

Executive Summary – Enforcement Matter – Case No. 39774
RICKY INVESTMENTS INC. d/b/a Speedway
RN101913606
Docket No. 2010-0881-PST-E

Order Type:

Default Shutdown Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

7183 US Highway 59 North, Goodrich, Polk 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: September 16, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed: \$47,350

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: \$47,350

Compliance History Classifications:

Person/CN – Poor
Site/RN – Poor

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: March 25, 2010; April 4, 2011
Date(s) of NOV(s): N/A
Date(s) of NOE(s): April 21, 2010; May 13, 2011

Violation Information

1. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE §§ 334.10(b) and 334.48(g)].
2. 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 according to the UST registration and self-certification form [30 TEX. ADMIN. CODE § 334.8(c)(5)(C)].
3. Failed to report a suspected release to the agency within 24 hours of discovery [30 TEX. ADMIN. CODE § 334.72].
4. Failed to immediately investigate a suspected release of a regulated substance [30 TEX. ADMIN. CODE § 334.74].
5. Failed to notify the agency of any changes in the type of release detection method being used for the USTs within 30 days of the occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(1)(H) and (d)(3)].
6. 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 [TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(a)(4)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

1. Submitted an updated Registration and Self-Certification form notifying the agency of a change in the type of release detection method being used for the USTs (violation 5).
2. Provided documentation that a legible tag, label, or marking with the tank number was permanently applied upon or affixed to a non-removable point in the immediate area of the fill tube according to the UST registration and self-certification form (violation 2).

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 and corrosion protection violations have been corrected.

RICKY INVESTMENTS INC. d/b/a Speedway

RN101913606

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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 sales of gasoline:
 - a. Begin maintaining all UST records at the Facility, including UST installation (brand and model), inventory control, release detection, and documentation of bimonthly inspections of the spill and overfill equipment (to assure their sides, bottoms and any penetration points are maintained liquid tight) (violation 1);
 - b. Install and implement a corrosion protection method for all the metal components of the UST system, including dispenser lines (violation 6);
 - c. Establish and implement a process for reporting suspected releases (violation 3);
 - d. Conduct an investigation of the suspected release and implement appropriate corrective measures (violation 4); and
 - e. 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.

Litigation Information

Date Petition(s) Filed: EDPRP-September 10, 2010 ; EDFARP- November 23, 2010;
EDSARP- June 17, 2011

Date(s) Green Card(s) Signed: Unclaimed (EDPRP); Unclaimed (EDFARP); June 20, 2011 (EDSARP)

Date(s) Answer(s) Filed: December 22, 2010

SOAH Referral Date: February 7, 2011

Hearing Date(s):

Preliminary hearing: March 24, 2011 (Waived)

Evidentiary hearing: July 28, 2011 (Defaulted)

Contact Information

TCEQ Attorneys: Phillip M. Goodwin, P.G., Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400

TCEQ Enforcement Coordinator: Elvia Maske, Waste Enforcement Section, (512) 239-0789

TCEQ Regional Contact: Derek Eades, Beaumont Regional Office, (409) 898-3838

Respondent: Waqas Naeem, Director, RICKY INVESTMENTS INC., 21521 S. Towerguard, Kingwood, Texas 77339; Frank Shaikh, RICKY INVESTMENTS INC., P.O. Box 31, Goodrich, Texas 77335

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	11-May-2010	Screening	12-May-2010	EPA Due	
	PCW	9-Jun-2011				

RESPONDENT/FACILITY INFORMATION			
Respondent	RICKY INVESTMENTS INC. dba Speedway		
Reg. Ent. Ref. No.	RN101913606		
Facility/Site Region	10-Beaumont	Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	39774	No. of Violations	5
Docket No.	2010-0881-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Elvia Maske
		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	\$25,000
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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	35.0% Enhancement	Subtotals 2, 3, & 7	\$8,750
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Notes

Enhancement for one order without denial and poor performer classification.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes

The Respondent does not meet the culpability criteria.

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	\$350
Approx. Cost of Compliance	\$6,300

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$33,750
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.3%	Adjustment	\$100
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Recommended enhancement to capture avoided costs associated with violation no. 3.

Final Penalty Amount	\$33,850
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$33,850
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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.

PAYABLE PENALTY	\$33,850
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Screening Date 12-May-2010

Docket No. 2010-0881-PST-E

PCW

Respondent RICKY INVESTMENTS INC. dba Speedway

Policy Revision 2 (September 2002)

Case ID No. 39774

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101913606

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

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	1	25%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

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

Adjustment Percentage (Subtotal 2) 25%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Poor Performer

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance History Notes

Enhancement for one order without denial and poor performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 35%

Screening Date 12-May-2010

Docket No. 2010-0881-PST-E

PCW

Respondent RICKY INVESTMENTS INC. dba Speedway

Policy Revision 2 (September 2002)

Case ID No. 39774

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101913606

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 334.10(b) and 334.48(g)

Violation Description Failed to maintain underground storage tank ("UST") records and make them immediately available for inspection upon request by agency personnel. Specifically, inventory control, release detection, cathodic protection testing, and inspection records of the sumps, manways, overflow containers or catchment basins were not available during the investigation.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
		x			25%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 48 Number of violation days

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

Violation Base Penalty \$2,500

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$17

Violation Final Penalty Total \$3,385

This violation Final Assessed Penalty (adjusted for limits) \$3,385

Economic Benefit Worksheet

Respondent RICKY INVESTMENTS INC. dba Speedway
Case ID No. 39774
Req. Ent. Reference No. RN101913606
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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	25-Mar-2010	1-Dec-2010	0.69	\$17	n/a	\$17
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 UST records. The date required is the investigation 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)

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

\$17

Screening Date 12-May-2010

Docket No. 2010-0881-PST-E

Respondent RICKY INVESTMENTS INC. dba Speedway

Policy Revision 2 (September 2002)

Case ID No. 39774

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101913606

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 2

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 according to the UST registration and self-certification form.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (25%).

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 Number of violation days 48

Table for frequency: daily, weekly, monthly, quarterly, semiannual, annual, single event (marked with x).

Violation Base Penalty \$2,500

One single event is recommended based on documentation of the violation during the March 25, 2010 investigation.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (marked 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 \$6

Violation Final Penalty Total \$3,385

This violation Final Assessed Penalty (adjusted for limits) \$3,385

Economic Benefit Worksheet

Respondent RICKY INVESTMENTS INC. dba Speedway
Case ID No. 39774
Req. Ent. Reference No. RN101913606
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	25-Mar-2010	7-Jun-2011	1.20	\$6	n/a	\$6

Notes for DELAYED costs

Estimated cost to label the tank fill ports. 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

\$100

TOTAL

\$6

Screening Date 12-May-2010

Docket No. 2010-0881-PST-E

Respondent RICKY INVESTMENTS INC. dba Speedway

Policy Revision 2 (September 2002)

Case ID No. 39774

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101913606

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.72

Violation Description Failed to report a suspected release to the agency within 24 hours of discovery. Specifically, Respondent didn't report a suspected release after receiving a failed evaluation from the statistical inventory reconciliation ("SIR") vendor for the month of January 2010.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
	x			25%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 100 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$2,500

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction \$0

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

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

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$117

Violation Final Penalty Total \$3,385

This violation Final Assessed Penalty (adjusted for limits) \$3,385

Economic Benefit Worksheet

Respondent RICKY INVESTMENTS INC. dba Speedway
Case ID No. 39774
Req. Ent. Reference No. RN101913606
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				0.00	\$0	n/a	\$0
Training/Sampling	\$500	25-Mar-2010	1-Dec-2010	0.69	\$17	n/a	\$17
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 establish and implement a process for reporting suspected releases. The date required is the investigation date and the final date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$100	1-Feb-2010	2-Feb-2010	0.00	\$0	\$100	\$100
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs Estimated cost to report a suspected release. The date required is the date of the suspected release and the final date is the date the report was due.

Approx. Cost of Compliance	\$600	TOTAL	\$117
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Screening Date 12-May-2010 **Docket No.** 2010-0881-PST-E
Respondent RICKY INVESTMENTS INC. dba Speedway
Case ID No. 39774
Reg. Ent. Reference No. RN101913606
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Elvia Maske

Policy Revision 2 (September 2002)
PCW Revision October 30, 2008

Violation Number

Rule Cite(s)

Violation Description Failed to immediately investigate a suspected release of a regulated substance. Specifically, Respondent did not investigate a suspected release after receiving a failed evaluation from the SIR vendor for the month of January 2010.

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="50%"/>
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="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

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

Violation Base Penalty

Three monthly events are recommended from the suspected release investigation due date of March 2, 2010 to the May 12, 2010 screening date.

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"/>	(mark with x)

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

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 RICKY INVESTMENTS INC. dba Speedway
Case ID No. 39774
Req. Ent. Reference No. RN101913606
Media Petroleum Storage Tank
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	\$5,000	2-Mar-2010	1-Jan-2011	0.84	\$209	n/a	\$209

Notes for DELAYED costs

Estimated cost to investigate a suspected release. The date required is the date the investigation was due and the final date is the estimated date of compliance.

Avoided Costs

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

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

\$5,000

TOTAL

\$209

Screening Date 12-May-2010

Docket No. 2010-0881-PST-E

Respondent RICKY INVESTMENTS INC. dba Speedway

Policy Revision 2 (September 2002)

Case ID No. 39774

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101913606

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 5

Rule Cite(s) 30 Tex. Admin. Code § 334.7(d)(1)(H) and (d)(3)

Violation Description Failed to notify the agency of any changes in the type of release detection method being used for the USTs within 30 days of the occurrence of the change or addition. Specifically, three methods of release detection were registered for the USTs on August 26, 2009, and as of January 2010 only one method had been conducted.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (25%).

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 259 Number of violation days

Table with frequency options: daily, weekly, monthly, quarterly, semiannual, annual, single event (marked with x).

Violation Base Penalty \$2,500

One single event is recommended based on documentation of the violation during the March 25, 2010 investigation.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Table with columns: Extraordinary, Ordinary, N/A, Before NOV, NOV to EDPRP/Settlement Offer.

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 \$0

Violation Final Penalty Total \$3,385

This violation Final Assessed Penalty (adjusted for limits) \$3,385

Economic Benefit Worksheet

Respondent RICKY INVESTMENTS INC. dba Speedway
Case ID No. 39774
Req. Ent. Reference No. RN101913606
Media Petroleum Storage Tank
Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	25-Mar-2010	22-Apr-2010	0.08	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to accurately prepare and submit an updated UST registration. The date required is the date of the investigation and the final date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$0



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	16-May-2011			
	PCW	9-Jun-2011	Screening	23-May-2011	EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent	RICKY INVESTMENTS INC. dba Speedway			
Reg. Ent. Ref. No.	RN101913606			
Facility/Site Region	10-Beaumont	Major/Minor Source	Major	

CASE INFORMATION

Enf./Case ID No.	39774	No. of Violations	1
Docket No.	2010-0881-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Elvia Maske
		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** \$10,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	35.0%	Enhancement	Subtotals 2, 3, & 7	\$3,500
Notes	Enhancement for one order without denial and poor performer classification.			
Culpability	No	0.0%	Enhancement	Subtotal 4
Notes	The Respondent does not meet the culpability criteria.			
Good Faith Effort to Comply Total Adjustments			Subtotal 5	\$0
Economic Benefit	0.0%	Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$50	*Capped at the Total EB \$ Amount		
Approx. Cost of Compliance	\$1,500			

SUM OF SUBTOTALS 1-7 **Final Subtotal** \$13,500

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
	Final Penalty Amount \$13,500

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$13,500

DEFERRAL 0.0% Reduction **Adjustment** \$0

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 \$13,500

Screening Date	23-May-2011	Docket No.	2010-0881-PST-E	PCW
Respondent	RICKY INVESTMENTS INC. dba Speedway			Policy Revision 2 (September 2002)
Case ID No.	39774			PCW Revision October 30, 2008
Reg. Ent. Reference No.	RN101913606			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Elvia Maske			

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	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	1	25%
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	23-May-2011	Docket No.	2010-0881-PST-E	PCW
Respondent	RICKY INVESTMENTS INC. dba Speedway		Policy Revision 2 (September 2002)	
Case ID No.	39774	PCW Revision October 30, 2008		
Reg. Ent. Reference No.	RN101913606			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Elvia Maske			

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> **Environmental, Property and Human Health Matrix**

OR	Harm			Percent <input type="text" value="50%"/>	
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent <input type="text" value="0%"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text" value="x"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

Good Faith Efforts to Comply

Reduction

		Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	(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 RICKY INVESTMENTS INC. dba Speedway
Case ID No. 39774
Req. Ent. Reference No. RN101913606
Media Violation No. 1
 Petroleum Storage Tank

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	4-Apr-2011	1-Dec-2011	0.66	\$50	n/a	\$50

Notes for DELAYED costs

Estimated cost to provide corrosion protection to all underground components of the UST system. The date required is the date of the investigation and the final date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance \$1,500

TOTAL \$50

Compliance History Report

Customer/Respondent/Owner-Operator: CN603536897 RICKY INVESTMENTS INC. Classification: POOR Rating: 225.00
 Regulated Entity: RN101913606 Speedway Classification: POOR Site Rating: 225.00
 ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 57178
 Location: 7183 US HWY 59 N, GOODRICH, TX, 77335
 TCEQ Region: REGION 10 - BEAUMONT
 Date Compliance History Prepared: June 18, 2010
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: June 18, 2005 to June 18, 2010
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History?
 Name: Elvia Maske Phone: (512) 239 - 0789

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? OWNOPR RICKY INVESTMENTS INC.
4. If Yes, who was/were the prior owner(s)/operator(s) ?
 OWN YAA ALI CORPORATION
 OPR LOGICS ENTERPRISE, L.L.C.
 OPR KASHMIR COMMERCE SYSTEMS, LC
5. When did the change(s) in owner or operator occur?
 01/05/2007 OPR KASHMIR COMMERCE SYSTEMS, LC
 07/25/2009 OWN YAA ALI CORPORATION
 OPR LOGICS ENTERPRISE, L.L.C.
6. Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
- Effective Date: 08/09/2009 ADMINORDER 2008-1544-PST-E**
- Classification: Moderate
 Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)
 Description: Failure to make all PST records available for the investigation upon request by agency personnel.
 Classification: Moderate
 Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)
 30 TAC Chapter 334, SubChapter A 334.8(c)(4)(A)(vii)
 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(B)(ii)
 Description: Failed to notify the agency of any change or additional information regarding USTS within 30 days from the date of occurrence of the change or addition.
 Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.3467(a)
 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(A)(i)
 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.
 Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.3475(d)
 30 TAC Chapter 334, SubChapter C 334.49(c)(4)
 Description: Failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years.
 Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)
 30 TAC Chapter 334, SubChapter C 334.50(d)(1)(B)(ii)
 Description: Failed to provide proper release detection by failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release as small as the sum of 1% of the total substance flow-through for the month plus 130 gallons.
 Classification: Moderate
 Citation: 30 TAC Chapter 114, SubChapter H 114.316(g)
 30 TAC Chapter 115, SubChapter C 115.226(1)
 30 TAC Chapter 115, SubChapter C 115.226(2)
 5C THSC Chapter 382 382.085(b)
 Description: Failed to maintain copies or records of product transfer documents for a minimum of two years and make such copies or records available to representatives of the Commission.
- 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 | 06/02/2008 | (671146) |
| 2 | 04/21/2010 | (798876) |
| 3 | 04/21/2010 | (799316) |
| 4 | 04/21/2010 | (799318) |

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: CN603536897 RICKY INVESTMENTS INC. Classification: POOR Rating: 90.00
 Regulated Entity: RN101913606 Speedway Classification: POOR Site Rating: 90.00
 ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 57178
 Location: 7183 US HWY 59 N, GOODRICH, TX, 77335
 TCEQ Region: REGION 10 - BEAUMONT
 Date Compliance History Prepared: May 23, 2011
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: May 23, 2006 to May 23, 2011
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History?
 Name: Elvia Maske Phone: (512) 239 - 0789

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? OPR TEXAS FOOD INVESTMENT, INC.
OWNOPR RICKY INVESTMENTS INC.
4. If Yes, who was/were the prior owner(s)/operator(s) ? OWN YAA ALI CORPORATION
OPR LOGICS ENTERPRISE, L.L.C.
OPR KASHMIR COMMERCE SYSTEMS, LC
5. When did the change(s) in owner or operator occur? 01/05/2007 OPR KASHMIR COMMERCE SYSTEMS, LC
07/25/2009 OWN YAA ALI CORPORATION
OPR LOGICS ENTERPRISE, L.L.C.
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.
- Effective Date: 08/09/2009 ADMINORDER 2008-1544-PST-E**
- Classification: Moderate
 Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)
 Description: Failure to make all PST records available for the investigation upon request by agency personnel.
 Classification: Moderate
 Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)
 30 TAC Chapter 334, SubChapter A 334.8(c)(4)(A)(vii)
 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(B)(ii)
 Description: Failed to notify the agency of any change or additional information regarding USTS within 30 days from the date of occurrence of the change or addition.
 Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.3467(a)
 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(A)(i)
 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.
 Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.3475(d)
 30 TAC Chapter 334, SubChapter C 334.49(c)(4)
 Description: Failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years.
 Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)
 30 TAC Chapter 334, SubChapter C 334.50(d)(1)(B)(ii)
 Description: Failed to provide proper release detection by failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release as small as the sum of 1% of the total substance flow-through for the month plus 130 gallons.
 Classification: Moderate
 Citation: 30 TAC Chapter 114, SubChapter H 114.316(g)
 30 TAC Chapter 115, SubChapter C 115.226(1)
 30 TAC Chapter 115, SubChapter C 115.226(2)
 5C THSC Chapter 382 382.085(b)
 Description: Failed to maintain copies or records of product transfer documents for a minimum of two years and make such copies or records available to representatives of the Commission.
- 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 | 06/02/2008 | (671146) |
| 2 | 04/21/2010 | (798876) |
| 3 | 04/21/2010 | (799316) |
| 4 | 04/21/2010 | (799318) |
| 5 | 05/13/2011 | (916195) |

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	§	BEFORE THE
ENFORCEMENT ACTION	§	
CONCERNING	§	TEXAS COMMISSION ON
RICKY INVESTMENTS INC. D/B/A	§	
SPEEDWAY;	§	ENVIRONMENTAL QUALITY
RN101913606	§	

DEFAULT AND SHUTDOWN ORDER

DOCKET NO. 2010-0881-PST-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Second 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 7183 US Highway 59 North in Goodrich, Polk County, Texas. The respondent made the subject of this Order is RICKY INVESTMENTS INC. d/b/a Speedway ("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 7183 US Highway 59 North in Goodrich, Polk 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 an investigation conducted on March 25, 2010, a TCEQ Beaumont Regional Office investigator documented that Respondent:
 - a. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel. Specifically, inventory control, release detection, cathodic protection testing, and inspection records of the sumps, manways, overspill containers or catchment basins were not available during the investigation;
 - b. 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 according to the UST registration and self-certification form;

- c. Failed to report a suspected release to the agency within 24 hours of discovery. Specifically, Respondent did not report a suspected release after receiving a failed evaluation from the statistical inventory reconciliation ("SIR") vendor for the month of January 2010;
 - d. Failed to immediately investigate a suspected release of a regulated substance. Specifically, Respondent did not investigate a suspected release after receiving a failed evaluation from the SIR vendor for the month of January 2010; and
 - e. Failed to notify the agency of any changes in the type of release detection method being used for the USTs within 30 days of the occurrence of the change or addition. Specifically, three methods of release detection were registered for the USTs on August 26, 2009, and as of January 2010 only one method had been conducted.
3. During an investigation conducted on April 4, 2011, a TCEQ Beaumont Regional Office investigator documented that Respondent 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, metal dispenser lines were in contact with soil and water and were not protected from corrosion.
4. By letters dated April 21, 2010, and May 13, 2011, the TCEQ Beaumont Regional Office provided Respondent with notice of the violations alleged in Paragraphs 2 and 3, respectively, 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.
5. The Executive Director recognizes that Respondent implemented the following corrective measures at the Facility:
 - a. Submitted an updated Registration and Self-Certification form on April 22, 2010, which notified the agency of a change in the type of release detection method being used for the USTs (Finding of Fact No. 2.e.); and
 - b. Provided documentation on June 7, 2011, that a legible tag, label, or marking with the tank number was permanently applied upon or affixed to a non-removable point in the immediate area of the fill tube according to the UST registration and self-certification form (Finding of Fact No. 2.b.).
6. Respondent filed an answer requesting a hearing on December 22, 2010, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on February 7, 2011.
7. On March 7, 2011, the Administrative Law Judge ("ALJ") issued Order No. 1, which set the evidentiary hearing for July 28, 2011. The SOAH docket clerk mailed a copy of Order No. 1 to Respondent at its last known address via first class mail, postage pre-paid.

8. On July 28, 2011, the ALJ convened the evidentiary hearing, but Respondent failed to appear. The ALJ entered a finding that Respondent was served with proper notice of the hearing, and the Executive Director requested that the matter be remanded to the Executive Director so that a Default Order may be entered and the case may be dismissed from the SOAH Docket.
9. The ALJ remanded the matter to the Executive Director by SOAH Order No. 3, Granting Request for Remand, issued on July 28, 2011, so that TCEQ may dispose of this case on a default basis.
10. By letter dated August 25, 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 corrosion protection violation within 30 days after Respondent's receipt of the notice.
11. As of the date of entry of this Order, Respondent has not provided the Executive Director with documentation demonstrating that the corrosion protection violation alleged in Finding of Fact No. 3 has been corrected.
12. The USTs at the Facility do not have corrosion protection as required by TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE §§ 334.49(a)(4) 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.a., Respondent failed to maintain UST records and make them immediately available for inspection upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE §§ 334.10(b) and 334.48(g).
3. As evidenced by Finding of Fact No. 2.b., Respondent 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 according to the UST registration and self-certification form, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(C).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to report a suspected release to the agency within 24 hours of discovery, in violation of 30 TEX. ADMIN. CODE § 334.72.
5. As evidenced by Findings of Fact No. 2.d., Respondent failed to immediately investigate a suspected release of a regulated substance, in violation of 30 TEX. ADMIN. CODE § 334.74.
6. As evidenced by Finding of Fact No. 2.e., Respondent failed to notify the agency of any changes in the type of release detection method being used for the USTs within 30 days of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(1)(H) and (d)(3).

7. As evidenced by Finding of Fact No. 3, Respondent 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 TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(a)(4).
8. As evidenced by Finding of Fact No. 6, Respondent filed an answer requesting a hearing as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105, and the matter was referred to SOAH pursuant to 1 TEX. ADMIN. CODE §§ 155.53(b) and 155.101(a)(3) and 30 TEX. ADMIN. CODE § 70.109.
9. As evidenced by Finding of Fact No. 7, Respondent was provided proper notice of the evidentiary hearing in accordance with TEX. GOV'T CODE §§ 2001.051(1) and 2001.052, TEX. WATER CODE § 7.058, 1 TEX. ADMIN. CODE §§ 155.103(a) and (c)(3), 155.401 and 155.501(c) and (e)(2), and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.23, 39.25, 39.405, 39.413, 39.423, 39.425 and 80.6.
10. As evidenced by Findings of Fact Nos. 8 and 9, Respondent failed to appear for the evidentiary hearing, and pursuant to TEX. GOV'T CODE § 2001.056(4), TEX. WATER CODE § 7.057, and 1 TEX. ADMIN. CODE § 155.501(e)(1)(A), the ALJ dismissed the case from the SOAH docket so that the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director pursuant to 30 TEX. ADMIN. CODE § 70.106(b).
11. 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.
12. An administrative penalty in the amount of forty-seven thousand three hundred fifty dollars (\$47,350.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
13. As evidenced by Findings of Fact Nos. 4, 10 and 11, Respondent failed to correct documented violations of Commission corrosion protection requirements within 30 days after Respondent received notice of the violations and notice of the Executive Director's intent to shut down the Facility.
14. 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.
15. 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.
16. 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.

17. Good cause for revocation of Respondent's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2, 3, and 6 through 8 and Conclusions of Law Nos. 2 through 10.
18. As evidenced by Findings of Fact Nos. 11 and 12, 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 corrosion protection violation noted in Finding of Fact No. 3 and Conclusion of Law No. 7 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, in accordance with Ordering Provision No. 12, below, documenting the steps taken to comply with Ordering Provisions Nos. 1.a. through 1.e. and 5.

7. Respondent is assessed an administrative penalty in the amount of forty-seven thousand three hundred fifty dollars (\$47,350.00) 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: RICKY INVESTMENTS INC. d/b/a Speedway; Docket No. 2010-0881-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 undertake the following technical requirements:
 - a. Begin maintaining all UST records at the Facility, including UST installation (brand and model), inventory control, release detection, and documentation of bimonthly inspections of the spill and overfill equipment (to assure their sides, bottoms and any penetration points are maintained liquid tight), in accordance with 30 TEX. ADMIN. CODE § 334.10 (Conclusion of Law No. 2);
 - b. Install and implement a corrosion protection method for all the metal components of the UST system, including dispenser lines, in accordance with 30 TEX. ADMIN. CODE § 334.49 (Conclusion of Law No. 7);

- c. Establish and implement a process for reporting suspected releases, in accordance with 30 TEX. ADMIN. CODE § 334.74 (Conclusion of Law No. 4);
 - d. Conduct an investigation of the suspected release and implement appropriate corrective measures, in accordance with 30 TEX. ADMIN. CODE § 334.74 (Conclusion of Law No. 5); and
 - e. 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, in accordance with Ordering Provision No. 12, below, to demonstrate compliance with Ordering Provisions Nos. 9 and 10.
12. The certifications required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including 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."

Respondent shall submit the written certifications and supporting 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:

Derek Eades, Waste Section Manager
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Fwy.
Beaumont, TX 77701-1830

13. All relief not expressly granted in this Order is denied.

14. 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.
15. 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.
16. 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.
17. 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.
18. 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.
19. 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 I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF PHILLIP M. GOODWIN

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

"My name is Phillip M. Goodwin. 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 RICKY INVESTMENTS INC. d/b/a Speedway" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on September 10, 2010.

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 RICKY INVESTMENTS INC. d/b/a Speedway" (the "EDFARP") was filed in the TCEQ Chief Clerk's office on November 23, 2010.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Second 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 RICKY INVESTMENTS INC. d/b/a Speedway" (the "EDSARP") was filed in the TCEQ Chief Clerk's office on June 17, 2011.

Respondent filed an answer requesting a hearing on December 22, 2010, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on February 7, 2011. On March 7, 2011, the Administrative Law Judge ("ALJ") issued Order No. 1, which set the evidentiary hearing for July 28, 2011. The SOAH docket clerk mailed a copy of Order No. 1 to Respondent at his last known address via first class mail, postage pre-paid.

Respondent failed to appear at the hearing on July 28, 2011. At that hearing, I requested and received a finding that Respondent was served with proper notice of the hearing pursuant to 1 TEX. ADMIN. CODE § 155.501(e)(2). I also requested that the matter be remanded to the Executive Director pursuant to 1 TEX. ADMIN. CODE § 155.501(e)(1)(A), which gives an ALJ the authority to remand the case back to the agency "to allow the agency to dispose of the case on a default basis under TEX. GOV'T CODE § 2001.056(4) and the referring agency's rules."

The ALJ remanded the matter to the Executive Director by SOAH Order No. 3, Granting Motion to Dismiss and Remand, issued on July 28, 2011, so that TCEQ may dispose of this case on a default basis."

By letter dated August 25, 2011, sent via first class mail and certified mail, return receipt requested article no. 7011 0470 0000 2421 1239, 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 corrosion protection 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 August 29, 2011.

As of the date of this affidavit, I am not aware of any evidence that indicates that Respondent has corrected the corrosion protection violation noted during the April 4, 2011, investigation."



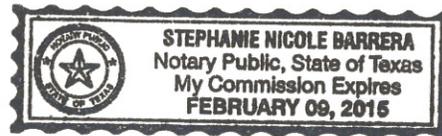
Phillip M. Goodwin, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Phillip M. Goodwin, 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 27th day of September, A.D. 2011.



Notary Signature



Notary without Bond