

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-1263-DCL-E TCEQ ID:RN104085550 CASE NO.: 36367
RESPONDENT NAME: LEE DRY CLEAN, INC.

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input 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 checked="" type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATIONS OCCURRED: 12511 Jones Road, Houston, Harris County

TYPE OF OPERATION: Dry cleaning facility

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location. The Respondent owes \$2,552.18 in past-due administrative penalties (2006-1159-DCL-E).

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 March 29, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Barham A. Richard, Litigation Division, MC 175, (512) 239-0107
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Ms. Danielle Porras, Waste Enforcement Section, MC 128, (512) 239-2602

TCEQ Regional Contact: Ms. Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623

Respondent: Mr. Hong Nguyen, President, Lee Dry Clean, Inc., 12511 Jones Road, Houston, Texas 77070

Respondent's Attorney: Mr. John Ethan Currier, Currier & Martin, 12777 Jones Road, Houston, Texas 77070

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: June 9, 2008 and October 31, 2008</p> <p>Date of NOE Relating to this Case: July 27, 2008</p> <p>Background Facts: The EDRP was filed February 24, 2009. The Respondent filed an answer and the case was referred to SOAH. The preliminary hearing was waived and an evidentiary hearing was set for January 12, 2010. On January 5, 2010, the Respondent withdrew its answer and request for hearing, stating it no longer wished to pursue the contested case. On January 7, 2010, SOAH remanded this case back to the Executive Director for final resolution in accordance with 30 TEX. ADMIN. CODE § 80.101. The Respondent is unwilling to sign an agreed order.</p> <p>Current Compliance Status: The Respondent has not yet submitted documentation certifying compliance. The Respondent owes \$1,728.99 in past-due fees.</p> <p>DCL:</p> <ol style="list-style-type: none"> Failed to install a dike or other secondary containment structure around each dry cleaning unit and around each storage area for dry cleaning solvents, dry cleaning waste, or dry cleaning wastewater [30 TEX. ADMIN. CODE § 337.20(e)(3)(A)]. Failed to renew the Facility's registration by completing and submitting the required registration form to the TCEQ for dry cleaning and/or drop station facility [30 TEX. ADMIN. CODE § 337.11(e)]. Failed to pay outstanding dry cleaner fees for TCEQ Financial Account No. 24001721 for FY 2005, 2006, 2007, and 2008 [30 TEX. ADMIN. CODE § 337.14 and TEX. WATER CODE § 5.702]. 	<p>Total Assessed: \$9,806</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$9,806</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" 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>Ordering Provisions:</p> <p>The Respondent's dry cleaner certificate is revoked immediately. The Respondent may submit an application for a new dry cleaner registration certificate only after compliance with all of the requirements of this Order.</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Immediately submit payment for outstanding fees, including any associated penalties and interest. Within 10 days, send its dry cleaner registration certificate to TCEQ. Within 30 days, install secondary containment structures around each dry cleaning unit and each area where dry cleaning solvents or waste contaminated with dry cleaning solvents are stored. Within 45 days, submit written certification demonstrating compliance with Ordering Provision Nos. 1 through 3.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 17, 2008

TCEQ

DATES	Assigned	4-Aug-2008		
	PCW	6-Feb-2009	Screening	12-Aug-2008
			EPA Due	

RESPONDENT/FACILITY INFORMATION	
Respondent	LEE DRY CLEAN, INC.
Reg. Ent. Ref. No.	RN104085550
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36367	No. of Violations	1
Docket No.	2008-1263-DCL-E	Order Type	1660
Media Program(s)	Dry Cleaner	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Danielle Porras
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$5,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$7,500
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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.

Compliance History	35.0% Enhancement	Subtotals 2, 3, & 7	\$2,625
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Notes: The Respondent received one TCEQ Default Order Docket No. 2006-1159-DCL-E and is classified as a Poor Performer.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$145
 Approx. Cost of Compliance: \$2,500
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$10,125
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$10,125**

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$5,000
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$5,000
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Screening Date 12-Aug-2008	Docket No. 2008-1263-DCL-E	PCW
Respondent LEE DRY CLEAN, INC.		Policy Revision 2 (September 2002)
Case ID No. 36367		PCW Revision June 17, 2008
Reg. Ent. Reference No. RN104085550		
Media [Statute] Dry Cleaner		
Enf. Coordinator Danielle Porras		

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>	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	1	25%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government <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%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 25%

>> Repeat Violator (Subtotal 3)

No	Adjustment Percentage (Subtotal 3) 0%
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>> Compliance History Person Classification (Subtotal 7)

Poor Performer	Adjustment Percentage (Subtotal 7) 10%
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>> Compliance History Summary

Compliance History Notes	The Respondent received one TCEQ Default Order Docket No. 2006-1159-DCL-E and is classified as a Poor Performer.
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Total Adjustment Percentage (Subtotals 2, 3, & 7) 35%

Screening Date	12-Aug-2008	Docket No.	2008-1263-DCL-E	PCW	
Respondent	LEE DRY CLEAN, INC.			<i>Policy Revision 2 (September 2002)</i>	
Case ID No.	36367			<i>PCW Revision June 17, 2008</i>	
Reg. Ent. Reference No.	RN104085550				
Media [Statute]	Dry Cleaner				
Enf. Coordinator	Danielle Porras				
Violation Number	1				
Rule Cite(s)	30 Tex. Admin. Code § 337.20(e)(3)(A)				
Violation Description	Failed to install a dike or other secondary containment structure around each dry cleaning unit and around each storage area for dry cleaning solvents, dry cleaning waste, or dry cleaning wastewater, as documented during an investigation conducted on June 9, 2008. Specifically, the Respondent did not have secondary containment around a drum of perchloroethylene and three drums of perchloroethylene contaminated waste.				
		Base Penalty	\$5,000		
>> Environmental, Property and Human Health Matrix					
OR	Release	Harm			
		Major	Moderate	Minor	
	Actual				
	Potential	x			Percent 25%
>> Programmatic Matrix					
	Falsification	Major	Moderate	Minor	
					Percent 0%
Matrix Notes	Human health or the environment will or could be exposed to pollutants which would exceed protective levels.				
		Adjustment	\$3,750		
			\$1,250		
Violation Events					
	Number of Violation Events	6	64	Number of violation days	
		daily			
		monthly	x		
		quarterly			
		semiannual			
		annual			
		single event			
		<i>mark only one with an x</i>			Violation Base Penalty \$7,500
	Six monthly events are recommended (three for each area needing secondary containment) beginning on the June 9, 2008 investigation date to the August 12, 2008 screening date.				
Good Faith Efforts to Comply					
		0.0%	Reduction	\$0	
		Before NOV	NOV to EDPRP/Settlement Offer		
	Extraordinary				
	Ordinary				
	N/A	x	(mark with x)		
	Notes	The Respondent does not meet the good faith criteria for this violation.			
		Violation Subtotal	\$7,500		
Economic Benefit (EB) for this violation					
	Statutory Limit Test				
	Estimated EB Amount	\$145	Violation Final Penalty Total	\$10,125	
	This violation Final Assessed Penalty (adjusted for limits)			\$5,000	

Economic Benefit Worksheet

Respondent LEE DRY CLEAN, INC.
Case ID No. 36367
Reg. Ent. Reference No. RN104085550
Media Dry Cleaner
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	\$2,500	9-Jun-2008	8-Apr-2009	0.83	\$7	\$138	\$145
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 a dike or other secondary containment structure around each dry cleaning unit and around each storage area for dry cleaning solvents, dry cleaning waste, or dry cleaning wastewater. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,500

TOTAL

\$145



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 17, 2008

TCEQ

DATES	Assigned	4-Aug-2008		
	PCW	6-Feb-2009	Screening	12-Aug-2008
			EPA Due	

RESPONDENT/FACILITY INFORMATION			
Respondent	LEE DRY CLEAN, INC.		
Reg. Ent. Ref. No.	RN104085550		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36367	No. of Violations	2
Docket No.	2008-1263-DCL-E	Order Type	1660
Media Program(s)	Dry Cleaner	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Danielle Porras
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit	Minimum	\$0	Maximum
			\$50

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$3,560
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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.

Compliance History	35.0% Enhancement	Subtotals 2, 3, & 7	\$1,246
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Notes
The Respondent received one TCEQ Default Order Docket No. 2006-1159-DCL-E and is classified as a Poor Performer.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes
The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts \$33
Approx. Cost of Compliance \$250
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$4,806
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount \$4,806

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$4,806
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$4,806
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Screening Date 12-Aug-2008	Docket No. 2008-1263-DCL-E	PCW
Respondent LEE DRY CLEAN, INC.		<i>Policy Revision 2 (September 2002)</i>
Case ID No. 36367		<i>PCW Revision June 17, 2008</i>
Reg. Ent. Reference No. RN104085550		
Media [Statute] Dry Cleaner		
Enf. Coordinator Danielle Porras		

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>)		0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	1	25%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<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) 25%

>> **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 The Respondent received one TCEQ Default Order Docket No. 2006-1159-DCL-E and is classified as a Poor Performer.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 35%

Screening Date	12-Aug-2008	Docket No.	2008-1263-DCL-E	PCW
Respondent	LEE DRY CLEAN, INC.			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	36367			<i>PCW Revision June 17, 2008</i>
Reg. Ent. Reference No.	RN104085550			
Media [Statute]	Dry Cleaner			
Enf. Coordinator	Danielle Porras			
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 337.11(e)			
Violation Description	Failed to renew the facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility, as documented during an investigation conducted on June 9, 2008. Specifically, the previous registration expired on August 31, 2006 and had not been renewed at the time of the investigation.			
		Base Penalty		\$50
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Major	Moderate	Minor	
	Release Actual			
	Potential			
			Percent	0%
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
		x		
			Percent	10%
Matrix Notes	100% of the rule requirement was not met.			
		Adjustment		\$45
				\$5
Violation Events				
	Number of Violation Events	712	712	Number of violation days
		daily	x	
		monthly		
		quarterly		
		semiannual		
		annual		
		single event		
			Violation Base Penalty	\$3,560
	Seven Hundred Twelve daily events are recommended from the August 31, 2006 Expiration Date to the August 12, 2008 Screening Date.			
Good Faith Efforts to Comply				
		0.0%	Reduction	\$0
		Before NOV	NOV to EDRP/Settlement Offer	
	Extraordinary			
	Ordinary			
	N/A	x	(mark with x)	
Notes	The Respondent does not meet the good faith criteria for this violation.			
		Violation Subtotal		\$3,560
Economic Benefit (EB) for this violation				
	Estimated EB Amount	\$33	Violation Final Penalty Total	\$4,806
		This violation Final Assessed Penalty (adjusted for limits)		\$4,806

Economic Benefit Worksheet

Respondent LEE DRY CLEAN, INC.
Case ID No. 36367
Reg. Ent. Reference No. RN104085550
Media Dry Cleaner
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	\$250	31-Aug-2006	8-Apr-2009	2.61	\$33	n/a	\$33
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost to register a dry cleaning or drop station facility annually. The Date Required is the expiration date of the previous registration and the Final Date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$250

TOTAL

\$33

Screening Date 12-Aug-2008	Docket No. 2008-1263-DCL-E	PCW
Respondent LEE DRY CLEAN, INC.		<i>Policy Revision 2 (September 2002)</i>
Case ID No. 36367		<i>PCW Revision June 17, 2008</i>
Reg. Ent. Reference No. RN104085550		
Media [Statute] Dry Cleaner		
Enf. Coordinator Danielle Porras		
Violation Number <input type="text" value="2"/>		
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 337.14 and Tex. Water Code § 5.702"/>	
Violation Description	<input type="text" value="Failed to pay outstanding dry cleaner fees for TCEQ Financial Account No. 24001721 for the 2005, 2006, 2007, and 2008 fiscal years, as documented during a record review conducted on October 31, 2008."/>	
	Base Penalty	<input type="text" value="\$50"/>
>> Environmental, Property and Human Health Matrix		
OR	Harm	
	Release Major Moderate Minor	
	Actual <input type="text"/> <input type="text"/> <input type="text"/>	Percent <input type="text" value="0%"/>
Potential <input type="text"/> <input type="text"/> <input type="text"/>		
>> Programmatic Matrix		
	Falsification Major Moderate Minor	
	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	Percent <input type="text" value="0%"/>
Matrix Notes	<input type="text" value="No penalty is calculated for this violation."/>	
	Adjustment	<input type="text" value="\$50"/>
		<input type="text" value="\$0"/>
Violation Events		
Number of Violation Events	<input type="text"/>	Number of violation days
	<input type="text"/>	
daily	<input type="text"/>	
monthly	<input type="text"/>	
quarterly	<input type="text"/>	
semiannual	<input type="text"/>	
annual	<input type="text"/>	
single event	<input type="text"/>	
<i>mark only one with an x</i>		Violation Base Penalty <input type="text" value="\$0"/>
	<input type="text" value="No additional administrative penalty was calculated for this violation as penalties and interest will be assessed on the next fee billing."/>	
Good Faith Efforts to Comply		
	0.0% Reduction	<input type="text" value="\$0"/>
	Before NOV NOV to EDRP/Settlement Offer	
Extraordinary	<input type="text"/>	
Ordinary	<input type="text"/>	
N/A	<input type="text"/> (mark with x)	
Notes	<input type="text"/>	
	Violation Subtotal	<input type="text" value="\$0"/>
Economic Benefit (EB) for this violation		
Statutory Limit Test		
Estimated EB Amount	<input type="text" value="\$0"/>	Violation Final Penalty Total
		<input type="text" value="\$0"/>
	This violation Final Assessed Penalty (adjusted for limits)	
		<input type="text" value="\$0"/>

Economic Benefit Worksheet

Respondent LEE DRY CLEAN, INC.
Case ID No. 36367
Reg. Ent. Reference No. RN104085550
Media Dry Cleaner
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

n/a

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

TOTAL

\$0

Compliance History

Customer/Respondent/Owner- CN602523037 Lee Dry Clean, Inc. Classification: AVERAGE Rating: 31.50
Regulated RN104085550 LEE DRY CLEANERS Classification: POOR Site Rating: 60.00

ID Number(s): DRY CLEANERS REGISTRATION INTERNAL 104085550
INDUSTRIAL AND HAZARDOUS WASTE EPA ID TXR000072082
GENERATION

Location: 12511 JONES RD, HOUSTON, TX, 77070 Rating Date: 9/1/2007 Repeat Violator: NO

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History: September 09, 2008

Agency Decision Requiring Compliance Enforcement

Compliance Period: September 09, 2003 to September 09, 2008

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

Name: Danielle Porras Phone: (512) 239-2602

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? Yes
3. If Yes, who is the current owner? Lee Dry Clean Inc.
4. If Yes, who was/were the prior owner(s)? Hong-Vanthi Nguyen
5. When did the change(s) in ownership occur? 9/1/2004

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
- Effective Date: 08/10/2007 ADMINORDER 2006-1159-DCL-E
Classification: Major
Citation: 30 TAC Chapter 337, SubChapter B 337.10(a)
TEXAS HEALTH AND SAFETY CODE 374.102(a)
Description: Facility does not possess a valid, current dry cleaning facility registration.
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 08/14/2006 (497352)
2 08/01/2008 (685279)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- F. Environmental audits
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A
- J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
LEE DRY CLEAN, INC.;
RN104085550**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER
DOCKET NO. 2008-1263-DCL-E**

At its _____ agenda, the Texas Commission on Environmental Quality, (“Commission” or “TCEQ”) considered the Executive Director’s Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 5 and 7, TEX. HEALTH & SAFETY CODE ch. 374, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty, corrective action of the respondent and revocation of the respondent’s dry cleaner registration certificate. The respondent made the subject of this Order is Lee Dry Clean, Inc. (“Lee Dry Clean”).

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

FINDINGS OF FACT

1. Lee Dry Clean owns, in accordance with TEX. HEALTH & SAFETY CODE § 374.001(12), and operates a dry cleaning facility located at 12511 Jones Road, Houston, Harris County, Texas (the “Facility”).
2. The Facility is a retail commercial establishment that operates in whole or in part for the purpose of cleaning garments or other fabrics using a process that involves any use of dry cleaning solvents. As such, the Facility is a dry cleaning facility as defined in TEX. HEALTH & SAFETY CODE § 374.001(7).
3. During an investigation conducted on June 9, 2008, a TCEQ Houston Regional Office investigator documented that Lee Dry Clean:
 - a. Failed to install a dike or other secondary containment structure around each dry cleaning unit and around each storage area for dry cleaning solvents, dry cleaning waste, or dry cleaning wastewater. Specifically Lee Dry Clean did not have secondary containment around a drum of perchloroethylene and three drums of perchloroethylene contaminated waste; and

- b. Failed to renew the Facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning facility. Specifically, the previous registration expired on August 31, 2006 and had not been renewed at the time of the investigation.
4. During a record review conducted on October 31, 2008, a TCEQ Central Office investigator documented that Lee Dry Clean failed to pay outstanding dry cleaner fees for TCEQ Financial Account No. 24001721 for fiscal years 2005, 2006, 2007, and 2008.
5. Lee Dry Clean received notice of the violations on or about August 1, 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 Lee Dry Clean, Inc." (the "EDPRP") in the TCEQ Chief Clerk's office on February 24, 2009.
7. By letter dated February 24, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Lee Dry Clean with notice of the EDPRP. According to the return receipt "green card," Lee Dry Clean received notice of the EDPRP on February 26, 2009, as evidenced by the signature on the card.
8. Lee Dry Clean filed an answer requesting a hearing on March 18, 2009, and, pursuant to 30 TEX. ADMIN. CODE § 70.109, the matter was referred to the State Office of Administrative Hearings ("SOAH") on April 30, 2009.
9. The preliminary hearing was waived, and the evidentiary hearing was set for January 12, 2010. On July 16, 2009, the Administrative Law Judge ("ALJ") issued Order No. 1 Waiver of Preliminary Hearing and Scheduling Order. The SOAH docket clerk mailed a copy of Order No. 1 to Lee Dry Clean's attorney at his last known address via first class mail, postage pre-paid.
10. On January 5, 2010, Lee Dry Clean withdrew its answer and request for hearing, stating it no longer wished to pursue the contested case.
11. On January 7, 2009, SOAH remanded this case back to the Executive Director for final resolution.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Lee Dry Clean is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 5, TEX. HEALTH & SAFETY CODE ch. 374, and the rules of the Commission.

2. As evidenced by Finding of Fact No. 3.a., Lee Dry Clean failed to install a dike or other secondary containment structure around each dry cleaning unit and around each storage area for dry cleaning solvents, dry cleaning waste, or dry cleaning wastewater, in violation of 30 TEX. ADMIN. CODE § 337.20(e)(3)(A).
3. As evidenced by Finding of Fact No. 3.b., Lee Dry Clean failed to renew the Facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning facility, in violation of 30 TEX. ADMIN. CODE § 337.11(e).
4. As evidenced by Finding of Fact No. 4, Lee Dry Clean failed to pay outstanding dry cleaner fees for TCEQ Financial Account No. 24001721 for fiscal years 2005, 2006, 2007, and 2008, in violation of TEX. WATER CODE § 5.702 and 30 TEX. ADMIN. CODE § 337.14.
5. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director timely served Lee Dry Clean with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
6. As evidenced by Finding of Fact No. 8 through 10, though Lee Dry Clean filed a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105, the answer and request for hearing were withdrawn due to Lee Dry Clean's wish to no longer pursue the contested case.
7. As evidenced by Finding of Fact No. 11, the case was remanded to the Executive Director in accordance with 30 TEX. ADMIN. CODE § 80.101. Pursuant to TEX. WATER CODE §§ 7.056 and 7.507 and 30 TEX. ADMIN. CODE § 76.106, the Commission may enter a Default Order against Lee Dry Clean and assess the penalty recommended by the Executive Director.
8. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Lee Dry Clean for violations of the Texas Water Code and the Texas Health and Safety 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.
9. An administrative penalty in the amount of nine thousand eight hundred six dollars (\$9,806.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE §§ 7.053 and 7.0525(c).
10. 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.
11. Pursuant to 30 TEX. ADMIN. CODE § 337.11(f)(1)(C), the Commission has authority to revoke Lee Dry Clean's dry cleaner registration certificate if the Commission finds that good cause exists.

12. Good cause for revocation of Lee Dry Clean's dry cleaner registration certificate exists as justified by Findings of Fact Nos. 2 through 4 and 6 through 11, and Conclusions of Law Nos. 2 through 7.

ORDERING PROVISIONS

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

1. Lee Dry Clean is assessed an administrative penalty in the amount of nine thousand eight hundred six dollars (\$9,806.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Lee Dry Clean'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: Lee Dry Clean, Inc.; Docket No. 2008-1263-DCL-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. Lee Dry Clean's dry cleaner registration certificate is revoked immediately upon the effective date of this Order. Lee Dry Clean may submit an application for a new dry cleaner registration certificate only after Lee Dry Clean has complied with all of the requirements of this Order.
3. Within 10 days after the effective date of this Order, Lee Dry Clean shall send its dry cleaner registration certificate to:

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

4. Lee Dry Clean shall undertake the following technical requirements:

- a. Immediately upon the effective date of this Order, Lee Dry Clean shall submit payment for outstanding fees including any associated penalties and interest with the notation, "Lee Dry Cleaners, Account No. 24001721, 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

- b. Within 30 days after the effective date of this Order, Lee Dry Clean shall install secondary containment structures around each dry cleaning unit and each area where where dry cleaning solvents or waste contaminated with dry cleaning solvents are stored, in accordance with 30 TEX. ADMIN. CODE § 337.20(e); and
- c. Within 45 days after the effective date of this Order, Lee Dry Clean shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 4.a. and 4.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

Lee Dry Clean shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 4.a. and 4.b. 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:

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

5. All relief not expressly granted in this Order is denied.
6. The provisions of this Order shall apply to and be binding upon Lee Dry Clean. Lee Dry Clean is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
7. If Lee Dry Clean fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Lee Dry Clean's failure to comply is not a violation of this Order. Lee Dry Clean shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Lee Dry Clean shall notify the Executive Director within seven days after Lee Dry Clean becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
8. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Lee Dry Clean shall be made in writing to the Executive Director. Extensions are not effective until Lee Dry Clean receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
9. 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 Lee Dry Clean if the Executive Director determines that Lee Dry Clean has not complied with one or more of the terms or conditions in this Order.
10. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
11. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Lee Dry Clean, Inc.
Docket No. 2008-1263-DCL-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF BARHAM A. RICHARD

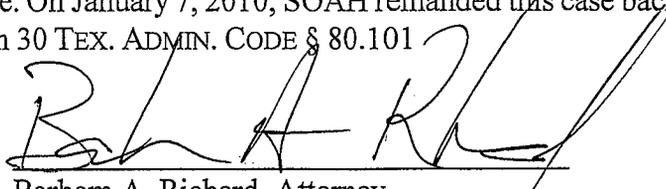
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

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

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Lee Dry Clean, Inc.” (the “EDPRP”) was filed with the Office of the Chief Clerk on February 24, 2009.

The EDPRP was mailed to Lee Dry Clean at its last known address on February 24, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Lee Dry Clean received notice of the EDPRP on February 26, 2009, as evidenced by the signature on the card.

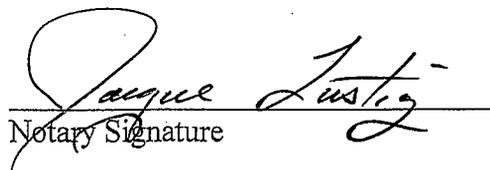
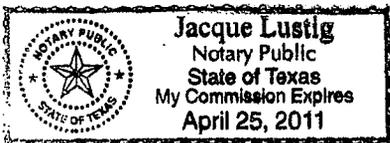
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Barham A. Richard, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 9th day of February, A.D., 2010.


Notary Signature