances within 30 days of discovery. Specifically, SIR results for February 2009 indicated a suspected release that was not investigated [30 TEX. ADMIN. CODE § 334.74].</p>		
--	--	--

Additional ID No(s): 50446





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

## TCEQ

<b>DATES</b>	<b>Assigned</b>	29-Jun-2009	<b>Screening</b>	30-Jun-2009	<b>EPA Due</b>	
	<b>PCW</b>	13-Jul-2009				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	City of Freeport				
<b>Reg. Ent. Ref. No.</b>	RN102027752				
<b>Facility/Site Region</b>	12-Houston	<b>Major/Minor Source</b>	Minor		

## CASE INFORMATION

<b>Enf./Case ID No.</b>	37952	<b>No. of Violations</b>	6
<b>Docket No.</b>	2009-1109-PST-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Wallace Myers
		<b>EC's Team</b>	Enforcement Team 6
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$13,000**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History** **0.0%** Enhancement **Subtotals 2, 3, & 7** **\$0**

Notes: No adjustment for compliance history.

**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** **\$625**

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

Total EB Amounts	\$1,143	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$8,200	

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$12,375**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **0.0%** **Adjustment** **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount** **\$12,375**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$12,375**

**DEFERRAL** **20.0%** Reduction **Adjustment** **-\$2,475**

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

Notes: Deferral offered for expedited settlement.

**PAYABLE PENALTY** **\$9,900**

Screening Date: 30-Jun-2009

Docket No. 2009-1109-PST-E

PCW

Respondent City of Freeport

Policy Revision 2 (September 2002)

Case ID No. 37952

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102027752

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)	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	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)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

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

<b>Screening Date</b> 30-Jun-2009	<b>Docket No.</b> 2009-1109-PST-E	<b>PCW</b>
<b>Respondent</b> City of Freeport		<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b> 37952		<i>PCW Revision October 30, 2008</i>
<b>Reg. Ent. Reference No.</b> RN102027752		
<b>Media [Statute]</b> Petroleum Storage Tank		
<b>Enf. Coordinator</b> Wallace Myers		
<b>Violation Number</b> 1		
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 334.50(b)(1)(A) and (b)(2)(A)(I)(III) and Tex. Water Code § 26.3475(a) and (c)(1)	
<b>Violation Description</b>	Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Also, failed to test the line leak detectors at least once per year for performance and operational reliability.	
	<b>Base Penalty</b>	\$10,000
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>		
<b>OR</b>	<b>Harm</b>	
	Release    Major    Moderate    Minor	
	Actual	<input type="text"/>
	Potential	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
	<b>Percent</b>	<input type="text" value="25%"/>
<b>&gt;&gt; Programmatic Matrix</b>		
	Falsification    Major    Moderate    Minor	
	<input type="text"/>	<input type="text"/>
	<b>Percent</b>	<input type="text" value="0%"/>
<b>Matrix Notes</b>	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.	
	<b>Adjustment</b>	\$7,500
		\$2,500
<b>Violation Events</b>		
	<b>Number of Violation Events</b> <input type="text" value="1"/>	<input type="text" value="1"/> <b>Number of violation days</b>
<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input checked="" type="checkbox"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>
	<b>Violation Base Penalty</b>	\$2,500
	One monthly event is recommended based on documentation of the violation during the May 22, 2009 investigation to the May 23, 2009 compliance date.	
<b>Good Faith Efforts to Comply</b>	25.0% Reduction	\$625
	Before NOV    NOV to EDRP/Settlement Offer	
Extraordinary	<input type="text"/>	
Ordinary	<input checked="" type="checkbox"/>	
N/A	<input type="text"/>	(mark with x)
<b>Notes</b>	The Respondent came into compliance on May 23, 2009, prior to the NOE dated June 26, 2009.	
	<b>Violation Subtotal</b>	\$1,875
<b>Economic Benefit (EB) for this violation</b>		
	<b>Statutory Limit Test</b>	
<b>Estimated EB Amount</b>	<input type="text" value="\$165"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$1,875"/>
	<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$1,875"/>	

## Economic Benefit Worksheet

**Respondent:** City of Freeport  
**Case ID No.:** 37952  
**Reg. Ent. Reference No.:** RN102027752  
**Media:** Petroleum Storage Tank  
**Violation No.:** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

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

No commas or \$.

**Delayed Costs**

Item Description	Item Cost	Date Required	Final Date	Yrs.	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$1,500	22-May-2009	23-May-2009	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 release detection for the USTs at the Station. The date required is the date of the investigation and the final date is the date of compliance.

**Avoided Costs**

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

Item Description	Item Cost	Date Required	Final Date	Yrs.	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$150	22-May-2008	22-May-2009	1.92	\$14	\$150	\$164
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Actual avoided cost of conducting line leak detector tests. The date required is one year prior to the investigation date and the final date is the investigation date.

Approx. Cost of Compliance

\$1,650

**TOTAL**

\$165

<b>Screening Date</b> 30-Jun-2009	<b>Docket No.</b> 2009-1109-PST-E	<b>PCW</b>	
<b>Respondent</b> City of Freeport		<small>Policy Revision 2 (September 2002)</small>	
<b>Case ID No.</b> 37952		<small>PCW Revision October 30, 2008</small>	
<b>Reg. Ent. Reference No.</b> RN102027752			
<b>Media [Statute]</b> Petroleum Storage Tank			
<b>Enf. Coordinator</b> Wallace Myers			
<b>Violation Number</b> <input type="text" value="2"/>			
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 334.51(b)(2)(C) and Tex. Water Code § 26.3475(c)(2)"/>		
<b>Violation Description</b>	<input type="text" value="Failed to equip the tank with a valve or other appropriate device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level no higher than 95% capacity level for the tank. Specifically, overflow prevention equipment was not installed."/>		
	<b>Base Penalty</b>	<input type="text" value="\$10,000"/>	
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>			
<b>OR</b>	<b>Release</b>	<b>Harm</b>	
		Major    Moderate    Minor	
	Actual	<input type="text"/>	<b>Percent</b> <input type="text" value="10%"/>
	Potential	<input type="text" value="x"/>	
<b>&gt;&gt; Programmatic Matrix</b>			
	Falsification	Major    Moderate    Minor	
	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>
<b>Matrix Notes</b>	<input type="text" value="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."/>		
	<b>Adjustment</b>	<input type="text" value="\$9,000"/>	
		<input type="text" value="\$1,000"/>	
<b>Violation Events</b>			
	<b>Number of Violation Events</b>	<input type="text" value="1"/>	<b>Number of violation days</b> <input type="text" value="39"/>
<small>mark only one with an x</small>	daily	<input type="text"/>	<b>Violation Base Penalty</b> <input type="text" value="\$1,000"/>
	weekly	<input type="text"/>	
	monthly	<input type="text"/>	
	quarterly	<input type="text" value="x"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input type="text"/>	
	<input type="text" value="One quarterly event is recommended based on documentation of the violation during the May 22, 2009 investigation to the June 30, 2009 screening date."/>		
<b>Good Faith Efforts to Comply</b>		<b>0.0% Reduction</b>	<input type="text" value="\$0"/>
		<small>Before NOV    NOV to EDRP/Settlement Offer</small>	
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)"/>	
<b>Notes</b>	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>		
	<b>Violation Subtotal</b>	<input type="text" value="\$1,000"/>	
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>	
	<b>Estimated EB Amount</b>	<input type="text" value="\$30"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$1,000"/>
		<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$1,000"/>	

## Economic Benefit Worksheet

**Respondent** City of Freeport  
**Case ID No.** 37952  
**Reg. Ent, Reference No.** RN102027752  
**Media** Petroleum Storage Tank  
**Violation No.** 2

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

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

No commas or \$

**Delayed Costs**

Equipment	\$500	22-May-2009	30-Mar-2010	0.85	\$1	\$28	\$30
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 properly install overfill prevention devices. 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)

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**

\$30

<b>Screening Date</b> 30-Jun-2009	<b>Docket No.</b> 2009-1109-PST-E	<b>PCW</b>																
<b>Respondent</b> City of Freeport		<small>Policy Revision 2 (September 2002)</small>																
<b>Case ID No.</b> 37952		<small>PCW Revision October 30, 2008</small>																
<b>Reg. Ent. Reference No.</b> RN102027752																		
<b>Media [Statute]</b> Petroleum Storage Tank																		
<b>Enf. Coordinator</b> Wallace Myers																		
<b>Violation Number</b>	3																	
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 115.245(2) and Tex. Health & Safety Code § 382.085(b)																	
<b>Violation Description</b>	Failed to verify proper operation of the Stage II equipment at least once every 12 months and vapor space manifolding and dynamic back-pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first. Specifically, the Stage II annual and triennial compliance tests had not been conducted.																	
	<b>Base Penalty</b>	\$10,000																
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>																		
<b>OR</b>	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <td colspan="3" style="text-align: center;">Harm</td> </tr> <tr> <td>Release</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> </tr> <tr> <td>Actual</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Potential</td> <td style="text-align: center;">x</td> <td></td> <td></td> </tr> </table>		Harm			Release	Major	Moderate	Minor	Actual				Potential	x			Percent <input type="text" value="25%"/>
	Harm																	
Release	Major	Moderate	Minor															
Actual																		
Potential	x																	
<b>&gt;&gt; Programmatic Matrix</b>																		
	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> </tr> <tr> <td>Falsification</td> <td></td> <td></td> <td></td> </tr> </table>		Major	Moderate	Minor	Falsification				Percent <input type="text" value="0%"/>								
	Major	Moderate	Minor															
Falsification																		
<b>Matrix Notes</b>	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.																	
	<b>Adjustment</b>	\$7,500																
		\$2,500																
<b>Violation Events</b>																		
<b>Number of Violation Events</b>	1	<b>Number of violation days</b> <input type="text" value="1096"/>																
mark only one with an x	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr><td>daily</td><td></td></tr> <tr><td>weekly</td><td></td></tr> <tr><td>monthly</td><td></td></tr> <tr><td>quarterly</td><td></td></tr> <tr><td>semiannual</td><td></td></tr> <tr><td>annual</td><td></td></tr> <tr><td>single event</td><td style="text-align: center;">x</td></tr> </table>	daily		weekly		monthly		quarterly		semiannual		annual		single event	x	<b>Violation Base Penalty</b> <input type="text" value="\$2,500"/>		
daily																		
weekly																		
monthly																		
quarterly																		
semiannual																		
annual																		
single event	x																	
	One single event is recommended for the 36-month period preceding the May 22, 2009 investigation.																	
<b>Good Faith Efforts to Comply</b>																		
	0.0% Reduction	\$0																
	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <td style="text-align: center;">Before NOV</td> <td style="text-align: center;">NOV to EDRP/Settlement Offer</td> </tr> <tr> <td>Extraordinary</td> <td></td> <td></td> </tr> <tr> <td>Ordinary</td> <td></td> <td></td> </tr> <tr> <td>N/A</td> <td style="text-align: center;">x</td> <td style="text-align: center;">(mark with x)</td> </tr> </table>		Before NOV	NOV to EDRP/Settlement Offer	Extraordinary			Ordinary			N/A	x	(mark with x)					
	Before NOV	NOV to EDRP/Settlement Offer																
Extraordinary																		
Ordinary																		
N/A	x	(mark with x)																
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.																	
	<b>Violation Subtotal</b>	\$2,500																
<b>Economic Benefit (EB) for this violation</b>																		
	<b>Estimated EB Amount</b>	\$568																
	<b>Violation Final Penalty Total</b>	\$2,500																
	<b>This violation Final Assessed Penalty (adjusted for limits)</b>	\$2,500																

## Economic Benefit Worksheet

**Respondent** City of Freeport  
**Case ID No.** 37952  
**Reg. Ent. Reference No.** RN102027752  
**Media** Petroleum Storage Tank  
**Violation No.** 3

<b>Percent Interest</b>	<b>Years of Depreciation</b>
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]	\$475	22-May-2006	22-May-2009	3.92	\$93	\$475	\$568
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. The date required is three years prior to the investigation and the final date is the investigation date.

Approx. Cost of Compliance

\$475

**TOTAL**

\$568

<b>Screening Date</b> 30-Jun-2009	<b>Docket No.</b> 2009-1109-PST-E																									
<b>Respondent</b> City of Freeport	<b>PGW</b> <small>Policy Revision 2 (September 2002) PCW Revision October 30, 2009</small>																									
<b>Case ID No.</b> 37952																										
<b>Reg. Ent. Reference No.</b> RN102027752																										
<b>Media [Statute]</b> Petroleum Storage Tank																										
<b>Enf. Coordinator</b> Wallace Myers																										
<b>Violation Number</b> 4																										
<b>Rufe Cite(s)</b>	30 Tex. Admin. Code § 115.242(3)(G) and Tex. Health & Safety Code § 382.085(b)																									
<b>Violation Description</b>	Failed to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system, including but not limited to vapor return lines, including such components as swivels, anti-recirculation valves, and underground piping, that malfunction, are blocked, or are restricted such that the pressure decay and/or dynamic backpressure through the line exceeds the value as certified in the approved system's California Air Resources Board ("CARB") Executive Order(s) or third-party certification. Specifically, the system failed the dynamic back-pressure test.																									
<b>Base Penalty</b>	\$10,000																									
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>																										
<b>OR</b>	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <th colspan="3">Harm</th> <td></td> </tr> <tr> <td></td> <th>Major</th> <th>Moderate</th> <th>Minor</th> <td></td> </tr> <tr> <th>Release</th> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <th>Actual</th> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <th>Potential</th> <td></td> <td style="text-align: center;">x</td> <td></td> <td style="text-align: right;"><b>Percent</b> 10%</td> </tr> </table>		Harm					Major	Moderate	Minor		Release					Actual					Potential		x		<b>Percent</b> 10%
		Harm																								
	Major	Moderate	Minor																							
Release																										
Actual																										
Potential		x		<b>Percent</b> 10%																						
<b>&gt;&gt; Programmatic Matrix</b>																										
	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <th>Major</th> <th>Moderate</th> <th>Minor</th> <td></td> </tr> <tr> <th>Falsification</th> <td></td> <td></td> <td></td> <td style="text-align: right;"><b>Percent</b> 0%</td> </tr> </table>		Major	Moderate	Minor		Falsification				<b>Percent</b> 0%															
	Major	Moderate	Minor																							
Falsification				<b>Percent</b> 0%																						
<b>Matrix Notes</b>	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.																									
<b>Adjustment</b>	\$9,000																									
<b>\$1,000</b>																										
<b>Violation Events</b>																										
Number of Violation Events	1																									
	39																									
	Number of violation days																									
<table border="1" style="margin-left: auto; margin-right: auto;"> <tr><td>daily</td><td></td></tr> <tr><td>weekly</td><td></td></tr> <tr><td>monthly</td><td></td></tr> <tr><td>quarterly</td><td style="text-align: center;">x</td></tr> <tr><td>semiannual</td><td></td></tr> <tr><td>annual</td><td></td></tr> <tr><td>single event</td><td></td></tr> </table> <p><small>mark only one with an x</small></p>	daily		weekly		monthly		quarterly	x	semiannual		annual		single event		<b>Violation Base Penalty</b> \$1,000											
daily																										
weekly																										
monthly																										
quarterly	x																									
semiannual																										
annual																										
single event																										
<p>One quarterly event is recommended based on documentation of the violation during the May 22, 2009 investigation to the June 30, 2009 screening date.</p>																										
<b>Good Faith Efforts to Comply</b>	0.0% Reduction \$0																									
	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <th>Before NOV</th> <th>NOV to EDPRP/Settlement Offer</th> </tr> <tr> <th>Extraordinary</th> <td></td> <td></td> </tr> <tr> <th>Ordinary</th> <td></td> <td></td> </tr> <tr> <th>N/A</th> <td style="text-align: center;">x</td> <td style="text-align: center;">(mark with x)</td> </tr> </table>		Before NOV	NOV to EDPRP/Settlement Offer	Extraordinary			Ordinary			N/A	x	(mark with x)													
	Before NOV	NOV to EDPRP/Settlement Offer																								
Extraordinary																										
Ordinary																										
N/A	x	(mark with x)																								
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.																									
<b>Violation Subtotal</b>	\$1,000																									
<b>Economic Benefit (EB) for this violation</b>																										
<b>Estimated EB Amount</b>	\$20																									
<b>Statutory Limit Test</b>																										
<b>Violation Final Penalty Total</b>	\$1,000																									
<b>This violation Final Assessed Penalty (adjusted for limits)</b> \$1,000																										

## Economic Benefit Worksheet

**Respondent** City of Freeport  
**Case ID No.** 37952  
**Reg. Ent. Reference No.** RN102027752  
**Media** Petroleum Storage Tank  
**Violation No.** 4

Percent Interest	Years of Depreciation
5.0	15

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

No commas or \$.

**Delayed Costs**

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)	\$475	22-May-2009	30-Mar-2010	0.85	\$20	n/a	\$20

Notes for DELAYED costs

Actual cost to repair blockages in the piping system and conduct Stage II system compliance testing. The date required is the investigation date 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)

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

\$475

**TOTAL**

\$20

<b>Screening Date</b> 30-Jun-2009	<b>Docket No.</b> 2009-1109-PST-E	<b>PCW</b>		
<b>Respondent</b> City of Freeport	<small>Policy Revision 2 (September 2002)</small>			
<b>Case ID No.</b> 37952	<small>PCW Revision October 30, 2008</small>			
<b>Reg. Ent. Reference No.</b> RN102027752				
<b>Media [Statute]</b> Petroleum Storage Tank				
<b>Enf. Coordinator</b> Wallace Myers				
<b>Violation Number</b>	5			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code §§ 334.50(d)(9)(A)(iv) and 334.72			
<b>Violation Description</b>	Failed to report a suspected release to the agency within 24 hours of discovery. Specifically, statistical inventory reconciliation ("SIR") results for the diesel tank for February 2009 indicated a suspected release that was not reported.			
<b>Base Penalty</b>	\$10,000			
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
<b>OR</b>	<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
				<b>Percent</b> <input type="text" value="0%"/>
<b>&gt;&gt; Programmatic Matrix</b>				
	<b>Falsification</b>	Major	Moderate	Minor
	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
				<b>Percent</b> <input type="text" value="10%"/>
<b>Matrix Notes</b>	100% of the rule requirement was not met.			
			<b>Adjustment</b>	\$9,000
			\$1,000	
<b>Violation Events</b>				
	<b>Number of Violation Events</b>	<input type="text" value="1"/>	<b>Number of violation days</b>	<input type="text" value="1"/>
	<small>mark only one with an x</small>	daily	<input type="text"/>	<b>Violation Base Penalty</b> <input type="text" value="\$1,000"/>
		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="checkbox"/>	
	One single event is recommended based on documentation of the violation during the May 22, 2009 investigation.			
<b>Good Faith Efforts to Comply</b>			<b>0.0% Reduction</b>	\$0
	<small>Before NOV    NOV to EDPRP/Settlement Offer</small>			
	Extraordinary	<input type="text"/>	<input type="text"/>	
	Ordinary	<input type="text"/>	<input type="text"/>	
	N/A	<input checked="" type="checkbox"/>	<small>(mark with x)</small>	
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.			
			<b>Violation Subtotal</b>	\$1,000
<b>Economic Benefit (EB) for this violation</b>			<b>Statutory Limit Test</b>	
	<b>Estimated EB Amount</b>	<input type="text" value="\$100"/>	<b>Violation Final Penalty Total</b>	<input type="text" value="\$1,000"/>
			<b>This violation Final Assessed Penalty (adjusted for limits)</b>	<input type="text" value="\$1,000"/>

## Economic Benefit Worksheet

**Respondent** City of Freeport  
**Case ID No.** 37952  
**Reg. Ent. Reference No.** RN102027752  
**Media** Petroleum Storage Tank  
**Violation No.** 5

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

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

Item Description: No commas or \$

**Delayed Costs**

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

Notes for DELAYED costs

**Avoided Costs**

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$100	28-Feb-2009	1-Mar-2009	0.00	\$0	\$100	\$100
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to report a suspected release. The date required is the date of the suspected release and the final date is the date the report was due.

Approx. Cost of Compliance

\$100

**TOTAL**

\$100

<b>Screening Date</b> 30-Jun-2009		<b>Docket No.</b> 2009-1109-PST-E		<b>PCW</b>	
<b>Respondent</b> City of Freeport				<small>Policy Revision 2 (September 2002)</small>	
<b>Case ID No.</b> 37952				<small>PCW Revision October 30, 2008</small>	
<b>Reg. Ent. Reference No.</b> RN102027752					
<b>Media [Statute]</b> Petroleum Storage Tank					
<b>Enf. Coordinator</b> Wallace Myers					
<b>Violation Number</b>		<input type="text" value="6"/>			
<b>Rule Cite(s)</b>		<input type="text" value="30 Tex. Admin. Code § 334.74"/>			
<b>Violation Description</b>		<input type="text" value="Failed to investigate a suspected release of regulated substances within 30 days of discovery. Specifically, SIR results for February 2009 indicated a suspected release that was not investigated."/>			
<b>Base Penalty</b>				<input type="text" value="\$10,000"/>	
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>					
<b>OR</b>	<b>Harm</b>				
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
				<b>Percent</b> <input type="text" value="25%"/>	
<b>&gt;&gt; Programmatic Matrix</b>					
		Falsification	Major	Moderate	Minor
		<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
				<b>Percent</b> <input type="text" value="0%"/>	
<b>Matrix Notes</b>		<input type="text" value="Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation."/>			
<b>Adjustment</b>				<input type="text" value="\$7,500"/>	
				<input type="text" value="\$2,500"/>	
<b>Violation Events</b>					
<b>Number of Violation Events</b>		<input type="text" value="2"/>	<b>Number of violation days</b> <input type="text" value="39"/>		
<small>mark only one with an x</small>	daily	<input type="text"/>			
	weekly	<input type="text"/>			
	monthly	<input checked="" type="checkbox"/>			
	quarterly	<input type="text"/>			
	semiannual	<input type="text"/>			
	annual	<input type="text"/>			
	single event	<input type="text"/>			
				<b>Violation Base Penalty</b> <input type="text" value="\$5,000"/>	
<input type="text" value="Two monthly events are recommended based on documentation of the violation during the May 22, 2009 investigation to the June 30, 2009 screening date."/>					
<b>Good Faith Efforts to Comply</b>		<input type="text" value="0.0%"/>	<b>Reduction</b>	<input type="text" value="\$0"/>	
		Before NOV	NOV to EOPRP/Settlement Offer		
Extraordinary	<input type="text"/>	<input type="text"/>			
Ordinary	<input type="text"/>	<input type="text"/>			
N/A	<input checked="" type="checkbox"/>	<small>(mark with x)</small>			
<b>Notes</b>		<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>			
<b>Violation Subtotal</b>				<input type="text" value="\$5,000"/>	
<b>Economic Benefit (EB) for this violation</b>			<b>Statutory Limit Test</b>		
<b>Estimated EB Amount</b>		<input type="text" value="\$260"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$5,000"/>		
<b>This violation Final Assessed Penalty (adjusted for limits)</b>				<input type="text" value="\$5,000"/>	

## Economic Benefit Worksheet

**Respondent** City of Freeport  
**Case ID No.** 37952  
**Reg. Ent. Reference No.** RN102027752  
**Media** Petroleum Storage Tank  
**Violation No.** 6

<b>Percent Interest</b>	<b>Years of Depreciation</b>
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)	\$5,000	30-Mar-2009	14-Apr-2010	1.04	\$260	n/a	\$260

Notes for DELAYED costs

Estimated cost to investigate a suspected release. The date required is 30 days after the discovery of the suspected release 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)**

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

\$5,000

**TOTAL**

\$260

# Compliance History Report

Customer/Respondent/Owner-Operator:	CN600641799	City of Freeport	Classification: AVERAGE	Rating: 2.10
Regulated Entity:	RN102027752	Freeport Service Center	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	50446
Location:	510 AVENUE A SOUTH, FREEPORT, TX, 77541			
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	June 30, 2009			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	June 30, 2004 to June 30, 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.  
N/A
  - B. Any criminal convictions of the state of Texas and the federal government.  
N/A
  - C. Chronic excessive emissions events.  
N/A
  - D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
1 06/26/2009 (746727)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
  - F. Environmental audits.  
N/A
  - G. Type of environmental management systems (EMSs).  
N/A
  - H. Voluntary on-site compliance assessment dates.  
N/A
  - I. Participation in a voluntary pollution reduction program.  
N/A
  - J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY OF FREEPORT  
RN102027752

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2009-1109-PST-E

I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding City of Freeport ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a fleet refueling facility at 510 Avenue A South in Freeport, Brazoria County, Texas (the "Station").
2. The Respondent's two underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about July 1, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Twelve Thousand Three Hundred Seventy-Five Dollars (\$12,375) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Nine Thousand Nine Hundred Dollars (\$9,900) of

the administrative penalty and Two Thousand Four Hundred Seventy-Five Dollars (\$2,475) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Station:
  - a. Implemented a release detection method for all USTs at the Station on May 23, 2009;
  - b. Successfully tested the line leak detectors for performance and operational reliability on May 23, 2009; and
  - c. Successfully conducted the required annual testing of the Stage II equipment on May 23, 2009.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

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

1. Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on May 22, 2009.
2. Failed to test the line leak detectors at least once per year for performance and operational reliability, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a), as documented during an investigation conducted on May 22, 2009.

3. Failed to equip the tank with a valve or other appropriate device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level no higher than 95% capacity level for the tank, in violation of 30 TEX. ADMIN. CODE § 334.51(b)(2)(C) and TEX. WATER CODE § 26.3475(c)(2), as documented during an investigation conducted on May 22, 2009. Specifically, overfill prevention equipment was not installed.
4. Failed to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first, in violation of 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on May 22, 2009. Specifically, the Stage II annual and triennial compliance tests had not been conducted.
5. Failed to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system, including but not limited to vapor return lines, including such components as swivels, anti-recirculation valves, and underground piping, that malfunction, are blocked, or are restricted such that the pressure decay and/or dynamic backpressure through the line exceeds the value as certified in the approved system's California Air Resources Board ("CARB") Executive Order(s) or third-party certification, in violation of 30 TEX. ADMIN. CODE § 115.242(3)(G) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on May 22, 2009. Specifically, the system failed the dynamic back-pressure test.
6. Failed to report a suspected release to the agency within 24 hours of discovery, in violation of 30 TEX. ADMIN. CODE §§ 334.50(d)(9)(A)(iv) and 334.72, as documented during an investigation conducted on May 22, 2009. Specifically, statistical inventory reconciliation ("SIR") results for the diesel tank for February 2009 indicated a suspected release that was not reported.
7. Failed to investigate a suspected release of regulated substances within 30 days of discovery, in violation of 30 TEX. ADMIN. CODE § 334.74, as documented during an investigation conducted on May 22, 2009. Specifically, SIR results for February 2009 indicated a suspected release that was not investigated.

### III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Freeport, Docket No. 2009-1109-PST-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:
- a. Within 30 days after the effective date of this Agreed Order:
    - i. Install an overfill prevention device for the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.51;
    - ii. Ensure that all piping is free of any blockages that may impair the effectiveness of the system, in accordance with 30 TEX. ADMIN. CODE § 115.242;
    - iii. Successfully conduct the required triennial testing of the Stage II equipment, in accordance with 30 TEX. ADMIN. CODE § 115.245; and
    - iv. Establish and implement a process for reporting a suspected release, in accordance with 30 TEX. ADMIN. CODE § 334.72.
  - b. Within 45 days after the effective date of this Agreed Order, conduct an investigation of the suspected release and implement appropriate corrective measures, in accordance with 30 TEX. ADMIN. CODE § 334.74.
  - c. Within 60 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

The certification shall be submitted to:

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

with a copy to:

Waste Section Manager  
Houston Regional Office  
Texas Commission on Environmental Quality  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Station operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

John Grallier  
For the Executive Director

12/23/2009  
Date

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

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

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

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

Sean Ryan  
Signature

11-4-09  
Date

Jeff Aynes  
Name (Printed or typed)  
Authorized Representative of  
City of Freeport

City Manager  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.