

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2010-0223-PWS-E **TCEQ ID:** RN102648342 **CASE NO.:** 39077

**RESPONDENT NAME:** TC Transport, Inc.

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> <b>1660 AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS ORDER FOLLOWING SOAH HEARING</b>
<input type="checkbox"/> <b>FINDINGS DEFAULT ORDER</b>	<input type="checkbox"/> <b>SHUTDOWN ORDER</b>	<input type="checkbox"/> <b>IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER</b>
<input type="checkbox"/> <b>AMENDED ORDER</b>	<input type="checkbox"/> <b>EMERGENCY ORDER</b>	
<b>CASE TYPE:</b>		
<input type="checkbox"/> <b>AIR</b>	<input type="checkbox"/> <b>MULTI-MEDIA (check all that apply)</b>	<input type="checkbox"/> <b>INDUSTRIAL AND HAZARDOUS WASTE</b>
<input checked="" type="checkbox"/> <b>PUBLIC WATER SUPPLY</b>	<input type="checkbox"/> <b>PETROLEUM STORAGE TANKS</b>	<input type="checkbox"/> <b>OCCUPATIONAL CERTIFICATION</b>
<input type="checkbox"/> <b>WATER QUALITY</b>	<input type="checkbox"/> <b>SEWAGE SLUDGE</b>	<input type="checkbox"/> <b>UNDERGROUND INJECTION CONTROL</b>
<input type="checkbox"/> <b>MUNICIPAL SOLID WASTE</b>	<input type="checkbox"/> <b>RADIOACTIVE WASTE</b>	<input type="checkbox"/> <b>DRY CLEANER REGISTRATION</b>
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Circle N Stores, 537 Vinton Road, Vinton, El Paso County</p> <p><b>TYPE OF OPERATION:</b> Gas station and convenience store with a public water supply</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on June 7, 2010. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Ms. Rebecca Clausewitz, Enforcement Division, Enforcement Team 2, MC R-13, (210) 403-4012; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495  <b>Respondent:</b> Mr. Michael G. Panzarell, Registered Agent, TC Transport, Inc., 3830 McCullough Avenue, San Antonio, Texas 78212                      Mr. William Kipp, Agent, Circle N Stores, 537 Vinton Road, Vinton, Texas 79821-8633  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> January 6, 2010</p> <p><b>Date of NOV/NOE Relating to this Case:</b> January 11, 2010 (NOE)</p> <p><b>Background Facts:</b> This was a record review.</p> <p><b>WATER</b></p> <p>1) Failure to locate the well site a minimum of 150 feet from the Facility's underground petroleum storage tanks ("PSTs") [30 TEX. ADMIN. CODE § 290.41(c)(1)(A)].</p> <p>2) Failure to obtain a sanitary control easement or Executive Director approval for a substitute to the easement requirement that covers the land within 150 feet of the Facility's well [30 TEX. ADMIN. CODE § 290.41(c)(1)(F)].</p>	<p><b>Total Assessed:</b> \$339</p> <p><b>Total Deferred:</b> \$67  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$272</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Within 90 days after the effective date of this Agreed Order, obtain a sanitary control easement that covers the land within 150 feet of the Facility's well or obtain Executive Director approval for an exception to the easement requirement;</p> <p>b. Within 105 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation, including a copy of the sanitary control easement or a letter approving a substitute, to demonstrate compliance with Ordering Provision a;</p> <p>c. Within 180 days after the effective date of this Agreed Order, provide a well site that is a minimum of 150 feet from the Facility's underground PSTs or obtain an exception to the distance requirement; and</p> <p>d. Within 195 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 Provision c.</p>

Additional ID No(s): Public Water Supply ID No. 0710184



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

## TCEQ

<b>DATES</b>	Assigned	11-Jan-2010			
	PCW	5-Feb-2010	Screening	15-Jan-2010	EPA Due

<b>RESPONDENT/FACILITY INFORMATION</b>					
Respondent	TC Transport, Inc.				
Reg. Ent. Ref. No.	RN102648342				
Facility/Site Region	6-El Paso	Major/Minor Source	Minor		

<b>CASE INFORMATION</b>					
Enf./Case ID No.	39077	No. of Violations	2		
Docket No.	2010-0223-PWS-E	Order Type	1660		
Media Program(s)	Public Water Supply	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Rebecca Clausewitz		
		EC's Team	Enforcement Team 2		
Admin. Penalty \$ Limit Minimum	\$50	Maximum	\$1,000		

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** Subtotal 1 \$300

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

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

**Compliance History** 13.0% Enhancement Subtotals 2, 3, & 7 \$39

Notes: The enhancement is due to one prior Notice of Violation (NOV) containing violations that are the same as the violations in the current enforcement action, and four prior NOV's containing dissimilar violations.

**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 \$0

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

Total EB Amounts \$7,570  
 Approx. Cost of Compliance \$60,200  
 \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** Final Subtotal \$339

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount** \$339

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty \$339

**DEFERRAL** 20.0% Reduction Adjustment -\$67

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** \$272

Screening Date 15-Jan-2010

Docket No. 2010-0223-PWS-E

PCW

Respondent TC Transport, Inc.

Policy Revision 2 (September 2002)

Case ID No. 39077

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102648342

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

### 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)	1	5%
	Other written NOVs	4	8%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 13%

>> Repeat Violator (Subtotal 3):

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7):

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The enhancement is due to one prior Notice of Violation (NOV) containing violations that are the same as the violations in the current enforcement action, and four prior NOVs containing dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 13%

Screening Date 15-Jan-2010

Docket No. 2010-0223-PWS-E

PCW

Respondent TC Transport, Inc.

Policy Revision 2 (September 2002)

Case ID No. 39077

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102648342

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 290.41(c)(1)(A)

Violation Description

Failed to locate the well site a minimum of 150 feet from the Facility's underground petroleum storage tanks. Specifically, the well, which is used as a groundwater source to provide drinking water to the customers of the convenience store, is approximately 34 feet from the underground storage tanks at the Facility.

Base Penalty \$1,000

>> 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

Locating a well within 150 feet of an underground storage tank could result in customers of the Facility being exposed to significant amounts of petroleum product, which would exceed levels that are protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 1

9 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$250

One monthly event is recommended, calculated from the date of the record review, January 6, 2010, to the date of case screening, January 15, 2010.

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 \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$7,548

Violation Final Penalty Total \$283

This violation Final Assessed Penalty (adjusted for limits) \$283

# Economic Benefit Worksheet

**Respondent** TC Transport, Inc.  
**Case ID No.** 39077  
**Reg. Ent. Reference No.** RN102648342  
**Media** Public Water Supply  
**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
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No commas or \$

**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$60,000	12-Jun-2009	30-Mar-2011	1.80	\$359	\$7,189	\$7,548
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

The delayed cost includes the estimated amount to drill a new well that is a minimum of 150 feet away from the Facility's underground storage tanks, calculated from the date the violation was initially documented, to 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

\$60,000

**TOTAL**

\$7,548

Screening Date 15-Jan-2010

Docket No. 2010-0223-PWS-E

PCW

Respondent TC Transport, Inc.

Policy Revision 2 (September 2002)

Case ID No. 39077

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102648342

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 290.41(c)(1)(F)

Violation Description

Failed to obtain a sanitary control easement or Executive Director approval for a substitute to the easement requirement that covers the land within 150 feet of the Facility's well.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			x

Percent 5%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Failure to have a sanitary control easement in place could result in exposure of the customers of the Facility to insignificant amounts of contaminants which do not exceed levels that are protective of human health.

Adjustment \$950

\$50

Violation Events

Number of Violation Events 1

9 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$50

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

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

Violation Subtotal \$50

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$22

Violation Final Penalty Total \$57

This violation Final Assessed Penalty (adjusted for limits) \$57

## Economic Benefit Worksheet

**Respondent:** TC Transport, Inc.  
**Case ID No.:** 39077  
**Reg. Ent. Reference No.:** RN102848342  
**Media:** Public Water Supply  
**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)	\$200	12-Jun-2009	31-Dec-2010	1.55	\$1	\$21	\$22
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: The delayed cost includes the estimated amount to obtain a sanitary control easement or a substitute that is approved by the Commission's Executive Director, calculated from the date the violation was initially documented to 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

\$200

**TOTAL**

\$22

# Compliance History Report

Customer/Respondent/Owner-Operator: CN601348733 TC Transport, Inc. Classification: AVERAGE Rating: 0.60  
Regulated Entity: RN102648342 CIRCLE N STORES Classification: AVERAGE Site Rating: 0.60  
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 66113  
PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 0710184  
Location: 537 VINTON RD, VINTON, EL PASO COUNTY, TX  
TCEQ Region: REGION 06 - EL PASO  
Date Compliance History Prepared: February 09, 2010  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: February 09, 2005 to February 09, 2010  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Rebecca Clausewitz Phone: (210) 403-4012

## 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: 9/1/2009 Repeat Violator: NO

## Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgments, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
  - 1 03/10/2005 (373221)
  - 2 11/04/2005 (434273)
  - 3 07/25/2006 (488143)
  - 4 07/05/2007 (566668)
  - 5 04/10/2008 (670579)
  - 6 07/25/2008 (686477)
  - 7 09/10/2008 (702066)
  - 8 09/25/2008 (703725)
  - 9 11/03/2008 (707079)
  - 10 11/24/2008 (708986)
  - 11 05/15/2009 (736718)
  - 12 06/29/2009 (749266)
  - 13 12/10/2009 (785137)
  - 14 01/08/2010 (787353)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 04/10/2008 (670579) CN601348733  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(4)  
Description: BACT - MONITORING/REPORTING VIOLATIONS

Date: 07/31/2008 (686477) CN601348733  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(4)  
 Description: BACT - MONITORING/REPORTING VIOLATIONS

Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter D 290.43(d)(2)  
 Description: As per regulation 290.43 (d) (2), they have failed to provide the pressure tank with a pressure release device.

Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter D 290.45(a)  
 Description: Failure to provide a minimum pressure tank capacity of 220 gallons.

Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.121(a)  
 Description: As per regulation 290.121 (a), this public water system has failed to maintain an up-to-date chemical and microbiological monitoring plan. As a result, a copy of the monitoring plan is also not being maintained at the water treatment plant or at the central location.

Date: 09/12/2008 (702066) CN601348733  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter D 290.43(d)(2)  
 Description: As per regulation 290.43 (d) (2), they have failed to provide the pressure tank with a pressure release device.

Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter D 290.45(a)  
 Description: Failure to provide a minimum pressure tank capacity of 220 gallons.

Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.121(a)  
 Description: As per regulation 290.121 (a), this public water system has failed to maintain an up-to-date chemical and microbiological monitoring plan. As a result, a copy of the monitoring plan is also not being maintained at the water treatment plant or at the central location.

Date: 05/15/2009 (736718) CN601348733  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 334, SubChapter C 334.45(c)(3)(A)  
 Description: Failure to ensure that shear valves were anchored for pressurized lines.

Date: 07/03/2009 (749266) CN601348733  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter D 290.41(a)  
 Description: Failure to provide the well with a minimum setback distance of 150 feet from the underground petroleum storage tank.

Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(1)(F)  
 Description: Failure to obtain a sanitary control easement covering land within 150 feet of the well.

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  
TC TRANSPORT, INC.  
RN102648342

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

## AGREED ORDER DOCKET NO. 2010-0223-PWS-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 TC Transport, Inc. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. 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 gas station and convenience store with a public water supply at 537 Vinton Road in Vinton, El Paso County, Texas (the "Facility") that has one service connection and serves at least 25 people per day for at least 60 days per year.
2. 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.
3. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about January 16, 2010.
4. 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.
5. An administrative penalty in the amount of Three Hundred Thirty-Nine Dollars (\$339) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Hundred Seventy-Two Dollars (\$272) of the administrative penalty and Sixty-Seven Dollars (\$67) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

6. 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.
7. 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.
8. 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.
9. 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.
10. 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 locate the well site a minimum of 150 feet from the Facility's underground petroleum storage tanks, in violation of 30 TEX. ADMIN. CODE § 290.41(c)(1)(A), as documented during a record review conducted on January 6, 2010.
2. Failed to obtain a sanitary control easement, or Executive Director approval for a substitute to the easement requirement, that covers the land within 150 feet of the Facility's well, in violation of 30 TEX. ADMIN. CODE § 290.41(c)(1)(F), as documented during a record review conducted on January 6, 2010.

## **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 5 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: TC Transport, Inc., Docket No. 2010-0223-PWS-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:
- a. Within 90 days after the effective date of this Agreed Order, obtain a sanitary control easement that covers the land within 150 feet of the Facility's well, in accordance with 30 TEX. ADMIN. CODE § 290.41, or obtain Executive Director approval for an exception to the easement requirement pursuant to 30 TEX. ADMIN. CODE § 290.39;
  - b. Within 105 days after the effective date of this Agreed Order, submit written certification as described in Ordering Provision 2.d below and include detailed supporting documentation, including a copy of the sanitary control easement or letter approving a substitute, to demonstrate compliance with Ordering Provision 2.a;
  - c. Within 180 days after the effective date of this Agreed Order, provide a well site that is a minimum of 150 feet from the Facility's underground petroleum storage tanks, in accordance with 30 TEX. ADMIN. CODE § 290.41, or obtain an exception to the distance requirement pursuant to 30 TEX. ADMIN. CODE § 290.39; and
  - d. Within 195 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 2.c. 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:

Water Section Manager  
El Paso Regional Office  
Texas Commission on Environmental Quality  
401 East Franklin Avenue, Suite 560  
El Paso, Texas 79901-1206

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. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

*[Handwritten Signature]*  
For the Executive Director

6/18/2010  
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.

*[Handwritten Signature]*  
Signature

5-18-10  
Date

William Kipp  
Name (Printed or typed)  
Authorized Representative of  
TC Transport, Inc.

Agent  
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.

