

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2009-1500-PST-E **TCEQ ID:** RN102726718 **CASE NO.:** 38376
RESPONDENT NAME: FUELCON MANAGEMENT LLC dba Horizon

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Horizon, 901 North Stemmons Street, Sanger, Denton County</p> <p>TYPE OF OPERATION: Convenience store with retail sales of gasoline</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received on July 15, 2009, alleging that fuel purchased from the facility caused problems with the complainant's vehicle from water and debris being in the fuel. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on February 22, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Judy Kluge, Enforcement Division, Enforcement Team 6, MC-04, (817) 588-5825; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Arish Khan, Registered Agent, FUELCON MANAGEMENT LLC, 901 North Stemmons Street, Sanger, Texas 76266 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: July 15, 2009</p> <p>Date of Investigation Relating to this Case: July 24, 2009</p> <p>Date of NOV/NOE Relating to this Case: September 11, 2009 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>WASTE</p> <p>1) Failure to ensure that all underground storage tanks ("USTs") are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>2) Failure to inspect all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the UST system at least once every 60 days to assure that the sides, bottoms, and any penetration points are maintained liquid tight. Specifically, the spill buckets contained liquid [30 TEX. ADMIN. CODE § 334.42(i)].</p> <p>3) Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system. Specifically, the USTs were not equipped with product and Stage I fill adaptor devices which prevent loosening and over-tightening [30 TEX. ADMIN. CODE § 115.242(3)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$3,406</p> <p>Total Deferred: \$681 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$158 (remaining \$2,567 due in 17 monthly payments of \$151 each)</p> <p>Site Compliance History Classification <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Station:</p> <p>a. Implemented statistical inventory reconciliation and inventory control as a monthly method of release detection for the USTs on October 7, 2009;</p> <p>b. Removed liquid from the spill buckets, cleaned them, and began conducting bi-monthly inspections of all sumps, manways, overfill containers or catchment basins on August 3, 2009; and</p> <p>c. Installed product and Stage I fill adapter devices on August 24, 2009.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned 14-Sep-2009	PCW 17-Sep-2009	Screening 15-Sep-2009	EPA Due
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RESPONDENT/FACILITY INFORMATION	
Respondent	FUELCON-MANAGEMENT LLC dba Horizon
Reg. Ent. Ref. No.	RN102726718
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	38376	No. of Violations	3
Docket No.	2009-1600-PST-E	Order Type	1680
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Judy Kluge
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* **\$4,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History -10.0% Enhancement *Subtotals 2, 3, & 7* **-\$450**

Notes Adjustment due to High Performer classification

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* **\$750**

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

Total EB Amounts	\$124	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$2,100	

SUM OF SUBTOTALS 1-7 *Final Subtotal* **\$3,300**

OTHER FACTORS AS JUSTICE MAY REQUIRE 3.2% *Adjustment* **\$106**

Reduces or enhances the Final Subtotal by the indicated percentage.

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

Final Penalty Amount **\$3,406**

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* **\$3,406**

DEFERRAL 20.0% Reduction *Adjustment* **-\$681**

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 **\$2,725**

Screening Date 15-Sep-2009

Docket No. 2009-1500-PST-E

PCW

Respondent FUELCON MANAGEMENT LLC dba Horizon

Policy Revision 2 (September 2002)

Case ID No. 38376

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102726718

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	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 judgments 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%
<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) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Adjustment due to High Performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) -10%

Screening Date: 15-Sep-2009

Docket No.: 2009-1500-PST-E

PCW

Respondent: FUELCON MANAGEMENT LLC dba Horizon

Policy Revision 2 (September 2002)

Case ID No.: 38376

PCW Revision October 30, 2008

Reg. Ent. Reference No.: RN102726718

Media [Statute]: Petroleum Storage Tank

Enf. Coordinator: Judy Kluge

Violation Number: 1

Rule Cite(s)

30 Tex. Admin. Code § 334.50(b)(1)(A) and Tex. Water Code § 26.3475(c)(1)

Violation Description

Failed to ensure that all USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring).

Base Penalty: \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent: 25%

>> Programmatic Matrix

Falsification	Harm		
	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

53 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty: \$2,500

One quarterly event is recommended based on documentation of the violation during the July 24, 2009 investigation to the September 16, 2009 screening date.

Good Faith Efforts to Comply

10.0% Reduction

\$250

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

Notes

The Respondent came into compliance on October 7, 2009 after the NOV dated September 11, 2009.

Violation Subtotal: \$2,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount: \$15

Violation Final Penalty Total: \$2,064

This violation Final Assessed Penalty (adjusted for limits): \$2,064

Economic Benefit Worksheet

Respondent: FUELCON MANAGEMENT LLC dba Horizon
Case ID No.: 38376
Reg. Ent. Reference No.: RN102726718
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
<small>No commas or \$</small>							

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)	\$1,500	24-Jul-2009	7-Oct-2009	0.21	\$15	n/a	\$15

Notes for DELAYED costs

Estimated cost of monitoring all USTs for releases. The date required is the investigation date and the final date is the compliance date.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$15

Screening Date: 15-Sep-2009

Docket No.: 2009-1500-PST-E

PCW

Respondent: FUELCON MANAGEMENT LLC dba Horizon

Policy Revision 2 (September 2002)

Case ID No.: 38376

PCW Revision October 30, 2008

Reg. Ent. Reference No.: RN102726718

Media [Statute]: Petroleum Storage Tank

Enf. Coordinator: Judy Kluge

Violation Number: 2

Rule Cite(s):

30 Tex. Admin. Code § 334.42(l)

Violation Description:

Failed to inspect all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the UST system at least once every 60 days to assure that the sides, bottoms, and any penetration points are maintained liquid tight. Specifically, the spill buckets contained liquid.

Base Penalty: \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		X	

Percent: 10%

>> Programmatic Matrix

Falsification	Harm		
	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

53 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty: \$1,000

One quarterly event is recommended based on documentation of the violation during the July 24, 2009 investigation to the August 3, 2009 compliance date.

Good Faith Efforts to Comply

25.0% Reduction

\$250

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

Notes:

The Respondent came into compliance on August 3, 2009, prior to the NOE dated September 11, 2009.

Violation Subtotal: \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount: \$106

Violation Final Penalty Total: \$871

This violation Final Assessed Penalty (adjusted for limits): \$671

Economic Benefit Worksheet

Respondent: FUELCON MANAGEMENT LLC dba Horizon
Case ID No.: 38378
Reg. Ent. Reference No.: RN102726718
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

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	24-May-2009	3-Aug-2009	1.11	\$6	\$100	\$106
Other (as needed)	0.00				\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct bimonthly inspections of the sumps, manways, overflow containers or catchment basins. The date required is 60 days before the investigation and the final date is the compliance date.

Approx. Cost of Compliance

\$100

TOTAL

\$106

Screening Date: 15-Sep-2009

Docket No.: 2009-1600-PST-E

PCW

Respondent: FUELCON MANAGEMENT LLC dba Horizon

Policy Revision 2 (September 2002)

Case ID No.: 38376

PCW Revision October 30, 2008

Reg. Ent. Reference No.: RN102726718

Media [Statute]: Petroleum Storage Tank

Enf. Coordinator: Judy Kluge

Violation Number: 3

Rule Cite(s)

30 Tex. Adm. Code § 115.242(3)(A) and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system. Specifically, the USTs were not equipped with product and Stage I fill adaptor devices which prevent loosening and over-tightening.

Base Penalty: \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		X	

Percent: 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

31 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty: \$1,000

One quarterly event is recommended based on documentation of the violation during the July 24, 2009 investigation to the August 24, 2009 compliance date.

Good Faith Efforts to Comply

25.0% Reduction

\$250

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

Notes

The Respondent came into compliance on August 24, 2009, prior to the NOE dated September 14, 2009.

Violation Subtotal: \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount: \$3

Violation Final Penalty Total: \$871

This violation Final Assessed Penalty (adjusted for limits): \$871

Economic Benefit Worksheet

Respondent: FUELCON MANAGEMENT LLC dba Horizon
Case ID No: 38376
Reg. Ent. Reference No: RN102726718
Media: Petroleum Storage Tank
Violation No: 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment	\$500	24-Jul-2009	24-Aug-2009	0.08	\$0	\$3	\$3
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 install devices that prevent loosening or over-tightening on the product and Stage I fill adaptors.
The date required is the investigation date and the final date is the compliance date.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$3

Compliance History Report

Customer/Respondent/Owner-Operator: CN603175852 FUELCON MANAGEMENT LLC Classification: HIGH Rating: 0.00
Regulated Entity: RN102726718 Horizon Classification: HIGH Site Rating: 0.00
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 42105
Location: 901 N STEMMONS ST, SANGER, TX, 76266
TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: September 15, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: September 15, 2004 to September 15, 2009

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

Name: Judy Kluge Phone: 817-588-5825

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? Yes
3. If Yes, who is the current owner/operator? Fuelcon Management LLC
4. If Yes, who was/were the prior owner(s)/operator(s)? Inara Management, LLC
5. When did the change(s) in owner or operator occur? 01/03/2007
6. Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site:

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

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 10/21/2004 (290640)
2 09/19/2005 (432315)

- 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.

- J. Early compliance.

N/A

- Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
FUELCON MANAGEMENT LLC DBA
HORIZON
RN102726718**

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§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2009-1500-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 FUELCON MANAGEMENT LLC dba Horizon ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a convenience store with retail sales of gasoline at 901 North Stemmons Street in Sanger, Denton County, Texas (the "Station").
2. The Respondent's three underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about September 16, 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 Three Thousand Four Hundred Six Dollars (\$3,406) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Hundred Fifty-Eight Dollars (\$158) of the administrative penalty and Six Hundred Eighty-One Dollars (\$681) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Two Thousand Five Hundred Sixty-Seven Dollars (\$2,567) of the administrative penalty shall be payable in 17 monthly payments of One Hundred Fifty-One Dollars (\$151) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Station:
 - a. Implemented statistical inventory reconciliation and inventory control as a monthly method of release detection for the USTs on October 7, 2009;
 - b. Removed liquid from the spill buckets, cleaned them, and began conducting bi-monthly inspections of all sumps, manways, overfill containers or catchment basins on August 3, 2009; and
 - c. Installed product and Stage I fill adaptor devices on August 24, 2009.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

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

1. Failed to ensure that all USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on July 24, 2009.
2. Failed to inspect all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the UST system at least once every 60 days to assure that the sides, bottoms, and any penetration points are maintained liquid tight, in violation of 30 TEX. ADMIN. CODE § 334.42(i), as documented during an investigation conducted on July 24, 2009. Specifically, the spill buckets contained liquid.
3. Failed to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system, in violation of 30 TEX. ADMIN. CODE § 115.242(3)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on July 24, 2009. Specifically, the USTs were not equipped with product and Stage I fill adaptor devices which prevent loosening and over-tightening.

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: FUELCON MANAGEMENT LLC dba Horizon, Docket No. 2009-1500-PST-E" to:

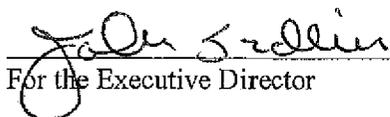
Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. 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.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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



For the Executive Director

Date 1/29/2010

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.



Signature

Date 11-28-09

ARISH A. KHAN
Name (Printed or typed)
Authorized Representative of
FUELCON MANAGEMENT LLC dba Horizon

MEMBER
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 I of this Agreed Order.

