

Executive Summary – Enforcement Matter – Case No. 40893
S & S Conveniences Inc. d/b/a C D Kwik Stop II
RN102781150
Docket No. 2010-2052-PST-E

Order Type:

Default Shutdown Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

2401 West Seminary Drive, Fort Worth, Tarrant County

Type of Operation:

convenience store with retail sales of gasoline

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: August 19, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed: \$2,600

Amount Deferred for Expedited Settlement: N/A

Amount Deferred for Financial Inability to Pay: N/A

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$2,600

Compliance History Classifications:

Person/CN – Average
Site/RN – Average

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: December 10, 2010
Date(s) of NOV(s): N/A
Date(s) of NOE(s): December 10, 2010

Violation Information

Failed to monitor the UST system for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

1. Immediately shut down operations of all USTs at the Facility:
 - a. Cease dispensing fuel from the USTs;
 - b. Cease receiving deliveries of regulated substances into the USTs;
 - c. Padlock the dispensers;
 - d. Empty the USTs of all regulated substances; and
 - e. Temporarily remove the USTs from service.
2. The USTs shall remain out of service until such time as Respondent demonstrates to the satisfaction of the Executive Director that the release detection violation has been corrected.
3. Respondent's UST fuel delivery certificate is revoked immediately. Respondent shall cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements.
4. Within 10 days, Respondent shall surrender its UST fuel delivery certificate.
5. Within 15 days, submit a detailed written report documenting the steps taken to comply with Technical Requirements Nos. 1 and 4.
6. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline:
 - a. Implement a release detection method for all USTs at the Facility; and
 - b. Obtain a new fuel delivery certificate.
7. Upon obtaining a new fuel delivery certificate, post the fuel delivery certificate in a location at the Facility where the delivery certificate is clearly visible at all times.
8. Within 10 days of resuming sales of gasoline, submit written certification to demonstrate compliance with Technical Requirements Nos. 6 and 7.

Executive Summary – Enforcement Matter – Case No. 40893
S & S Conveniences Inc. d/b/a C D Kwik Stop II
RN102781150
Docket No. 2010-2052-PST-E

Litigation Information

Date Petition(s) Filed: April 12, 2011 (EDPRP); May 3, 2011 (EDFARP)
Date(s) Green Card(s) Signed: April 14, 2011 (EDPRP); May 4, 2011 (EDFARP)
Date(s) Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A

Contact Information

TCEQ Attorneys: Steven M. Fishburn, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
TCEQ Enforcement Coordinator: Michael Pace, Waste Enforcement Section, (817) 588-5933
TCEQ Regional Contact: Sam Barrett, Dallas/Fort Worth Regional Office, (817) 588-5903
Respondent: Mohammed Salim, President, S & S Conveniences, Inc., 2668 Silver Hill Drive, Fort Worth, Texas 76131
Respondent's Attorney: N/A

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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	20-Dec-2010	Screening	21-Dec-2010	EPA Due	
	PCW	4-Apr-2011				

RESPONDENT/FACILITY INFORMATION	
Respondent	S & S Conveniences Inc. dba C D Kwik Stop II
Reg. Ent. Ref. No.	RN102781150
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	40893	No. of Violations	1
Docket No.	2010-2052-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	\$2,500
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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	4.0% Enhancement	Subtotals 2, 3, & 7	\$100
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Notes	Enhancement for two NOVs with dissimilar violations.
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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	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$52	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,500	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,600
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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	\$2,600
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,600
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$2,600
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Screening Date 21-Dec-2010

Docket No. 2010-2052-PST-E

PCW

Respondent S & S Conveniences Inc. dba C D Kwik Stop II

Policy Revision 2 (September 2002)

Case ID No. 40893

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102781150

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 notices of violation ("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	2	4%
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) 4%

>> 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

Enhancement for two NOVs with dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 4%

Screening Date 21-Dec-2010

Docket No. 2010-2052-PST-E

PCW

Respondent S & S Conveniences Inc. dba C D Kwik Stop II

Policy Revision 2 (September 2002)

Case ID No. 40893

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102781150

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Mike Pace

Violation Number 1

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 underground storage tanks ("USTs") 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 11 Number of violation days

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 December 10, 2010 record review to the December 21, 2010 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$52

Violation Final Penalty Total \$2,600

This violation Final Assessed Penalty (adjusted for limits) \$2,600

Economic Benefit Worksheet

Respondent S & S Conveniences Inc. dba C D Kwik Stop II
Case ID No. 40893
Req. Ent. Reference No. RN102781150
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				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	10-Dec-2010	21-Aug-2011	0.70	\$52	n/a	\$52

Notes for DELAYED costs

Estimated cost to monitor the USTs for releases. The date required is the record review date and the final date is the expected date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$52

Compliance History

Customer/Respondent/Owner-Operator: CN602298838 S & S Conveniences Inc. Classification: AVERAGE Rating: 2.40

Regulated Entity: RN102781150 C D Kwik Stop II Classification: AVERAGE Site Rating: 1.80

ID Number(s): PETROLEUM STORAGE TANK REGISTRATION: 20626
REGISTRATION

Location: 2401 W SEMINARY DR, FORT WORTH, TX, 76115

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: December 21, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: December 21, 2005 to December 21, 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: 9/1/2010 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 | 12/13/2006 | (517504) |
| 2 | 01/05/2007 | (534778) |
| 3 | 07/08/2009 | (748544) |
| 4 | 09/01/2009 | (762414) |
| 5 | 12/10/2010 | (877543) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | |
|--------------|--|----------|--------------------------|
| Date: | 12/13/2006 | (517504) | CN602298838 |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.242(3)(K) | | |
| Description: | The Healy Monitor did not have paper or ink | | |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.242(3) | | |
| Description: | Healy Monitor is not visible to station personnel. | | |

Date: 07/08/2009 (748544)

CN602298838

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(K)

Description: The facility's Healy system monitor was not functioning.

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 S & S CONVENIENCES INC. D/B/A C D KWIK STOP II; RN102781150	§ § § § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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DEFAULT AND SHUTDOWN ORDER

DOCKET NO. 2010-2052-PST-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's First Amended Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty, corrective action of the respondent, and revocation of the respondent's fuel delivery certificate. The Commission also considered the Executive Director's Motion requesting the entry of an Order requiring the respondent to shutdown and remove from service the underground storage tanks ("USTs") located at 2401 West Seminary Drive in Fort Worth, Tarrant County, Texas. The respondent made the subject of this Order is S & S Conveniences Inc. d/b/a C D Kwik Stop II ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns and operates, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), a UST system and a convenience store with retail sales of gasoline located at 2401 West Seminary Drive in Fort Worth, Tarrant County, Texas (the "Facility"). The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contain a regulated petroleum substance as defined in the rules of the TCEQ.
2. During a record review conducted on December 10, 2010, a UT Arlington PST investigator documented that Respondent failed to monitor the UST system for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).
3. By letter dated December 10, 2010, the UT Arlington PST Office provided Respondent with notice of the violations and of TCEQ's authority to shut down and remove from service USTs not in compliance with release detection, spill and/or overfill prevention, corrosion protection, and/or financial assurance requirements if the violations are not corrected.

4. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of S & S Conveniences Inc. d/b/a C D Kwik Stop II" (the "EDPRP") in the TCEQ Chief Clerk's office on April 12, 2011.
5. By letter dated April 12, 2011, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on April 14, 2011, as evidenced by the signature on the card.
6. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of S & S Conveniences Inc. d/b/a C D Kwik Stop II" (the "EDFARP") in the TCEQ Chief Clerk's office on May 3, 2011.
7. By letter dated May 3, 2011, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDFARP. According to the return receipt "green card," Respondent received notice of the EDFARP on May 4, 2011, as evidenced by the signature on the card.
8. More than 20 days have elapsed since Respondent received notice of the EDPRP and the EDFARP provided by the Executive Director. Respondent failed to file an answer and failed to request a hearing.
9. By letter dated June 29, 2011, the Executive Director provided Respondent with notice of TCEQ's intent to order the USTs at the Facility to be shut down and removed from service if Respondent failed to correct the release detection violation within 30 days after Respondent's receipt of the notice.
10. As of the date of entry of this Order, Respondent has not provided the Executive Director with documentation demonstrating that the release detection violation alleged in Finding of Fact No. 2 has been corrected.
11. The USTs at the Facility do not have release detection as required by 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1) and may be releasing petroleum products to the environment. Therefore, conditions at the Facility constitute an imminent peril to public health, safety, and welfare.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2, Respondent failed to monitor the UST system for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A).

3. As evidenced by Findings of Fact Nos. 4, 5, 6, and 7, the Executive Director timely served Respondent with proper notice of the EDPRP and EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No 8, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of two thousand six hundred dollars (\$2,600.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. As evidenced by Findings of Fact Nos. 3, 9, and 10, Respondent failed to correct a documented violation of Commission release detection requirements within 30 days after Respondent received notice of the violations and notice of the Executive Director's intent to shut down the Facility.
8. TEX. WATER CODE §§ 26.3475(e) and 26.352(i) authorize the Commission to order a UST owner or operator to shut down a UST system if, within 30 days after receiving notice of the violations, the owner or operator fails to correct violations of Commission regulatory requirements relating to release detection for tanks and/or piping, spill and/or overfill protection for tanks, corrosion protection for tanks and/or piping, and/or acceptable financial assurance.
9. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.
10. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Respondent's UST fuel delivery certificate if the Commission finds that good cause exists.
11. Good cause for revocation of Respondent's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2 and 4 through 8 and Conclusions of Law Nos. 2 through 4.
12. As evidenced by Findings of Fact Nos. 10 and 11, current conditions at the Facility constitute an imminent peril to public health, safety, and welfare. Therefore, pursuant to the Administrative Procedure Act, TEX. GOV'T CODE § 2001.144(a)(3), this Order is final and effective on the date rendered.

ORDERING PROVISIONS

NOW, THEREFORE, IT IS ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. Immediately upon the effective date of this Order, Respondent shall take the following steps to shut down operations of all USTs at the Facility:
 - a. Cease dispensing fuel from the USTs;
 - b. Cease receiving deliveries of regulated substances into the USTs;
 - c. Padlock the dispensers;
 - d. Empty the USTs of all regulated substances in accordance with 30 TEX. ADMIN. CODE § 334.54(d); and
 - e. Temporarily remove the USTs from service in accordance with 30 TEX. ADMIN. CODE § 334.54.
2. Respondent's USTs shall remain out of service, pursuant to TEX. WATER CODE § 26.3475 and as directed by Ordering Provision Nos. 1.a. through 1.e., until such time as Respondent demonstrates to the satisfaction of the Executive Director that the release detection violation noted in Finding of Fact No. 2. and Conclusion of Law No. 2 has been corrected.
3. If Respondent elects to permanently remove from service any portion of the UST system at the Facility, Respondent shall, immediately upon the effective date of the Order, permanently remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.55, and within 15 days after the effective date of this Order, shall submit a written report documenting compliance with 30 TEX. ADMIN. CODE § 334.55 to:

Petroleum Storage Tank Registration Team, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
4. Respondent's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Respondent shall cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ in accordance with 30 TEX. ADMIN. CODE §§ 334.7 and 334.8. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements set forth in this Order.
5. Within 10 days after the effective date of this Order, Respondent shall send its UST fuel delivery certificate to:

Petroleum Storage Tank Registration Team, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

6. Within 15 days after the effective date of this Order, Respondent shall submit a detailed written report documenting the steps taken to comply with Ordering Provision Nos. 1.a. through 1.e. and 5. The written report shall include detailed supporting documentation such as photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall 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."

The certification, written report, and supporting documentation shall be submitted to:

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

and:

Sam Barrett, Waste Section Manager
Texas Commission on Environmental Quality
Dallas/Fort Worth Regional Office
2309 Gravel Dr.
Fort Worth, Texas 76118-6951

7. Respondent is assessed an administrative penalty in the amount of two thousand six hundred dollars (\$2,600.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here.
8. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: S & S Conveniences Inc. d/b/a C D Kwik Stop II; Docket No. 2010-2052-PST-E" to:

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

9. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline, Respondent shall:
 - a. Implement a release detection method for all USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.50; and
 - b. Obtain a new fuel delivery certificate from the TCEQ.
10. Upon obtaining a new fuel delivery certificate, Respondent shall post the fuel delivery certificate in a location at the Facility where the delivery certificate is clearly visible at all times, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii).
11. Within 10 days of resuming retail sales of gasoline, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provisions Nos. 9 and 10. The certification shall be notarized by a State of Texas Notary Public and shall 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."

Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and:

Sam Barrett, Waste Section Manager
Texas Commission on Environmental Quality
Dallas/Fort Worth Regional Office
2309 Gravel Dr.
Fort Worth, Texas 76118-6951

12. All relief not expressly granted in this Order is denied.
13. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.

14. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
15. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
16. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
17. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
18. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date this Order was rendered, pursuant to TEX. GOV'T CODE § 2001.144(a)(3).

S & S Conveniences Inc. d/b/a C D Kwik Stop II
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S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF STEVEN M. FISHBURN

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

"My name is Steven M. Fishburn. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of S & S Conveniences Inc. d/b/a C D Kwik Stop II" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on April 12, 2011.

The EDPRP was mailed to Respondent's last known address on April 12, 2011, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on April 14, 2011, as evidenced by the signature on the card.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of S & S Conveniences Inc. d/b/a C D Kwik Stop II" (the "EDFARP") was filed in the TCEQ Chief Clerk's office on May 3, 2011.

The EDFARP was mailed to Respondent's last known address on May 3, 2011, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDFARP on May 4, 2011, as evidenced by the signature on the card.

More than 20 days have elapsed since Respondent received notice of the EDPRP and EDFARP. Respondent failed to file an answer and failed to request a hearing.

By letter dated June 29, 2011, sent via first class mail and certified mail, return receipt requested article no. 7011 0470 0000 2420 5917, I provided Respondent with notice of the TCEQ's intent to order the USTs at the Facility shut down and removed from service if the violation pertaining to release detection was not corrected within 30 days of Respondent's receipt of the letter. According to the return receipt "green card," Respondent received the notice on June 30, 2011.

As of the date of this affidavit, I am not aware of any evidence that indicates that Respondent has corrected the violations noted during the December 10, 2010 investigation."

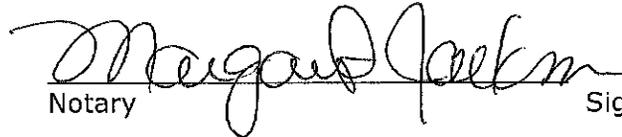


Steven M. Fishburn, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 2nd day of August A.D. 2011.


Notary _____ Signature

