

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO. 2009-1576-PST-E TCEQ ID RN102274537 CASE NO. 38444

RESPONDENT NAME: QANDIL, INC. AND SKY BUSINESS, INC. DBA BRYAN DRIVE IN

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 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

SITE WHERE VIOLATION(S) OCCURRED: 1501 Groesbeck Street, Bryan, Brazos County

TYPE OF OPERATION: Convenience store with retail sales of gasoline

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired July 5, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Anna Treadwell, Litigation Division, MC 175, (512) 239-0974
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Mr. Tom Greimel, Waste Enforcement Section, MC 128, (512) 239-5690

TCEQ Regional Contact: Mr. Frank Burleson, Waco Regional Office, MC R-9, (254) 761-3001

Respondent: Mr. Noorallah B. Dharani, President, QUANDIL, INC. and Sky Business, Inc., 708 West William Joe Bryan Parkway, Bryan, TX 77803

Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: July 14, 2009</p> <p>Date of NOE Relating to this Case: September 8, 2009</p> <p>Background Facts: The EDRP was filed on February 5, 2010. Settlement was achieved and the agreed order was signed on May 3, 2010.</p> <p>Current Compliance Status: Respondent corrected violation nos. 1 and 2. Respondent's delivery certificate expired in January 2010.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to maintain the corrosion protection system in a manner that ensures adequate corrosion protection for the underground storage tank ("UST") system [TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(a)(2)]. Failed to ensure that all USTs are properly identified as listed on the Facility's UST registration and self-certification form by a legible tag, label, or marking that is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube [30 TEX. ADMIN. CODE § 334.8(c)(5)(C)]. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b)]. 	<p>Total Assessed: \$3,625</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid/Due to General Revenue: \$125/\$3,500</p> <p>Respondent paid \$125 of the administrative penalty. The remaining amount of \$3,500 shall be payable in 35 monthly payments of \$100 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 Respondent implemented the following corrective actions:</p> <ol style="list-style-type: none"> Submitted documentation which demonstrates that the USTs have been properly identified; and Submitted documentation which demonstrates that a corrosion protection specialist determined that the corrosion protection system was operating in a manner to provide continuous corrosion protection to all underground metal components of the UST system. <p>Ordering Provisions:</p> <p>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Within 30 days, begin maintaining all UST records. Within 45 days, submit written certification demonstrating compliance.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	14-Sep-2009			
	PCW	4-Feb-2010	Screening	25-Sep-2009	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	QANDIL, INC. and Sky Business, Inc. dba Bryan Drive In
Reg. Ent. Ref. No.	RN102274537
Facility/Site Region	9-Waco
Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	38444	No. of Violations	3	
Docket No.	2009-1576-PST-E	Order Type	1660	
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No	
Multi-Media		Enf. Coordinator	Thomas Greimel	
		EC's Team	Enforcement Team 7	
Admin. Penalty \$ Limit	Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$4,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0.0% Reduction	Subtotals 2, 3, & 7	\$0
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Notes	No adjustment due to compliance history.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$875
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$29	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$4,800	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,625
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$3,625
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,625
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$3,625
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Screening Date 25-Sep-2009

Docket No. 2009-1576-PST-E

PCW

Respondent QANDIL, INC. and Sky Business, Inc. dba Bryan Drive In

Policy Revision 2 (September 2002)

Case ID No. 38444

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102274537

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	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 (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

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

Screening Date	25-Sep-2009	Docket No.	2009-1576-PST-E	PCW
Respondent	QANDIL, INC. and Sky Business, Inc. dba Bryan Drive In			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	38444			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN102274537			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Thomas Greimel			
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 334.49(a)(2) and Tex. Water Code § 26.3475(d)			
Violation Description	Failed to maintain the corrosion protection system in a manner that ensures adequate corrosion protection for the underground storage tank ("UST") system. Specifically, on February 26, 2009 during a re-certification survey of the corrosion protection system ("CPS") a corrosion protection specialist determined that the CPS was not operating in a manner to provide continuous corrosion protection to all underground metal components of the UST system.			
	Base Penalty	\$10,000		

>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	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 or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events: 1 73 Number of violation days

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

Violation Base Penalty \$2,500

One quarterly event is recommended from the July 14, 2009 investigation date to the September 25, 2009 screening date.

Good Faith Efforts to Comply 25.0% Reduction \$625

		Before NOV	NOV to EDPRP/Settlement
Extraordinary			
Ordinary	x		
N/A			(mark with x)
Notes	The Respondent came into compliance on July 23, 2009.		
	Violation Subtotal	\$1,875	

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$7 **Violation Final Penalty Total** \$1,875

This violation Final Assessed Penalty (adjusted for limits) \$1,875

Economic Benefit Worksheet

Respondent QANDIL, INC. and Sky Business, Inc. dba Bryan Drive In
Case ID No. 38444
Reg. Ent. Reference No. RN102274537
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	\$4,200	14-Jul-2009	23-Jul-2009	0.02	\$0	\$7	\$7
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 make repairs on the corrosion protection system and provide proper corrosion protection. The Date Required is the investigation date. 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

\$4,200

TOTAL

\$7

Screening Date 25-Sep-2009 **Docket No.** 2009-1576-PST-E **PCW**
Respondent QANDIL, INC. and Sky Business, Inc. dba Bryan Drive In *Policy Revision 2 (September 2002)*
Case ID No. 38444 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102274537
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Thomas Greimel

Violation Number
Rule Cite(s)
Violation Description
Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
	<input type="text"/>	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>
<input type="text" value="100% of the rule requirement was not met."/>					

Adjustment

Violation Base Penalty

Violation Events

Number of Violation Events Number of violation days
mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text" value="x"/>

Violation Base Penalty

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text" value="x"/>	<input type="text"/>
N/A		(mark with x)

Notes

Violation Subtotal

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount **Violation Final Penalty Total**
This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent QANDIL, INC. and Sky Business, Inc. dba Bryan Drive In
Case ID No. 38444
Reg. Ent. Reference No. RN102274537
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

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	14-Jul-2009	28-Jul-2009	0.04	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to label tank fill ports. The Date Required is the investigation date. 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

\$100

TOTAL

\$0

Screening Date 25-Sep-2009 **Docket No.** 2009-1576-PST-E **PCW**
Respondent QANDIL, INC. and Sky Business, Inc. dba Bryan Drive In *Policy Revision 2 (September 2002)*
Case ID No. 38444 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102274537
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Thomas Greimel

Violation Number
Rule Cite(s)
Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual	<input type="text"/>	<input type="text"/>	
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>		

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	
<input type="text" value="100% of the rule requirement was not met."/>					

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text" value="x"/>

Violation Base Penalty

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	<input type="text" value="(mark with x)"/>

Notes

Violation Subtotal

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount **Violation Final Penalty Total**

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent QANDIL, INC. and Sky Business, Inc. dba Bryan Drive In
Case ID No. 38444
Reg. Ent. Reference No. RN102274537
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				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	14-Jul-2009	31-May-2010	0.88	\$22	n/a	\$22
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 maintain the UST records. Date Required is the investigation date. 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

\$22

Compliance History Report

Customer/Respondent/Owner-Operator: CN603514449 QANDIL, INC. Classification: AVERAGE Rating: 3.01
Regulated Entity: RN102274537 Bryan Drive In Classification: AVERAGE Site Rating: 3.01
BY DEFAULT
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 20379
REGISTRATION
Location: 1501 GROESBECK ST, BRYAN, TX, 77803
TCEQ Region: REGION 09 - WACO
Date Compliance History Prepared: October 23, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: October 23, 2004 to October 23, 2009

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

Name: Thomas Greimel Phone: (512) 239-5690

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? Yes
3. If Yes, who is the current owner/operator? QANDIL, INC. (owner)
Sky Business, Inc. (operator)
4. If Yes, who was/were the prior owner(s)/operator(s)? Agog Business, Inc
5. When did the change(s) in owner or operator occur? 1/1/2009
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.
1 09/10/2009 (762228)
 - 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

Compliance History Report

Customer/Respondent/Owner-Operator: CN603514449 Sky Business, Inc. Classification: AVERAGE Rating: 3.01
Regulated Entity: RN102274537 Bryan Drive In Classification: AVERAGE Site Rating: 3.01
BY DEFAULT
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 20379
REGISTRATION
Location: 1501 GROESBECK ST, BRYAN, TX, 77803
TCEQ Region: REGION 09 - WACO
Date Compliance History Prepared: October 23, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: October 23, 2004 to October 23, 2009

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

Name: Thomas Greimel Phone: (512) 239-5690

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? Yes
3. If Yes, who is the current owner/operator?
QANDIL, INC. (owner)
Sky Business, Inc. (operator)
4. If Yes, who was/were the prior owner(s)/operator(s) ?
Agog Business, Inc
5. When did the change(s) in owner or operator occur?
1/1/2009
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.
1 09/10/2009 (762228)
 - 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
QANDIL, INC. AND
SKY BUSINESS, INC. DBA
BRYAN DRIVE IN;
RN102274537**

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§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2009-1576-PST-E**

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality (“Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding QANDIL, INC. and Sky Business, Inc. dba Bryan Drive In (“QANDIL” and “Sky”) under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and QANDIL and Sky appear before the Commission and together stipulate that:

1. QANDIL owns and Sky operates a convenience store with retail sales of gasoline located at 1501 Groesbeck Street, Bryan, Brazos County, Texas (the “Facility”). QANDIL and Sky’s two underground storage tanks (“USTs”) are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. QANDIL and Sky’s USTs contain a regulated petroleum substance as defined in the rules of the Commission.
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission, QANDIL, and Sky agree that the Commission has jurisdiction to enter this Agreed Order, and that QANDIL and Sky are subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by QANDIL and Sky of any violation alleged in Section II (“Allegations”), nor of any statute or rule.
5. An administrative penalty in the amount of three thousand six hundred twenty-five dollars (\$3,625.00) is assessed by the Commission in settlement of the violations alleged in Section II (“Allegations”). QANDIL and Sky paid one hundred twenty-five dollars (\$125.00) of the

administrative penalty. The remaining amount of three thousand five hundred dollars (\$3,500.00) of the administrative penalty shall be payable in 35 monthly payments of one hundred dollars (\$100.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If QANDIL and Sky fail to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his 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, QANDIL and Sky's failure to meet the payment schedule of this Agreed Order constitutes the failure by QANDIL and Sky to timely and satisfactorily comply with all of the terms of this Agreed Order.

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 QANDIL and Sky agree on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. The Executive Director recognizes that QANDIL and Sky implemented the following corrective measures at the Facility:
 - a. Submitted documentation which demonstrates that the USTs have been properly identified; and
 - b. Submitted documentation which demonstrates that a corrosion protection specialist determined that the corrosion protection system was operating in a manner to provide continuous corrosion protection to all underground metal components of the UST system.
9. 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 QANDIL and Sky have not complied with one or more of the terms or conditions in this Agreed Order.
10. 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.
11. 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

1. During an investigation conducted on July 14, 2009, a TCEQ Waco Regional Office investigator documented that QANDIL and Sky violated:
 - a. TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(a)(2), by failing to maintain the corrosion protection system in a manner that ensures adequate corrosion protection for the underground storage tank (“UST”) system. Specifically, on February 26, 2009, during a re-certification survey of the corrosion protection system (“CPS”) a corrosion protection specialist determined that the CPS was not operating in a manner to provide continuous corrosion protection to all underground metal components of the UST system.
 - b. 30 TEX. ADMIN. CODE § 334.8(c)(5)(C), by failing to ensure that all USTs are properly identified as listed on the Facility’s UST registration and self-certification form by a legible tag, label, or marking that is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube.
 - c. 30 TEX. ADMIN. CODE § 334.10(b) by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel.
2. QANDIL and Sky received notice of the violations on or about September 13, 2009.

III. DENIALS

QANDIL and Sky generally deny each allegation in Section II (“Allegations”).

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that QANDIL and Sky pay an administrative penalty as set forth in Section I, Paragraph 5 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and QANDIL and Sky’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 considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to “Texas Commission on Environmental Quality” and shall be sent with the notation “Re: QANDIL, INC. and Sky Business, Inc. dba Bryan Drive In, Docket No. 2009-1576-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. QANDIL and Sky shall undertake the following technical requirements:
- a. Within 30 days after the effective date of this Agreed Order, QANDIL and Sky shall begin maintaining all UST records, in accordance with 30 TEX. ADMIN. CODE § 334.10.
 - b. Within 45 days after the effective date of this Agreed Order, QANDIL and Sky shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

QANDIL and Sky shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision No. 2.a. to:

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

and

Frank Burlison, Waste Section Manager
Texas Commission on Environmental Quality
Waco Regional Office
6801 Sanger Avenue, Suite 2500
Waco, Texas 76710-7826

3. The provisions of this Agreed Order shall apply to and be binding upon QANDIL and Sky. QANDIL and Sky are 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 QANDIL and Sky fail 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, QANDIL and Sky's failure to comply is not a violation of this Agreed Order. QANDIL and Sky shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. QANDIL and Sky shall notify the Executive Director within seven days after QANDIL and Sky become 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 QANDIL and Sky shall be made in writing to the Executive Director. Extensions are not effective until QANDIL and Sky receive 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 QANDIL and Sky 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.
8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Agreed Order to QANDIL and Sky, or three days after the date on which the Commission mails notice of this Agreed Order to QANDIL and Sky, 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 Brewer Penland

For the Executive Director

6/25/2010

Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, 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 my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on QANDIL and Sky's compliance history;
- Greater scrutiny of any permit applications submitted by QANDIL and Sky;
- 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 against QANDIL and Sky;
- Automatic referral to the Attorney General's Office of any future enforcement actions against QANDIL and Sky; and
- TCEQ seeking other relief as authorized by law.

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

Noorallah B. Dharani

Signature

05.03.2010

Date

Noorallah B. Dharani

Name (Printed or typed)

Authorized representative of
QANDIL, INC.

President

Title

Noorallah B. Dharani

Signature

05.03.2010

Date

Noorallah B. Dharani

Name (Printed or typed)

Authorized representative of
Sky Business, Inc. dba Bryan Drive In

President

Title