

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2008-1822-PST-E TCEQ ID: RN101431831 CASE NO.: 36803**  
**RESPONDENT NAME: MARK E. BLACKWELL DBA BLACKIES GRAB N GO**

<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:** 3702 Bowie Street, San Angelo, Tom Green 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 and the Respondent expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired February 15, 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) 239-0019

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

**TCEQ Regional Contact:** Mr. Mark Newman, San Angelo Regional Office, MC R-8, (325) 655-9479

**Respondent:** Mr. Mark Blackwell, Owner, Blackies Grab N Go, 3702 Bowie Street, San Angelo, Texas 76903

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

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><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> September 8, 2008</p> <p><b>Date of NOE Relating to this Case:</b> October 28, 2008</p> <p><b>Background Facts:</b> The EDPRP was filed March 30, 2009. According to the return receipt "green card," the Respondent received notice of the EDPRP on April 1, 2009. The EDFARP was filed on October 6, 2009. According to the return receipt "green card," the Respondent received notice of the EDFARP on October 8, 2009. The Respondent failed to file an answer to either the EDPRP or EDFARP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Current Compliance Status:</b> Not yet in compliance. The Respondent does not have a current delivery certificate.</p> <p><b>PST:</b></p> <ol style="list-style-type: none"> <li>Failed to notify the agency of any change or addition within 30 days from the date of the occurrence of the change or addition, or within 30 days from the date on which the owner or operator first became aware of the change or addition [TEX. ADMIN. CODE § 334.7(d)(3)].</li> <li>Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].</li> <li>Failed to maintain the required UST records and make them immediately available for inspection upon request by agency personnel. [30 TEX. ADMIN. CODE § 334.10(b)].</li> </ol>	<p><b>Total Assessed:</b> \$19,915</p> <p><b>Total Deferred:</b> \$0</p> <p><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> \$19,915</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of the Order.</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" 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>Ordering Provisions:</b></p> <ol style="list-style-type: none"> <li>The Respondent shall take the following steps to shut down operations of the non-compliant UST systems at the Facility:             <ol style="list-style-type: none"> <li>Immediately:                     <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 UST system from service.</li> </ol> </li> <li>The Respondent's UST delivery certificate is revoked immediately. The Respondent may submit an application for a new delivery certificate only after the Respondent has complied with all of the terms and conditions of the Order.</li> </ol> </li> <li>Within 10 days, send in his UST delivery certificate to the TCEQ.</li> <li>Within 15 days, submit written documentation to demonstrate compliance with Ordering Provision nos. 1.a.i. through 1.a.v.</li> <li>Respondent's USTs shall remain out of service until such time as the Respondent demonstrates to the satisfaction of the Executive Director that he has corrected the violations.</li> <li>If the Respondent elects to permanently remove from service any UST system at the Facility, the Respondent shall permanently remove those UST systems, and shall, within 15 days after the effective date of this Order, submit to the Commission a written report documenting compliance.</li> <li>Prior to receiving deliveries of gasoline and resuming retail sales of gasoline:             <ol style="list-style-type: none"> <li>Install and implement a release detection method, test the line leak detectors for performance and operational reliability, and begin conducting volume measurement and monthly reconciliation of inventory control records;</li> </ol> </li> </ol>

<b>VIOLATION SUMMARY CHART:</b>		
<b>VIOLATION INFORMATION</b>	<b>PENALTY CONSIDERATIONS</b>	<b>CORRECTIVE ACTIONS TAKEN/REQUIRED</b>
<p>4. Failed to ensure that all spill and overflow prevention devices are maintained in good operating condition [30 TEX. ADMIN. CODE § 334.51(a)(6) and TEX. WATER CODE § 26.3475(c)(2)].</p> <p>5. Failed to conduct effective manual or automatic inventory control procedures for the UST system [30 TEX. ADMIN. CODE § 334.48(c)].</p> <p>6. Failed to have cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years [30 TEX. ADMIN. CODE § 334.49(c)(4) and TEX. WATER CODE § 26.3475(d)].</p> <p>7. Failed to monitor the USTs for releases at a frequency of at least once per 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>8. Failed to provide proper release detection for the pressurized piping associated with the USTs [30 TEX. ADMIN. CODE § 334.50 (b)(2) and TEX. WATER CODE § 26.3475(a)].</p> <p>9. Failed 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)].</p> <p>10. Failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons [30 TEX. ADMIN. CODE § 334.50 (d)(1)(B)(ii)].</p> <p>11. Failed to conduct inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day [30 TEX. ADMIN. CODE § 334.50 (d)(1)(B)(iii)(I)].</p>		<p>b. Install a corrosion protection system for the active USTs at the Facility;</p> <p>c. Ensure that all spill and overflow prevention devices are maintained in good operating condition;</p> <p>d. Submit documentation that demonstrates acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs;</p> <p>e. Submit an amended UST registration to reflect the current operational status of the active USTs;</p> <p>f. Begin maintaining all UST records;</p> <p>g. Begin to conduct effective manual or automatic inventory control procedures for the UST system; and</p> <p>h. Obtain a new delivery certificate.</p> <p>7. Upon obtaining a new delivery certificate, post the delivery certificate in a location where the document is clearly visible at all times</p> <p>8. Within 10 days of resuming retail sales of gasoline, submit written certification to demonstrate compliance with Ordering Provision nos. 6.a. through 7.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	3-Nov-2008			
	<b>PCW</b>	30-Sep-2009	<b>Screening</b>	12-Nov-2008	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>					
<b>Respondent</b>	Mark E. Blackwell dba Blackies Grab N Go				
<b>Reg. Ent. Ref. No.</b>	RN101431831				
<b>Facility/Site Region</b>	8-San Angelo	<b>Major/Minor Source</b>	Minor		

<b>CASE INFORMATION</b>					
<b>Enf./Case ID No.</b>	36803	<b>No. of Violations</b>	7		
<b>Docket No.</b>	2008-1822-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>	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

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$12,500
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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>	30.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$3,750
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Notes: Enhancement for one Agreed Order containing a denial of liability and due to poor performer classification.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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Notes: The Respondent does 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	\$3,786
Approx. Cost of Compliance	\$6,400

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$16,250
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	22.6%	<b>Adjustment</b>	\$3,665
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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. 2, 6 and 7.

**Final Penalty Amount** \$19,915

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$19,915
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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 indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

<b>PAYABLE PENALTY</b>	\$19,915
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**Screening Date** 12-Nov-2008      **Docket No.** 2008-1822-PST-E  
**Respondent** Mark E. Blackwell dba Blackies Grab N Go  
**Case ID No.** 36803  
**Reg. Ent. Reference No.** RN101431831  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Wallace Myers

**PCW**

Policy Revision 2 (September 2002)  
 PCW Revision October 30, 2008

### Compliance History Worksheet

#### >> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 20%

#### >> Repeat Violator (Subtotal 3)

No

**Adjustment Percentage (Subtotal 3)** 0%

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

Poor Performer

**Adjustment Percentage (Subtotal 7)** 10%

#### >> Compliance History Summary

**Compliance History Notes**

Enhancement for one Agreed Order containing a denial of liability and due to poor performer classification.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 30%

Screening Date 12-Nov-2008 Docket No. 2008-1822-PST-E PCW

Respondent Mark E. Blackwell dba Blackies Grab N Go Policy Revision 2 (September 2002)

Case ID No. 36803 PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101431831

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.7(d)(3)

Violation Description Failed to notify the agency of any change or addition within 30 days from the date of the occurrence of the change or addition, or within 30 days from the date on which the owner or operator first became aware of the change or addition. Specifically, the registration was not updated to reflect the correct operational status.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual				
	Potential				0%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
		x			10%

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 65 Number of violation days

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

Violation Base Penalty \$1,000

One single event is recommended based on the documentation of the violation during the September 8 2008 investigation.

Good Faith Efforts to Comply

	0.0%	Reduction	\$0
		Before NOV	NOV to EDP/PP/ Settlement Offer
Extraordinary			
Ordinary			
N/A	x	(mark with x)	

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

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount \$5 Violation Final Penalty Total \$1,593

This violation Final Assessed Penalty (adjusted for limits) \$1,593

## Economic Benefit Worksheet

**Respondent** Mark E. Blackwell dba Blackies Grab N Go

**Case ID No.** 36803

**Reg. Ent. Reference No.** RN101431831

**Media** Petroleum Storage Tank

**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	8-Sep-2008	12-Aug-2009	0.93	\$5	n/a	\$5

Notes for DELAYED costs

Estimated cost to accurately prepare and submit an updated UST registration. The Date Required is the investigation date. 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

**TOTAL**

**Screening Date** 12-Nov-2008 **Docket No.** 2008-1822-PST-E **PCW**  
**Respondent** Mark E. Blackwell dba Blackies Grab N Go *Policy Revision 2 (September 2002)*  
**Case ID No.** 36803 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN101431831  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Wallace Myers

**Violation Number** 2

**Rule Cite(s)** 30 Tex. Admin. Code § 37.815(a) and (b)

**Violation Description** Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs.

**Base Penalty** \$10,000

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
		x			10%

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

**Adjustment** \$9,000

\$1,000

**Violation Events**

Number of Violation Events 2 365 Number of violation days

*mark only one with an x*

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

**Violation Base Penalty** \$2,000

Two single events (one per tank) are recommended.

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

**Violation Subtotal** \$2,000

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

**Estimated EB Amount** \$1,365 **Violation Final Penalty Total** \$3,186

**This violation Final Assessed Penalty (adjusted for limits)** \$3,186

## Economic Benefit Worksheet

**Respondent** Mark E. Blackwell dba Blackies Grab N Go

**Case ID No.** 36803

**Reg. Ent. Reference No.** RN101431831

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

Notes for DELAYED costs

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]	\$1,300	8-Sep-2007	8-Sep-2008	1.00	\$65	\$1,300	\$1,365
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to provide financial assurance for two USTs (\$650 per tank). The Date Required is one year prior to the investigation date. The Final Date is the investigation date.

Approx. Cost of Compliance \$1,300

**TOTAL** \$1,365

**Screening Date** 12-Nov-2008 **Docket No.** 2008-1822-PST-E **PCW**  
**Respondent** Mark E. Blackwell dba Blackies Grab N Go *Policy Revision 2 (September 2002)*  
**Case ID No.** 36803 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN101431831  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Wallace Myers

**Violation Number** 3  
**Rule Cite(s)** 30 Tex. Admin. Code § 334.10(b)  
**Violation Description** Failed to maintain the required UST records and make them immediately available for inspection upon request by agency personnel.

**Base Penalty** \$10,000

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

OR	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

**>> Programmatic Matrix**

				Percent
Falsification	Major	Moderate	Minor	
	x			10%

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

**Adjustment** \$9,000

\$1,000

**Violation Events**

Number of Violation Events 1 65 Number of violation days

*mark only one with an x*

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

**Violation Base Penalty** \$1,000

One single event is recommended based on the documentation of the violation during the September 8, 2008 investigation.

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

**Violation Subtotal** \$1,000

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

**Estimated EB Amount** \$23 **Violation Final Penalty Total** \$1,593

**This violation Final Assessed Penalty (adjusted for limits)** \$1,593

## Economic Benefit Worksheet

**Respondent** Mark E. Blackwell dba Blackies Grab N Go

**Case ID No.** 36803

**Reg. Ent. Reference No.** RN101431831

**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	\$500	8-Sep-2008	12-Aug-2009	0.93	\$23	n/a	\$23
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 maintain UST records. The Date Required is the investigation date. 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** \$23

**Screening Date** 12-Nov-2008 **Docket No.** 2008-1822-PST-E **PCW**  
**Respondent** Mark E. Blackwell dba Blackies Grab N Go *Policy Revision 2 (September 2002)*  
**Case ID No.** 36803 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN101431831  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Wallace Myers

**Violation Number** 4  
**Rule Cite(s)** 30 Tex. Admin. Code § 334.51(a)(6) and Tex. Water Code § 26.3475(c)(2)  
**Violation Description** Failed to ensure that all spill and overfill prevention devices are maintained in good operating condition. Specifically, tank nos. 1 and 2 did not have liquid tight spill buckets and the fill tube cap for tank no. 1 did not close/seal tightly.

**Base Penalty** \$10,000

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

OR	<b>Harm</b>			Percent
	Major	Moderate	Minor	
	Actual	Potential	Potential	
		x		10%

**>> Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
				0%

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

**Adjustment** \$9,000

\$1,000

**Violation Events**

Number of Violation Events 1 45 Number of violation days

*mark only one with an x*

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

**Violation Base Penalty** \$1,000

One quarterly event is recommended from the investigation date of September 8, 2008 to the October 23, 2008 compliance 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 Respondent does not meet the good faith criteria for this violation.

**Violation Subtotal** \$1,000

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

**Estimated EB Amount** \$3 **Violation Final Penalty Total** \$1,593

**This violation Final Assessed Penalty (adjusted for limits)** \$1,593

## Economic Benefit Worksheet

**Respondent** Mark E. Blackwell dba Blackies Grab N Go

**Case ID No.** 36803

**Reg. Ent. Reference No.** RN101431831

**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)	\$500	8-Sep-2008	23-Oct-2008	0.12	\$3	n/a	\$3

Notes for DELAYED costs

Estimated cost to install the spill buckets and replace the tight-fill tube caps and maintain the overfill protection equipment in proper working condition. The Date Required is the investigation date. The Final Date is the date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance \$500

**TOTAL** \$3

**Screening Date** 12-Nov-2008 **Docket No.** 2008-1822-PST-E **PCW**  
**Respondent** Mark E. Blackwell dba Blackies Grab N Go *Policy Revision 2 (September 2002)*  
**Case ID No.** 36803 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN101431831  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Wallace Myers

**Violation Number** 5  
**Rule Cite(s)** 30 Tex. Admin. Code § 334.48(c)  
**Violation Description** Failed to conduct effective manual or automatic inventory control procedures for the UST system.

**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 65 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 from the investigation date of September 8, 2008 to the screening date of November 12, 2008.

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

**Violation Subtotal** \$2,500

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

**Estimated EB Amount** \$21 **Violation Final Penalty Total** \$3,983

**This violation Final Assessed Penalty (adjusted for limits)** \$3,983

## Economic Benefit Worksheet

**Respondent** Mark E. Blackwell dba Blackies Grab N Go

**Case ID No.** 36803

**Reg. Ent. Reference No.** RN101431831

**Media** Petroleum Storage Tank

**Violation No.** 5

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	8-Sep-2008	12-Jul-2009	0.84	\$21	n/a	\$21
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. The Date Required is the investigation date. 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** \$21

**Screening Date** 12-Nov-2008 **Docket No.** 2008-1822-PST-E **PCW**  
**Respondent** Mark E. Blackwell dba Blackies Grab N Go *Policy Revision 2 (September 2002)*  
**Case ID No.** 36803 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN101431831  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Wallace Myers

**Violation Number** 6  
**Rule Cite(s)** 30 Tex. Admin. Code § 334.49(c)(4) and Tex. Water Code § 26.3475(d)  
**Violation Description** Failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years. Specifically, the triennial test had not been conducted.

**Base Penalty** \$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 1095 Number of violation days

*mark only one with an x*

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

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

One single event is recommended for the three-year period preceding the September 8, 2008 investigation.

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

**Violation Subtotal** \$2,500

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount \$1,204 Violation Final Penalty Total \$3,983

**This violation Final Assessed Penalty (adjusted for limits)** \$3,983

## Economic Benefit Worksheet

**Respondent** Mark E. Blackwell dba Blackies Grab N Go

**Case ID No.** 36803

**Reg. Ent. Reference No.** RN101431831

**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

### 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	8-Sep-2005	3-Nov-2008	4.07	\$204	\$1,000	\$1,204
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Avoided cost for completing the triennial test. The Date Required is three years prior to the investigation. The Final Date is the compliance date.

Approx. Cost of Compliance \$1,000

**TOTAL** \$1,204

**Screening Date** 12-Nov-2008 **Docket No.** 2008-1822-PST-E **PCW**  
**Respondent** Mark E. Blackwell dba Blackies Grab N Go *Policy Revision 2 (September 2002)*  
**Case ID No.** 36803 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN101431831  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Wallace Myers

**Violation Number** 7  
**Rule Cite(s)** 30 Tex. Admin. Code §§ 334.50(b)(1)(A), (b)(2), (b)(2)(A)(i)(III), (d)(1)(B)(ii), (d)(1)(B)(iii)(I) and Tex. Water Code § 26.3475(a) and (c)(1)  
**Violation Description** Failed to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring). Failed to provide proper release detection for the pressurized piping associated with the USTs. Specifically, the Respondent did not conduct the annual piping tightness test. Failed to test the line leak detectors at least once per year for performance and operational reliability. Failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons. Also, failed to conduct 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			
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**

	1	65	Number of violation days
<i>mark only one with an x</i>	daily		
	weekly		
	monthly		
	quarterly	x	
	semiannual		
	annual		
	single event		

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

One quarterly event is recommended from the investigation date of September 8, 2008 to the screening date of November 12, 2008.

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

**Violation Subtotal** \$2,500

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

**Estimated EB Amount** \$1,165 **Violation Final Penalty Total** \$3,983  
**This violation Final Assessed Penalty (adjusted for limits)** \$3,983

## Economic Benefit Worksheet

**Respondent** Mark E. Blackwell dba Blackies Grab N Go

**Case ID No.** 36803

**Reg. Ent. Reference No.** RN101431831

**Media** Petroleum Storage Tank

**Violation No.** 7

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	8-Sep-2008	12-Aug-2009	0.93	\$69	n/a	\$69

**Notes for DELAYED costs** Estimated cost to provide release detection for the USTs including recording daily volume measurement and monthly reconciliation of inventory control records. The Date Required is the date of investigation. 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]	\$1,000	8-Sep-2007	8-Sep-2008	1.92	\$96	\$1,000	\$1,096
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs** Estimated cost to conduct annual piping tightness and line leak detector tests. The Date Required is one year prior to the investigation date. The Final Date is the date of investigation.

Approx. Cost of Compliance \$2,500

**TOTAL** \$1,165



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  
MARK E. BLACKWELL DBA  
BLACKIES GRAB N GO;  
RN101431831**

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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**DEFAULT AND SHUTDOWN ORDER  
DOCKET NO. 2008-1822-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 and the rules of the TCEQ, which requests appropriate relief, the imposition of an administrative penalty, corrective action of the respondent, and the revocation of the Respondent’s underground storage tank (“UST”) delivery certificate. The TCEQ also considered the Motion of the Executive Director requesting entry of an order requiring the respondent, Mark E. Blackwell dba Blackies Grab N Go (“Mr. Blackwell”) to shutdown or remove from service the USTs at Blackies Grab N Go, located at 3702 Bowie Street, San Angelo, Tom Green County, Texas.

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

**FINDINGS OF FACT**

1. Mr. Blackwell owns and operates a convenience store with retail sales of gasoline located at 3702 Bowie Street, San Angelo, Tom Green County, Texas (the “Facility”).
2. Mr. Blackwell’s two underground storage tanks (“USTs”) are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Blackwell’s USTs contain a regulated substance as defined in the rules of the Commission.
3. During an investigation conducted on September 8, 2008, a TCEQ San Angelo Regional Office investigator documented that Mr. Blackwell violated the following requirements:
  - a. Failed to notify the agency of any change or addition within 30 days from the date of the occurrence of the change or addition, or within 30 days from the date on which the owner or operator first became aware of the change or addition. Specifically, the

registration was not updated to reflect the correct operational status of the UST system;

- b. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs;
  - c. Failed to maintain the required UST records and make them immediately available for inspection upon request by agency personnel;
  - d. Failed to ensure that all spill and overfill prevention devices are maintained in good operating condition. Specifically, tank nos. 1 and 2 did not have liquid tight spill buckets and the fill tube cap for tank no. 1 did not close/seal tightly;
  - e. Failed to conduct effective manual or automatic inventory control procedures for the UST system;
  - f. Failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years. Specifically, the triennial test had not been conducted;
  - g. Failed to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring);
  - h. Failed to provide proper release detection for the pressurized piping associated with the USTs. Specifically, Mr. Blackwell did not conduct the annual piping tightness test;
  - i. Failed to test the line leak detectors at least once per year for performance and operational reliability;
  - j. Failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; and
  - k. Failed to conduct inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day.
4. By letter dated October 28, 2008 the TCEQ San Angelo Regional Office provided Mr. Blackwell with notice of the violations and the TCEQ's authority to shut down and remove from service UST systems not in compliance with UST system release detection, spill and/or

overflow prevention, corrosion protection, and/or financial assurance requirements if the violations were not corrected.

5. Mr. Blackwell received notice of the violations on or about November 2, 2008.
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 Mark E. Blackwell dba Blackies Grab N Go" (the "EDPRP") in the TCEQ Chief Clerk's office on March 30, 2009.
7. By letter dated March 30, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Blackwell with notice of the EDPRP. According to the return receipt "green card," Mr. Blackwell received notice of the EDPRP on April 1, 2009, as evidenced by the signature on the card.
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 Mark E. Blackwell dba Blackies Grab N Go" (the "EDFARP") in the TCEQ Chief Clerk's office on October 6, 2009.
9. By letter dated October 6, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Blackwell with notice of the EDFARP. According to the return receipt "green card," Mr. Blackwell received notice of the EDFARP on October 8, 2009, as evidenced by the signature on the card.
10. More than 20 days have elapsed since Mr. Blackwell received notice of the EDPRP and EDFARP, provided by the Executive Director. Mr. Blackwell 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 December 14, 2009, TCEQ provided Mr. Blackwell with notice of TCEQ's intent to order the USTs at the Facility shut down and removed from service if Mr. Blackwell failed to correct the corrosion protection, release detection, spill and overflow prevention equipment, and financial assurance violations within 30 days after Mr. Blackwell's receipt of the notice.
12. As of the date of entry of this Order, Mr. Blackwell has not corrected the release detection, corrosion protection, spill and overflow protection, and financial assurance violations noted during the September 8, 2008 investigation.

13. The UST system at the Facility does not have release detection as required by 30 TEX. ADMIN. CODE § 334.50, does not have corrosion protection as required by 30 TEX. ADMIN. CODE § 334.49, does not have spill and overfill prevention as required by 30 TEX. ADMIN. CODE § 334.51, does not have financial assurance as required by 30 TEX. ADMIN. CODE § 37.815(a) and (b), and may be releasing petroleum products to the environment without the knowledge of the tank owner or operator. Therefore, conditions at the Facility constitute an imminent peril to public health, safety, and welfare.

### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Blackwell is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Blackwell violated 30 TEX. ADMIN. CODE § 334.7(d)(3) by failing to notify the agency of any change or addition within 30 days from the date of the occurrence of the change or addition, or within 30 days from the date on which the owner or operator first became aware of the change or addition.
3. As evidenced by Finding of Fact No. 3.b., Mr. Blackwell violated 30 TEX. ADMIN. CODE § 37.815(a) and (b) by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs.
4. As evidenced by Finding of Fact No. 3.c., Mr. Blackwell violated 30 TEX. ADMIN. CODE § 334.10(b) by failing to maintain the required UST records and make them immediately available for inspection upon request by agency personnel.
5. As evidenced by Finding of Fact No. 3.d., Mr. Blackwell violated 30 TEX. ADMIN. CODE § 334.51(a)(6) and TEX. WATER CODE § 26.3475(c)(2) by failing to ensure that all spill and overfill prevention devices are maintained in good operating condition.
6. As evidenced by Finding of Fact No. 3.e., Mr. Blackwell violated 30 TEX. ADMIN. CODE § 334.48(c) by failing to conduct effective manual or automatic inventory control procedures for the UST system.
7. As evidenced by Finding of Fact No. 3.f., Mr. Blackwell violated 30 TEX. ADMIN. CODE § 334.49(c)(4) and TEX. WATER CODE § 26.3475(d) by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years.
8. As evidenced by Finding of Fact No. 3.g., Mr. Blackwell violated 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1) by failing to monitor the USTs for

releases at a frequency of at least once per month (not to exceed 35 days between each monitoring).

9. As evidenced by Finding of Fact No. 3.h., Mr. Blackwell violated 30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a) by failing to provide proper release detection for the pressurized piping associated with the USTs.
10. As evidenced by Finding of Fact No. 3.i., Mr. Blackwell violated 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) by failing to test the line leak detectors at least once per year for performance and operational reliability.
11. As evidenced by Finding of Fact No. 3.j., Mr. Blackwell violated 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) by failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons.
12. As evidenced by Finding of Fact No. 3.k., Mr. Blackwell violated 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(iii)(I) by failing to conduct inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day.
13. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director timely served Mr. Blackwell with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
14. As evidenced by Finding of Fact Nos. 8 and 9, the Executive Director timely served Mr. Blackwell with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
15. As evidenced by Finding of Fact No. 10, Mr. Blackwell failed to file a timely answer to either the EDPRP or the EDFARP, 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 Mr. Blackwell and assess the penalty recommended by the Executive Director.
16. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Blackwell for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
17. An administrative penalty in the amount of nineteen thousand nine hundred fifteen dollars (\$19,915.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

18. As evidenced by Finding of Fact Nos. 3, 4, 5, 11, and 12, Mr. Blackwell failed to correct documented violations of Commission requirements within 30 days after Mr. Blackwell received notice of the violations and notice of the Executive Director's intent to shut down the Facility.
19. 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 overfill protection for tanks, corrosion protection for tanks and piping, and/or acceptable financial assurance.
20. 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.
21. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Mr. Blackwell's UST delivery certificate if the Commission finds that good cause exists.
22. Good cause for revocation of Mr. Blackwell's UST delivery certificate exists as justified by Findings of Fact Nos. 3 through 12 and Conclusions of Law Nos. 2 through 15 and 18.
23. As evidenced by Finding of Fact No. 13, current conditions at the Facility constitute an imminent peril to public health, safety and welfare. Therefore, pursuant to TEX. GOV'T CODE § 2001.144(a)(3), this Order is final and effective on the date rendered.

### **ORDERING PROVISIONS**

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

1. Immediately upon the effective date of this Order:
  - a. Mr. Blackwell shall take the following steps to shut down operations of the non-compliant UST systems at the Facility:
    - i. Cease dispensing fuel from the USTs;
    - ii. Cease receiving deliveries of regulated substances into the USTs;
    - iii. Padlock the dispensers;
    - iv. Empty the USTs of all regulated substances in accordance with 30 TEX. ADMIN. CODE § 334.54(d); and

- v. Temporarily remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.54.
2. Mr. Blackwell's UST delivery certificate is revoked immediately upon the effective date of this Order. Mr. Blackwell shall cease accepting fuel until such time as a valid certificate is obtained from the TCEQ by submitting a properly completed UST Registration and Self-Certification form including the current ownership information, in accordance with 30 TEX. ADMIN. CODE §§ 334.7 and 334.8. Mr. Blackwell may submit an application for a new delivery certificate only after Mr. Blackwell has complied with the requirements set forth in Ordering Provision Nos. 1,3,4,6,7, and 8.
3. Within 10 days after the effective date of this Order, Mr. Blackwell shall send his UST delivery certificate to:

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

4. Within 15 days after the effective date of this Order, Mr. Blackwell shall submit to the Executive Director a detailed written report documenting the steps he has taken to comply with Ordering Provisions Nos. 1.a.i. through 1.a.v. Mr. Blackwell 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

Mark Newman, Air/Water/Waste Section Manager  
Texas Commission on Environmental Quality  
San Angelo Regional Office  
622 South Oakes, Ste K  
San Angelo, Texas 76903-7035

5. Mr. Blackwell's USTs shall remain out of service pursuant to TEX. WATER CODE § 26.3475 and as directed by Ordering Provision Nos. 1.a.i through 1.a.v., until such time as Mr. Blackwell demonstrates to the satisfaction of the Executive Director that he has corrected the violations noted in Findings of Fact Nos. 3.a through 3.k., and Conclusions of Law Nos. 2 through 12 as listed herein.

6. If Mr. Blackwell elects to permanently remove from service any UST systems at the Facility, Mr. Blackwell shall immediately and permanently remove the UST system in accordance with 30 TEX. ADMIN. CODE § 334.55. If Mr. Blackwell permanently removes any portion of the UST system from service, Mr. Blackwell shall, within 15 days after the effective date of this Order, submit to the Commission a written report documenting compliance with 30 TEX. ADMIN. CODE § 334.55. Mr. Blackwell shall submit the report to:

Petroleum Storage Tank Registration Team, MC 138  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

7. Mr. Blackwell is assessed an administrative penalty in the amount of nineteen thousand nine hundred fifteen dollars (\$19,915.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Mr. Blackwell's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Mark E. Blackwell dba Blackies Grab N Go; Docket No. 2008-1822-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

8. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline, Mr. Blackwell shall:
  - a. Install and implement a release detection method for the USTs, test the line leak detectors for performance and operational reliability, and begin conducting volume measurement and monthly reconciliation of inventory control records, in accordance with 30 TEX. ADMIN. CODE § 334.50;
  - b. Install a corrosion protection system for the active USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.49;

- c. Ensure that all spill and overflow prevention devices are maintained in good operating condition, in accordance with 30 TEX. ADMIN. CODE § 334.51(a)(6) and TEX. WATER CODE § 26.3475(c)(2);
- d. Submit documentation that demonstrates acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in accordance with 30 TEX. ADMIN. CODE § 37.815. to:

Registration and Reporting Section  
Permitting & Remediation Support Division, MC-138  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

- e. Submit an amended UST registration to reflect the current operational status of the active USTs, in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

Registration and Reporting Section  
Permitting & Remediation Support Division, MC-138  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

- f. Begin maintaining all UST records, in accordance with 30 TEX. ADMIN. CODE § 334.10;
  - g. Begin to conduct effective manual or automatic inventory control procedures for the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.48(c); and
  - h. Obtain a new delivery certificate from the TCEQ.
9. Upon obtaining a new delivery certificate, Mr. Blackwell 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).
10. Within 10 days of resuming retail sales of gasoline, Mr. Blackwell shall submit written certification as described below, and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 8.a. through 9. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that I have personally examined and am

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

The certification shall be submitted to:

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

with a copy to:

Mark Newman, Air/Water/Waste Section Manager  
Texas Commission on Environmental Quality  
San Angelo Regional Office  
622 South Oakes, Ste K  
San Angelo, Texas 76903-7035

11. All relief not expressly granted in this Order is denied.
12. The provisions of this Order shall apply to and be binding upon Mr. Blackwell and Mr. Blackwell is ordered to give notice of this Order to personnel who maintain day-to-day control over the USTs at the Facility.
13. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas (“OAG”) for further enforcement proceedings without notice to Mr. Blackwell if the Executive Director determines that Mr. Blackwell has not complied with one or more of the terms or conditions in this Order.
14. This Order shall terminate five years from its effective date or when Mr. Blackwell demonstrates to the satisfaction of the Executive Director that he has corrected all of the violations noted herein, whichever is later.
15. 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).

**Mark E. Blackwell dba Blackies Grab N Go**  
**Docket No. 2008-1822-PST-E**  
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**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 Mark E. Blackwell dba Blackies Grab N Go” (the “EDPRP”) was filed with the Office of the Chief Clerk on March 30, 2009.

I sent the EDPRP to Mr. Blackwell at his last known address on March 30, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card”, Mr. Blackwell received notice of the EDPRP on April 1, 2009, as evidenced by the signature on the card.

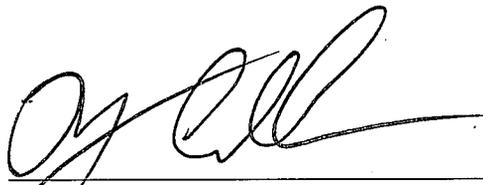
On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Mark E. Blackwell dba Blackies Grab N Go” (the “EDFARP”) was filed with the Office of the Chief Clerk on October 6, 2009.

I sent the EDFARP to Mr. Blackwell at his last known address on October 6, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card”, Mr. Blackwell received notice of the EDFARP on October 8, 2009, as evidenced by the signature on the card.

More than 20 days have elapsed since Mr. Blackwell received notice of the EDPRP and EDFARP. Mr. Blackwell 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 December 14, 2009, sent via first class mail and certified mail, return receipt requested Article #7003 0500 0002 9942 2096, I provided Mr. Blackwell with notice of the TCEQ’s intent to order the USTs at the Facility shut down and removed from service if the violations pertaining to release detection, corrosion protection for tanks and piping, and spill and overflow prevention equipment were not corrected within 30 days of Mr. Blackwell’s receipt of letter.

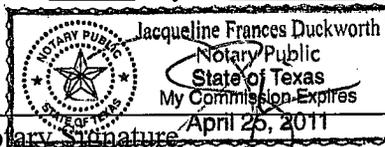
As of the date of this affidavit, Mr. Blackwell has not corrected the violations noted during the September 8, 2008 investigation.”



Rudy Calderon, Attorney  
Office of Legal Services, Litigation Division  
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 17<sup>th</sup> day of December, A.D., 2009.



Notary Signature 