

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 3
DOCKET NO.: 2010-0216-PST-E **TCEQ ID:** RN101904308 **CASE NO.:** 39154
RESPONDENT NAME: HEALTHSOUTH OF SAN ANTONIO, INC.

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: Healthsouth of San Antonio, 9119 Cinnamon Hill, San Antonio, Bexar County</p> <p>TYPE OF OPERATION: Physical rehabilitation facility with an emergency generator and one underground storage tank ("UST")</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" 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 June 28, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Mike Pace, Enforcement Division, Enforcement Team 6, MC R-04, TCEQ, (817)588-5933; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. David Mork, CEO, HEALTHSOUTH OF SAN ANTONIO, INC., 9119 Cinnamon Hill, San Antonio, Texas 78240 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: July 17, 2009</p> <p>Date of NOE Relating to this Case: February 3, 2010</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>1) Failure to update the registration for any change or additional information regarding the UST within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the correct owner and operator information [30 TEX. ADMIN. CODE § 334.7(d)(3)].</p> <p>2) Failure to timely 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 September 30, 2002 [30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)].</p> <p>3) Failure to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST. Specifically, the Respondent received four deliveries of fuel without a delivery certificate [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)].</p> <p>4) Failure to ensure that a corrosion protection system is provided to all underground metal components of a UST system which are designed or used to convey, contain, or store regulated</p>	<p>Total Assessed: \$11,339</p> <p>Total Deferred: \$2,267 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$9,072</p> <p>Site Compliance History Classification <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a. Submitted a properly completed UST registration and self-certification form and obtained a TCEQ fuel delivery certificate on August 26, 2009;</p> <p>b. Updated the UST registration to reflect the correct owner and operator information on August 26, 2009;</p> <p>c. Installed an anode to the piping associated with the UST and successfully tested the corrosion protection system on August 26, 2009;</p> <p>d. Implemented manual tank gauging as a release detection method for the UST system on August 5, 2009;</p> <p>e. Properly marked the UST with an identification number matching the number listed on the UST registration and self-certification form on August 26, 2009; and</p> <p>f. Began conducting the required bimonthly inspections of all sumps, manways, overspill containers and catchment basins on July 23, 2009.</p>

<p>substances. Specifically, the Respondent did not provide corrosion protection for the steel piping associated with the UST system [30 TEX. ADMIN. CODE § 334.49(a)(4) and TEX. WATER CODE § 26.3475(d)].</p> <p>5) Failure to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>6) Failure to ensure that a legible tag, label or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form [30 TEX. ADMIN. CODE § 334.8(c)(5)(c)].</p> <p>7) Failure to inspect all sumps, manways, overflow containers or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight [30 TEX. ADMIN. CODE § 334.42(i)].</p>		
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Additional ID No(s): PST 45922



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	8-Feb-2010	Screening	11-Feb-2010	EPA Due	
	PCW	9-Feb-2010				

RESPONDENT/FACILITY INFORMATION			
Respondent	HEALTHSOUTH OF SAN ANTONIO, INC		
Reg. Ent. Ref. No.	RN101904808		
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	39154	No. of Violations	0
Docket No.	2010-0216-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Mike Pace
		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 -10.0% Enhancement *Subtotals 2, 3, & 7* **-\$1,600**

Notes: Reduction for high-performer classification.

Culpability No 0.0% Enhancement *Subtotal 4* **\$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments *Subtotal 5* **\$4,000**

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

Total EB Amounts	\$958	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$3,852	

SUM OF SUBTOTALS 1-7 *Final Subtotal* **\$10,400**

OTHER FACTORS AS JUSTICE MAY REQUIRE 9.0% *Adjustment* **\$939**

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 and 6.

Final Penalty Amount **\$11,339**

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* **\$11,339**

DEFERRAL 20.0% Reduction *Adjustment* **-\$2,267**

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 **\$9,072**

Screening Date 11-Feb-2010

Docket No. 2010-0216-PST-E

PCW

Respondent HEALTHSOUTH OF SAN ANTONIO, INC.

Policy Revision 2 (September 2002)

Case ID No. 39154

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101904308

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Mike Pace

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

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

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) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Reduction for high performer classification.

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

Screening Date 11-Feb-2010

Docket No. 2010-0216-PST-E

PCW

Respondent HEALTHSOUTH OF SAN ANTONIO, INC.

Policy Revision 2 (September 2002)

Case ID No. 39154

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101904308

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Mike Pace

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code §§ 334.7(d)(3), 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)

Violation Description

Failed to update the registration for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not amended to reflect the correct owner and operator information. Also, failed to timely 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 September 30, 2002.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	X		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 7

2521 Number of violation days

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 July 17, 2009 investigation.

Good Faith Efforts to Comply

25.0% Reduction

\$1,750

Extraordinary

Ordinary

N/A

Notes

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

The Respondent came into compliance on August 26, 2009 prior to the NOE dated February 3, 2010.

Violation Subtotal \$5,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$835

Violation Final Penalty Total \$4,961

This violation Final Assessed Penalty (adjusted for limits) \$4,961

Economic Benefit Worksheet

Respondent: HEALTHSOUTH OF SAN ANTONIO, INC.
Case ID No.: 39154
Reg. Ent. Reference No.: RN101904308
Media: Petroleum Storage Tank
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$100	17-Jul-2009	26-Aug-2009	0.11	\$1	n/a	\$1
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 investigation date and the final date is the compliance date.

Avoided Costs

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

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-Aug-2002	17-Jul-2009	7.80	\$234	\$600	\$834
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 current TCEQ delivery certificate. The date required is 30 days prior to the expiration date of the delivery certificate and the final date is the investigation date.

Approx. Cost of Compliance

\$700

TOTAL

\$835

Screening Date: 11-Feb-2010

Docket No.: 2010-0216-PST-E

PCW

Respondent: HEALTHSOUTH OF SAN ANTONIO, INC.

Policy Revision 2 (September 2002)

Case ID No.: 39154

PCW Revision October 30, 2008

Reg. Ent. Reference No.: RN101904308

Media [Statute]: Petroleum Storage Tank

Enf. Coordinator: Mike Pace

Violation Number: 2

Rule Cite(s): 30 Tex. Admin. Code §.334.8(c)(5)(A)(i) and Tex. Water Code §.26.3467(a)

Violation Description: Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST. Specifically, the Respondent received four deliveries of fuel without a delivery certificate.

Base Penalty: \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				5%
	Potential			x	

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0%
Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.					

Adjustment: \$9,500

\$500

Violation Events

Number of Violation Events: 4 Number of violation days: 4

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty: \$2,000

Four single events are recommended for accepting four deliveries of fuel.

Good Faith Efforts to Comply

25.0% Reduction

\$500

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

Notes: The Respondent came into compliance on August 26, 2009 prior to the NOE dated February 3, 2010.

Violation Subtotal: \$1,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount: \$0

Violation Final Penalty Total: \$1,417

This violation Final Assessed Penalty (adjusted for limits): \$1,417

Economic Benefit Worksheet

Respondent: HEALTHSOUTH OF SAN ANTONIO, INC.

Case ID No.: 39154

Reg. Ent. Reference No.: RN101904308

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
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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

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: 11-Feb-2010

Docket No.: 2010-0216-PST-E

PCW

Respondent: HEALTHSOUTH OF SAN ANTONIO, INC.

Policy Revision 2 (September 2002)

Case ID No.: 39154

PCW Revision October 30, 2008

Reg. Ent. Reference No.: RN101904308

Media [Statute]: Petroleum Storage Tank

Enf. Coordinator: Mike Pace

Violation Number: 3

Rule Cite(s):

30 Tex. Admin. Code § 334.49(a)(4) and Tex. Water Code § 26.3475(d)

Violation Description:

Failed to ensure that a corrosion protection system is provided to all underground metal components of a UST system which are designed or used to convey, contain, or store regulated substances. Specifically, the Respondent did not provide corrosion protection for the steel piping associated with the UST system.

Base Penalty: \$10,000

>> 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 levels that are protective of human health and environmental receptors as a result of the violation.

Adjustment: \$7,500

\$2,500

Violation Events

Number of Violation Events: 1

40 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty: \$2,500

One quarterly event is recommended based on the documentation of the violation during the July 17, 2009 investigation to the August 26, 2009 compliance date.

Good Faith Efforts to Comply

25.0% Reduction

\$625

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

Notes:

The Respondent came into compliance on August 26, 2009 prior to the NOE dated February 3, 2010.

Violation Subtotal: \$1,875

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount: \$11

Violation Final Penalty Total: \$1,772

This violation Final Assessed Penalty (adjusted for limits): \$1,772

Economic Benefit Worksheet

Respondent: HEALTHSOUTH OF SAN ANTONIO, INC.
Case ID No.: 39164
Reg. Ent. Reference No.: RN101904308
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	\$1,452	17-Jul-2009	26-Aug-2009	0.11	\$1	\$11	\$11
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

Actual cost to install an anode to protect the US1 piping. 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)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,452

TOTAL

\$11

Screening Date 11-Feb-2010

Docket No. 2010-0216-PST-E

PCW

Respondent HEALTHSOUTH OF SAN ANTONIO, INC.

Falty Revision 2 (September 2002)

Case ID No. 39154

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101904308

Media [Statute] Petroleum Storage Tank

Enf. Coordinator: Mike Pace

Violation Number 4

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

Violation Description Failed to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

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 Number of violation days 18

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,500

One monthly event is recommended based on documentation of the violation during the July 17, 2009 investigation to the August 5, 2009 compliance date.

Good Faith Efforts to Comply

25.0% Reduction

\$625

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

Notes The Respondent came into compliance on August 5, 2009, prior to the NOE dated February 3, 2010.

Violation Subtotal \$1,875

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4

Violation Final Penalty Total \$1,772

This violation Final Assessed Penalty (adjusted for limits) \$1,772

Economic Benefit Worksheet

Respondent: HEALTHSOUTH OF SAN ANTONIO, INC.
Case ID No.: 39154
Reg. Ent. Reference No.: RN101904308
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
<small>No commas or \$</small>							

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	17-Jul-2009	5-Aug-2009	0.05	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to provide proper release detection for the UST system. The date required is the investigation date and the final date is the compliance date.

Avoided Costs

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

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

\$4

Screening Date 11-Feb-2010

Docket No. 2010-0216-PST-E

PCW

Respondent HEALTHSOUTH OF SAN ANTONIO, INC.

Policy Revision 2 (September 2002)

Case ID No. 39154

PCW Revision October 30, 2009

Reg. Ent. Reference No. RN101904308

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Mike Pace

Violation Number 5

Rule Cite(s)

30 Tex. Admin. Code § 334.8(c)(5)(C)

Violation Description

Failed to ensure that a legible tag, label or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
	X		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events

40 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

mark only one with an x

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the July 17, 2009 investigation.

Good Faith Efforts to Comply

25.0% Reduction

\$250

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

Notes

The Respondent came into compliance on August 26, 2009 prior to the NOE dated February 3, 2010.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$709

This violation Final Assessed Penalty (adjusted for limits) \$709

Economic Benefit Worksheet

Respondent: HEALTHSOUTH OF SAN ANTONIO, INC.
Case ID No: 39154
Reg. Ent. Reference No: RN101904308
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
<small>No commas or \$</small>							

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	17-Jul-2009	26-Aug-2009	0.11	\$1	n/a	\$1

Notes for DELAYED costs

Estimated cost to label the tank fill-port. The date required is the investigation date and the final date is the compliance date.

Avoided Costs

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

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

\$100

TOTAL

\$1

Screening Date 11-Feb-2010

Docket No. 2010-0216-PST-E

PCW

Respondent HEALTHSOUTH OF SAN ANTONIO, INC.

Policy Revision 2 (September 2002)

Case ID No. 39154

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101904308

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Mike Pace

Violation Number 6

Rule Cite(s)

30 Tex. Admin. Code § 334.42(i)

Violation Description

Failed to inspect all sumps, manways, overspill containers or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm	
	Major	Minor
Actual		
Potential	X	

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

60 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$1,000

One quarterly event is recommended for the period preceding the July 17, 2009 investigation.

Good Faith Efforts to Comply

25.0% Reduction

\$250

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

Notes

The Respondent came into compliance on July 23, 2009 prior to the NOE dated February 3, 2010.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$105

Violation Final Penalty Total \$709

This violation Final Assessed Penalty (adjusted for limits) \$709

Economic Benefit Worksheet

Respondent: HEALTHSOUTH OF SAN ANTONIO, INC.
Case ID No.: 39154
Reg. Ent. Reference No.: RN101904308
Media: Petroleum Storage Tank
Violation No.: 6

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

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

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$100	18-May-2009	23-Jul-2009	1.10	\$5	\$100	\$105
Other (as needed)				0.00	\$0	\$0	\$0

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 before the investigation and the final date is the compliance date.

Approx. Cost of Compliance

\$100

TOTAL

\$105

Compliance History Report

Customer/Respondent/Owner-Operator:	CN601040272 HEALTHSOUTH OF SAN ANTONIO, INC.	Classification: HIGH	Rating: 0.00
Regulated Entity:	RN101904308 Healthsouth of San Antonio	Classification: HIGH	Site Rating: 0.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	45922
Location:	9119 CINNAMON HL, SAN ANTONIO, TX, 78240		
TCEQ Region:	REGION 13 - SAN ANTONIO		
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: Mike Pace Phone: 817-588-5933

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 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	08/17/2009	(782860)
2	01/15/2010	(788680)
 - 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
HEALTHSOUTH OF SAN ANTONIO,
INC.
RN101904308

§
§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2010-0216-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 HEALTHSOUTH OF SAN ANTONIO, INC. ("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 physical rehabilitation facility with an emergency power generator and one underground storage tank ("UST") at 9119 Cinnamon Hill in San Antonio, Bexar County, Texas (the "Facility").
2. The Respondent's one UST is 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 February 8, 2010.
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 Eleven Thousand Three Hundred Thirty-Nine Dollars (\$11,339) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Nine Thousand Seventy-Two Dollars (\$9,072) of the administrative penalty and Two Thousand Two Hundred Sixty-Seven Dollars (\$2,267) 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.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. Submitted a properly completed UST registration and self-certification form and obtained a TCEQ fuel delivery certificate on August 26, 2009;
 - b. Updated the UST registration to reflect the correct owner and operator information on August 26, 2009;
 - c. Installed an anode to the piping associated with the UST and successfully tested the corrosion protection system on August 26, 2009;
 - d. Implemented manual tank gauging as a release detection method for the UST system on August 5, 2009;
 - e. Properly marked the UST with an identification number matching the number listed on the UST registration and self-certification form on August 26, 2009; and
 - f. Began conducting the required bimonthly inspections of all sumps, manways, overspill containers and catchment basins on July 23, 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 update the registration for any change or additional information regarding the UST within 30 days from the date of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3), as documented during an investigation conducted on July 17, 2009. Specifically, the registration was not updated to reflect the correct owner and operator information.
2. Failed to timely 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)(4)(A)(vii) and (c)(5)(B)(ii), as documented during an investigation conducted on July 17, 2009. Specifically, the delivery certificate expired September 30, 2002.
3. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST, 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 July 17, 2009. Specifically, the Respondent received four deliveries of fuel without a delivery certificate.
4. Failed to ensure that a corrosion protection system is provided to all underground metal components of a UST system which are designed or used to convey, contain, or store regulated substances, in violation of 30 TEX. ADMIN. CODE § 334.49(a)(4) and TEX. WATER CODE § 26.3475(d), as documented during an investigation conducted on July 17, 2009. Specifically, the Respondent did not provide corrosion protection for the steel piping associated with the UST system.
5. Failed to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on July 17, 2009.
6. Failed to ensure that a legible tag, label or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(C), as documented during an investigation conducted on July 17, 2009.
7. Failed to inspect all sumps, manways, overspill containers or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight, in violation of 30 TEX. ADMIN. CODE § 334.42(i), as documented during an investigation conducted on July 17, 2009.

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: HEALTHSOUTH OF SAN ANTONIO, INC., Docket No. 2010-0216-PST-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088
2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. 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.
4. 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.
5. 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 Szollier
For the Executive Director

6/7/2010
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.

David Mark
Signature

4/22/10
Date

DAVID MARK
Name (Printed or typed)
Authorized Representative of
HEALTHSOUTH OF SAN ANTONIO, INC.

CEO
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.

