

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 3
DOCKET NO.: 2009-0799-PST-E **TCEQ ID:** RN102279908 **CASE NO.:** 37703
RESPONDENT NAME: Michael G. Stephenson dba Cottonflat Grocery

| | | |
|--|---|--|
| 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: Cottonflat Grocery, 2800 Cottonflat Road, Midland, Midland 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: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on April 12, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Wallace Myers, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-6580; Ms. Laurie Baves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Michael G. Stephenson, Owner, Cottonflat Grocery, 2800 Cottonflat Road, Midland, Texas 79706 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 type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: May 13, 2009</p> <p>Date of NOV/NOE Relating to this Case: May 21, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>1) Failure to renew a previously issued underground storage tank ("UST") delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date. Specifically, the delivery certificate expired on June 30, 2002 [30 TEX. ADMIN. CODE § 334.8(c)(5)(B)(ii)].</p> <p>2) Failure to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, one fuel delivery was accepted without a delivery certificate [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)].</p> <p>3) Failure to provide proper corrosion protection for the UST system. Specifically, the rectifier was not functioning [30 TEX. ADMIN. CODE § 334.49(a) and TEX. WATER CODE § 26.3475(d)].</p> <p>4) Failure to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly. Specifically, the rectifier system has never been tested [30 TEX. ADMIN. CODE § 334.49(c)(2)(C) and TEX. WATER CODE § 26.3475(d)].</p> | <p>Total Assessed: \$17,564</p> <p>Total Deferred: \$3,512 <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: \$402 (remaining \$13,650 due in 35 monthly payments of \$390 each)</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 checked="" 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 Facility:</p> <p>a. Submitted an updated UST registration and self-certification form and obtained a delivery certificate on June 9, 2009;</p> <p>b. Repaired the corrosion protection system at the Facility on June 8, 2009;</p> <p>c. Began conducting bimonthly inspections of the rectifier and other components of the impressed current cathodic protection system on June 8, 2009;</p> <p>d. Successfully conducted the required triennial testing of the corrosion protection system on June 8, 2009; and</p> <p>e. Emptied and properly disposed of all fuel from the overspill containers and began conducting bimonthly inspections of the sumps, manways, overspill containers or catchment basins on June 2, 2009.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, begin conducting proper inventory control procedures for all USTs at the Facility;</p> <p>b. Within 30 days after the effective date of this Agreed Order, install and implement a release detection method for all USTs at the Facility and begin recording volume measurements and reconciliation of inventory control records; and</p> <p>c. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a. and b.</p> |

| | | |
|---|--|--|
| <p>5) Failure to 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 [30 TEX. ADMIN. CODE § 334.49(c)(4) and TEX. WATER CODE § 26.3475(d)].</p> <p>6) Failure to conduct effective manual or automatic inventory control procedures for the UST system [30 TEX. ADMIN. CODE § 334.48(c)].</p> <p>7) Failure to provide a release detection method for the USTs by failing to conduct reconciliation of inventory control records at least once a month, in a manner 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) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>8) Failure to record 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) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>9) Failure to inspect, at least once every 60 days, any sumps, manways, overfill containers or catchment basins, to assure that their sides, bottoms, and any penetration points are maintained liquid tight. Specifically, two overfill containers were filled with fuel [30 TEX. ADMIN. CODE § 334.42(i) and TEX. WATER CODE § 26.3475(c)(2)].</p> | | |
|---|--|--|

Additional ID No(s): 28210



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ
DATES

Assigned 26-May-2009
PCW 21-Aug-2009 Screening 27-May-2009 EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent Michael G. Stephenson dba Cottonflat Grocery
Reg. Ent. Ref. No. RN102279908
Facility/Site Region 7-Midland Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No. 37703 No. of Violations 6
Docket No. 2009-0799-PST-E Order Type 1660
Media Program(s) Petroleum Storage Tank Government/Non-Profit No
Multi-Media Enf. Coordinator Wallace Myers
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 \$16,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

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

Notes No adjustment for compliance history.

Culpability No 0.0% Enhancement Subtotal 4 \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments Subtotal 5 \$1,100

Economic Benefit 0.0% Enhancement* Subtotal 6 \$0

Total EB Amounts \$2,750 *Capped at the Total EB \$ Amount
Approx. Cost of Compliance \$5,900

SUM OF SUBTOTALS 1-7 Final Subtotal \$14,900

OTHER FACTORS AS JUSTICE MAY REQUIRE 17.9% Adjustment \$2,664

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes Recommended enhancement to capture the avoided cost of compliance associated with violation nos. 1, 3 and 6.

Final Penalty Amount \$17,564

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$17,564

DEFERRAL 20.0% Reduction Adjustment -\$3,512

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 \$14,052

Screening Date 27-May-2009

Docket No. 2009-0799-PST-E

PCW

Respondent Michael G. Stephenson dba Cottonflat Grocery

Policy Revision 2 (September 2002)

Case ID No. 37703

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102279908

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

| Component | Number of... | Enter Number Here | Adjust. |
|-------------------------------|--|-------------------|---------|
| NOVs | Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria) | 0 | 0% |
| | Other written NOVs | 0 | 0% |
| Orders | Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria) | 0 | 0% |
| | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 0 | 0% |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria) | 0 | 0% |
| | Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government | 0 | 0% |
| Convictions | Any criminal convictions of this state or the federal government (number of counts) | 0 | 0% |
| Emissions | Chronic excessive emissions events (number of events) | 0 | 0% |
| Audits | Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted) | 0 | 0% |
| | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed) | 0 | 0% |
| <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)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

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

Screening Date 27-May-2009 **Docket No.** 2009-0799-PST-E **PCW**
Respondent Michael G. Stephenson dba Cottonflat Grocery *Policy Revision 2 (September 2002)*
Case ID No. 37703 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102279908
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Wallace Myers
Violation Number 1
Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(B)(ii)
Violation Description Failed to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date. Specifically, the delivery certificate expired on June 30, 2002.
Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

| Release | Harm | | | Percent |
|-----------|-------|----------|-------|---------|
| | Major | Moderate | Minor | |
| Actual | | | | 0% |
| Potential | | | | |

>> Programmatic Matrix

| Falsification | Harm | | | Percent |
|---------------|-------|----------|-------|---------|
| | 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: 7 Number of violation days: 2523

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

Violation Base Penalty \$7,000

Seven annual events are recommended based on documentation of the violation during the May 13, 2009 investigation.

Good Faith Efforts to Comply

10.0% Reduction **\$700**
 Before NOV NOV to EDPRP/Settlement Offer
 Extraordinary
 Ordinary
 N/A (mark with x)
 Notes: The Respondent came into compliance on June 9, 2009.

Violation Subtotal \$6,300

Economic Benefit (EB) for this violation

Estimated EB Amount \$837

Statutory Limit Test

Violation Final Penalty Total \$7,426

This violation Final Assessed Penalty (adjusted for limits) \$7,426

Economic Benefit Worksheet

Respondent Michael G. Stephenson dba Cottonflat Grocery
Case ID No. 37703
Reg. Ent. Reference No. RN102279908
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 |
|--------------------------|-----------|---------------|------------|------|----------------|---------------|-----------|
| Delayed Costs | | | | | | | |
| Equipment | | | | 0.00 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | \$100 | 13-May-2009 | 9-Jun-2009 | 0.07 | \$0 | \$0 | \$1 |
| 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 accurately prepare and submit an updated UST registration and obtain a current TCEQ delivery certificate. The date required is the date of the investigation and the final date is the date of compliance.

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|---|-----------|---------------|-------------|------|----------------|---------------|-----------|
| Avoided Costs | | | | | | | |
| ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs) | | | | | | | |
| Disposal | | | | 0.00 | \$0 | \$0 | \$0 |
| Personnel | | | | 0.00 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling | | | | 0.00 | \$0 | \$0 | \$0 |
| Supplies/equipment | | | | 0.00 | \$0 | \$0 | \$0 |
| Financial Assurance [2] | | | | 0.00 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3] | \$600 | 31-May-2002 | 13-May-2009 | 7.87 | \$236 | \$600 | \$836 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs
 Estimated avoided cost (\$100 per full year) to accurately prepare and submit an updated UST registration and obtain a TCEQ delivery certificate. The date required is 30 days prior to the expiration date of the delivery certificate and the final date is the date of the investigation.

Approx. Cost of Compliance **TOTAL**
\$700 \$837

Economic Benefit Worksheet

Respondent Michael G. Stephenson dba Cottonflat Grocery
Case ID No. 37703
Reg. Ent. Reference No. RN102279908
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 |
|--------------------------|-----------|---------------|------------|------|----------------|---------------|-----------|
| Delayed Costs | | | | | | | |
| Equipment | | | | 0.00 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |
| Engineering/construction | | | | 0.00 | \$0 | \$0 | \$0 |
| Land | | | | 0.00 | \$0 | n/a | \$0 |
| Record Keeping System | | | | 0.00 | \$0 | n/a | \$0 |
| Training/Sampling | | | | 0.00 | \$0 | n/a | \$0 |
| Remediation/Disposal | | | | 0.00 | \$0 | n/a | \$0 |
| Permit Costs | | | | 0.00 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | n/a | \$0 |

Notes for DELAYED costs

Economic benefit included in Violation No. 1.

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

Screening Date 27-May-2009

Docket No. 2009-0799-PST-E

PCW

Respondent Michael G. Stephenson dba Cottonflat Grocery

Policy Revision 2 (September 2002)

Case ID No. 37703

PCW Revision October 30, 2009

Reg. Ent. Reference No. RN102279908

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 334.49(a), (c)(2)(C) and (c)(4) and Tex. Water Code § 26.3475(d)

Violation Description

Failed to provide proper corrosion protection for the UST system. Specifically, the rectifier was not functioning. Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly. Specifically, the rectifier system has never been tested. Also, 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 26 Number of violation days

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

Violation Base Penalty \$2,500

One monthly event is recommended based on documentation of the violation during the May 13, 2009 investigation to the June 8, 2009 compliance date.

Good Faith Efforts to Comply

10.0% Reduction \$250

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

Notes

The Respondent came into compliance on June 8, 2009.

Violation Subtotal \$2,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,731

Violation Final Penalty Total \$2,652

This violation Final Assessed Penalty (adjusted for limits) \$2,652

Economic Benefit Worksheet

Respondent Michael G. Stephenson dba Cottonflat Grocery
Case ID No. 37703
Reg. Ent. Reference No. RN102279908
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 | \$1,500 | 13-May-2009 | 8-Jun-2009 | 0.07 | \$0 | \$7 | \$7 |
| Buildings | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |
| Engineering/construction | | | | 0.00 | \$0 | \$0 | \$0 |
| Land | | | | 0.00 | \$0 | n/a | \$0 |
| Record Keeping System | | | | 0.00 | \$0 | n/a | \$0 |
| Training/Sampling | | | | 0.00 | \$0 | n/a | \$0 |
| Remediation/Disposal | | | | 0.00 | \$0 | n/a | \$0 |
| Permit Costs | | | | 0.00 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | n/a | \$0 |

Notes for DELAYED costs

Estimated cost to provide corrosion protection for the UST system. The date required is the date of the investigation and the final date is the date of compliance.

Avoided Costs

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

| | | | | | | | |
|-------------------------------|---------|-------------|-------------|------|-------|---------|---------|
| 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 | 13-May-2006 | 13-May-2009 | 3.92 | \$196 | \$1,000 | \$1,196 |
| Other (as needed) | \$500 | 14-Mar-2009 | 13-May-2009 | 1.08 | \$27 | \$500 | \$527 |

Notes for AVOIDED costs

Estimated avoided cost for completing the triennial test (\$1,000). The date required is three years prior to the investigation date and the final date is the investigation date. Estimated avoided cost to conduct bimonthly inspections of the rectifier and other components of the cathodic protection system (\$500). The date required is 60 days prior to the investigation and the final date is the investigation date.

Approx. Cost of Compliance

\$3,000

TOTAL

\$1,731

| | | |
|--|--|------------|
| Screening Date 27-May-2009 | Docket No. 2009-0799-PST-E | PCW |
| Respondent Michael G. Stephenson dba Cottonflat Grocery | <small>Policy Revision 2 (September 2002)</small> | |
| Case ID No. 37703 | <small>PCW Revision October 30, 2008</small> | |
| Reg. Ent. Reference No. RN102279908 | | |
| Media [Statute] Petroleum Storage Tank | | |
| Enf. Coordinator Wallace Myers | | |
| Violation Number 4 | | |
| Rule Cite(s) | 30 Tex. Admin. Code § 334.48(c) | |
| Violation Description | Failed to conduct effective manual or automatic inventory control procedures for the UST system. | |
| Base Penalty | | \$10,000 |

>> Environmental, Property and Human Health Matrix

| | | | | | |
|-----------|-------------|--------------------------|--------------------------|--------------------------|--------------------------|
| OR | Harm | | | | |
| | Release | Major | Moderate | | Minor |
| | Actual | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> |
| | Potential | x | <input type="checkbox"/> | <input type="checkbox"/> | Percent 25% |

>> Programmatic Matrix

| | | | | | |
|--|--------------------------|--------------------------|--------------------------|--------------------------|-------------------|
| | Falsification | Major | Moderate | Minor | |
| | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 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 Number of violation days

| | | |
|--|--------------------------|--------------------------|
| <small>mark only one with an x</small> | daily | <input type="checkbox"/> |
| | weekly | <input type="checkbox"/> |
| | monthly | x |
| | quarterly | <input type="checkbox"/> |
| | semiannual | <input type="checkbox"/> |
| | annual | <input type="checkbox"/> |
| single event | <input type="checkbox"/> | |

Violation Base Penalty \$2,500

One monthly event is recommended based on documentation of the violation during the May 13, 2009 investigation to the May 27, 2009 screening date.

Good Faith Efforts to Comply

| | | | |
|---------------|---------------------------|---|--|
| | 0.0% | Reduction | |
| | <small>Before NOV</small> | <small>NOV to EDRP/Settlement Offer</small> | |
| Extraordinary | <input type="checkbox"/> | <input type="checkbox"/> | |
| Ordinary | <input type="checkbox"/> | <input type="checkbox"/> | |
| 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 <input style="width: 100px;" type="text" value="\$18"/> | Violation Final Penalty Total <input style="width: 100px;" type="text" value="\$2,947"/> |
| This violation Final Assessed Penalty (adjusted for limits) <input style="width: 100px;" type="text" value="\$2,947"/> | |

Economic Benefit Worksheet

Respondent Michael G. Stephenson dba Cottonflat Grocery
Case ID No. 37703
Reg. Ent. Reference No. RN102279908
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 | \$500 | 13-May-2009 | 27-Jan-2010 | 0.71 | \$18 | n/a | \$18 |
| 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 and the final date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$18

| | | |
|--|--|------------|
| Screening Date 27-May-2009 | Docket No. 2009-0799-PST-E | PCW |
| Respondent Michael G. Stephenson dba Cottonflat Grocery | <small>Policy Revision 2 (September 2002)</small> | |
| Case ID No. 37703 | <small>PCW Revision October 30, 2008</small> | |
| Reg. Ent. Reference No. RN102279908 | | |
| Media [Statute] Petroleum Storage Tank | | |
| Enf. Coordinator Wallace Myers | | |
| Violation Number 5 | | |
| Rule Cite(s) | 30 Tex. Admin. Code § 334.50(d)(1)(B)(ii), (d)(1)(B)(iii)(I) and Tex. Water Code § 26.3475(c)(1) | |
| Violation Description | Failed to provide a release detection method for the USTs by failing to conduct reconciliation of inventory control records at least once a month, in a manner 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 record 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

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

>> Programmatic Matrix

| | | | | | |
|--|--|-------|----------|-------|-------------------|
| | | 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 Number of violation days

| | | |
|--|--------------|---|
| <small>mark only one with an x</small> | daily | |
| | weekly | |
| | monthly | x |
| | quarterly | |
| | semiannual | |
| | annual | |
| | single event | |

Violation Base Penalty \$2,500

One monthly event is recommended based on documentation of the violation during the May 13, 2009 investigation to the May 27, 2009 screening date.

Good Faith Efforts to Comply

0.0% Reduction

| | | |
|---------------|---------------------------|---|
| | <small>Before NOV</small> | <small>NOV to EDRP/Settlement Offer</small> |
| 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

Estimated EB Amount \$59

Statutory Limit Test

Violation Final Penalty Total \$2,947

This violation Final Assessed Penalty (adjusted for limits) \$2,947

Economic Benefit Worksheet

Respondent Michael G. Stephenson dba Cottonflat Grocery
Case ID No. 37703
Reg. Ent. Reference No. RN102279908
Media Petroleum Storage Tank
Violation No. 5

| | |
|-------------------------|------------------------------|
| Percent Interest | Years of Depreciation |
| 5.0 | 15 |

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

No commas or \$

Delayed Costs

| | | | | | | | |
|--------------------------|---------|-------------|-------------|------|------|-----|------|
| Equipment | | | | 0.00 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |
| Engineering/construction | | | | 0.00 | \$0 | \$0 | \$0 |
| Land | | | | 0.00 | \$0 | n/a | \$0 |
| Record Keeping System | | | | 0.00 | \$0 | n/a | \$0 |
| Training/Sampling | | | | 0.00 | \$0 | n/a | \$0 |
| Remediation/Disposal | | | | 0.00 | \$0 | n/a | \$0 |
| Permit Costs | | | | 0.00 | \$0 | n/a | \$0 |
| Other (as needed) | \$1,500 | 13-May-2009 | 28-Feb-2010 | 0.79 | \$59 | n/a | \$59 |

Notes for DELAYED costs
 Estimated cost to provide a method of release detection for the UST system including volume measurement and reconciliation of inventory control records. 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 | \$1,500 | TOTAL | \$59 |
|-----------------------------------|---------|--------------|------|

| | | | | |
|---|---|---|--|---|
| Screening Date 27-May-2009 | Docket No. 2009-0799-PST-E | PCW | | |
| Respondent Michael G. Stephenson dba Cottonflat Grocery | <small>Policy Revision 2 (September 2002)</small> | | | |
| Case ID No. 37703 | <small>PCW Revision October 30, 2008</small> | | | |
| Reg. Ent. Reference No. RN102279908 | | | | |
| Media [Statute] Petroleum Storage Tank | | | | |
| Enf. Coordinator Wallace Myers | | | | |
| Violation Number 6 | | | | |
| Rule Cite(s) | 30 Tex. Admin. Code § 334.42(i) and Tex. Water Code § 26.3475(c)(2) | | | |
| Violation Description | Failed to inspect at least once every 60 days, any sumps, manways, overflow containers or catchment basins, to assure that their sides, bottoms, and any penetration points are maintained liquid tight. Specifically, two overflow containers were filled with fuel. | | | |
| Base Penalty | | \$10,000 | | |
| >> Environmental, Property and Human Health Matrix | | | | |
| Harm | | | | |
| Release | Major | Moderate | Minor | |
| Actual | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Percent <input type="text" value="10%"/> |
| Potential | <input type="checkbox"/> | x | <input type="checkbox"/> | |
| >> Programmatic Matrix | | | | |
| Falsification | | | | |
| Major | | | Moderate | Minor |
| <input type="checkbox"/> | | | <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> | | | Percent <input type="text" value="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 <input type="text" value="1"/> | | Number of violation days <input type="text" value="20"/> | | |
| <small>mark only one with an x</small> | daily | <input type="checkbox"/> | | |
| | weekly | <input type="checkbox"/> | | |
| | monthly | <input type="checkbox"/> | | |
| | quarterly | x | | |
| | semiannual | <input type="checkbox"/> | | |
| | annual | <input type="checkbox"/> | | |
| single event | <input type="checkbox"/> | | | |
| Violation Base Penalty <input type="text" value="\$1,000"/> | | | | |
| One quarterly event is recommended based on documentation of the violation during the May 13, 2009 investigation to the June 2, 2009 compliance date. | | | | |
| Good Faith Efforts to Comply | | | | |
| | | 10.0% Reduction | <input type="text" value="\$100"/> | |
| | | <small>Before NOV</small> | <small>NOV to EOPRP/Settlement Offer</small> | |
| Extraordinary | <input type="checkbox"/> | | <input type="checkbox"/> | |
| Ordinary | <input type="checkbox"/> | | x | |
| N/A | <input type="checkbox"/> | | <small>(mark with x)</small> | |
| Notes | The Respondent came into compliance on June 2, 2009. | | | |
| Violation Subtotal | | | \$900 | |
| Economic Benefit (EB) for this violation | | | | |
| Estimated EB Amount | | <input type="text" value="\$106"/> | | |
| Statutory Limit Test | | | | |
| Violation Final Penalty Total | | | <input type="text" value="\$1,061"/> | |
| This violation Final Assessed Penalty (adjusted for limits) | | | <input type="text" value="\$1,061"/> | |

Economic Benefit Worksheet

Respondent Michael G. Stephenson dba Cottonflat Grocery
Case ID No. 37703
Reg. Ent. Reference No. RN102279908
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) | \$100 | 13-May-2009 | 2-Jun-2009 | 0.05 | \$0 | n/a | \$0 |

Notes for DELAYED costs

Estimated cost to empty and properly dispose of all fuel from the overspill containers. The date required is the investigation date and 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) | \$100 | 14-Mar-2009 | 13-May-2009 | 1.08 | \$5 | \$100 | \$105 |

Notes for AVOIDED costs

Estimated avoided cost of conducting bimonthly inspections of the sumps, manways, overspill containers or catchment basins. The date required is 60 days prior to the investigation and the final date is the investigation date.

Approx. Cost of Compliance

\$200

TOTAL

\$106

Compliance History Report

| | | | |
|---|--|---------------------------------------|-------------------|
| Customer/Respondent/Owner-Operator: | CN601210968 Stephenson, Michael G. | Classification: AVERAGE | Rating: 3.01 |
| Regulated Entity: | RN102279908 COTTONFLAT GROCERY | Classification: AVERAGE BY DEFAULT | Site Rating: 3.01 |
| ID Number(s): | PUBLIC WATER SYSTEM/SUPPLY | REGISTRATION | 1650124 |
| | PETROLEUM STORAGE TANK | REGISTRATION | 28210 |
| | REGISTRATION | | |
| Location: | 2800 COTTONFLAT RD, MIDLAND, TX, 79706 | | |
| TCEQ Region: | REGION 07 - MIDLAND | | |
| Date Compliance History Prepared: | May 27, 2009 | | |
| Agency Decision Requiring Compliance History: | Enforcement | | |
| Compliance Period: | May 27, 2004 to May 27, 2009 | | |

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

Name: Wallace Myers Phone: 512-239-6580

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
 2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
 3. If Yes, who is the current owner/operator? N/A
 4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
 5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2008 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

| | | |
|---|------------|----------|
| 1 | 05/14/2009 | (745718) |
| 2 | 05/20/2009 | (745559) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A
- J. Early compliance.
N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
MICHAEL G. STEPHENSON DBA
COTTONFLAT GROCERY
RN102279908**

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2009-0799-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 Michael G. Stephenson dba Cottonflat Grocery ("the Respondent") under the authority of 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 2800 Cottonflat Road in Midland, Midland County, Texas (the "Facility").
2. The Respondent's two underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
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 May 26, 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 Seventeen Thousand Five Hundred Sixty-Four Dollars (\$17,564) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Four Hundred Two Dollars (\$402) of the

administrative penalty and Three Thousand Five Hundred Twelve Dollars (\$3,512) 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 Thirteen Thousand Six Hundred Fifty Dollars (\$13,650) of the administrative penalty shall be payable in 35 monthly payments of Three Hundred Ninety Dollars (\$390) 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. Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. Submitted an updated UST registration and self-certification form and obtained a delivery certificate on June 9, 2009;
 - b. Repaired the corrosion protection system at the Facility on June 8, 2009;
 - c. Began conducting bimonthly inspections of the rectifier and other components of the impressed current cathodic protection system on June 8, 2009;
 - d. Successfully conducted the required triennial testing of the corrosion protection system on June 8, 2009; and
 - e. Emptied and properly disposed of all fuel from the overspill containers and began conducting bimonthly inspections of the sumps, manways, overspill containers or catchment basins on June 2, 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 Facility, the Respondent is alleged to have:

1. Failed to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(B)(ii), as documented during an investigation conducted on May 13, 2009. Specifically, the delivery certificate expired on June 30, 2002.
2. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a), as documented during an investigation conducted on May 13, 2009. Specifically, one fuel delivery was accepted without a delivery certificate.
3. Failed to provide proper corrosion protection for the UST system, in violation of 30 TEX. ADMIN. CODE § 334.49(a) and TEX. WATER CODE § 26.3475(d), as documented during an investigation conducted on May 13, 2009. Specifically, the rectifier was not functioning.
4. Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly, in violation of 30 TEX. ADMIN. CODE § 334.49(c)(2)(C) and TEX. WATER CODE § 26.3475(d), as documented during an investigation conducted on May 13, 2009. Specifically, the rectifier system has never been tested.
5. 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, in violation of 30 TEX. ADMIN. CODE § 334.49(c)(4) and TEX. WATER CODE § 26.3475(d), as documented during an investigation conducted on May 13, 2009. Specifically, the triennial test had not been conducted.
6. Failed to conduct effective manual or automatic inventory control procedures for the UST system, in violation of 30 TEX. ADMIN. CODE § 334.48(c), as documented during an investigation conducted on May 13, 2009.
7. Failed to provide a release detection method for the USTs by failing to conduct reconciliation of inventory control records at least once a month, in a manner 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, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on May 13, 2009.
8. Failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on May 13, 2009.

9. Failed to inspect at least once every 60 days, any sumps, manways, overfill containers or catchment basins, to assure that their sides, bottoms, and any penetration points are maintained liquid tight, in violation of 30 TEX. ADMIN. CODE § 334.42(i) and TEX. WATER CODE § 26.3475(c)(2), as documented during an investigation conducted on May 13, 2009. Specifically, two overfill containers were filled with fuel.

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: Michael G. Stephenson dba Cottonflat Grocery, Docket No. 2009-0799-PST-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, begin conducting proper inventory control procedures for all USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.48;
 - b. Within 30 days after the effective date of this Agreed Order, install and implement a release detection method for all USTs at the Facility and begin recording volume measurements and reconciliation of inventory control records, in accordance with 30 TEX. ADMIN. CODE § 334.50; and
 - c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

The certification shall be submitted to:

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

with a copy to:

Waste Section Manager
Midland Regional Office
Texas Commission on Environmental Quality
3300 North A Street, Building 4, Suite 107
Midland, Texas 79705-5404

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

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Doolin

For the Executive Director

3/30/2010

Date

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

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

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

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

Michael G. Stephenson

Signature

1/27/10

Date

Michael G Stephenson

Name (Printed or typed)
Authorized Representative of
Michael G. Stephenson dba Cottonflat Grocery

Owner

Title

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