

Executive Summary – Enforcement Matter – Case No. 39526
BLUFF SPRINGS ENTERPRISES INC. DBA TEXAN FOOD MART
RN102351111
Docket No. 2010-0616-PST-E

Order Type:
Agreed Order

Findings Order Justification:
N/A

Media:
PST
N/A

Location(s) Where Violation(s) Occurred:
7612 Bluff Springs Road, Austin, Travis 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: October 14, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed: \$11,897

Amount Deferred for Expedited Settlement: N/A

Amount Deferred for Financial Inability to Pay: N/A

Total Paid to General Revenue: \$522

Total Due to General Revenue: \$11,375

Payment Plan: 35 payments of \$325 each

SEP Conditional Offset: N/A

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: February 1, 2010
Date(s) of NOV(s): N/A
Date(s) of NOE(s): April 2, 2010

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)].
2. Failed to notify the agency of any change or additional information regarding the USTs within 30 days from the date of occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)].
3. Failed to provide proper corrosion protection for the UST system; failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly; and failed to inspect and a test the cathodic protection system for operability and adequacy of protection at a frequency of at least once every three years [30 TEX. ADMIN. CODE § 334.49(a),(c)(2)(C) and (c)(4)(c), and TEX. WATER CODE § 26.3475(d)].
4. Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel [30 TEX. ADMIN. CODE § 334.48(c)].
5. 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); failed to provide release detection for the piping associated with the UST system; failed to test the line leak detectors at least once per year for performance and operational reliability; failed 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 1.0% of the total substance flow-through for the month plus 130 gallons; and failed to record the inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day [30 TEX. ADMIN. CODE §§ 334.50(b)(1)(A), (b)(2), (b)(2)(A)(i)(III), (d)(1)(B)(ii) and (d)(1)(B)(iii)(I), and TEX. WATER CODE §§ 26.3475(a) and (c)(1)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

1. Updated the UST registration on or about May 9, 2011;
2. As of April 6, 2010, has a properly operating cathodic protection system and began to properly test all components of the cathodic protection system in accordance with TCEQ rules;
3. As of June 4, 2010:
 - a. Implemented effective manual inventory control procedures;
 - b. Began using Statistical Inventory Reconciliation (“SIR”) as their method of inventory control, began monitoring the UST system for releases at least once every month, began to reconcile inventory control records in accordance with TCEQ rules, and began to record the inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tanks each operating day;
 - c. Began providing release detection for piping associated with the UST system;
 - d. Conducted the annual piping tightness test; and
 - e. Tested the line leak detectors for performance and operational reliability.

**Executive Summary – Enforcement Matter – Case No. 39526
BLUFF SPRINGS ENTERPRISES INC. DBA TEXAN FOOD MART
RN102351111
Docket No. 2010-0616-PST-E**

Technical Requirements:

1. Immediately, begin maintaining all UST records; and
2. Within 30 days, submit written certification demonstrating compliance.

Litigation Information

Date Petition(s) Filed: October 15, 2010
Date Answer(s) Filed: December 20, 2010
SOAH Referral Date: February 9, 2011
Hearing Date(s):
Preliminary hearing: March 31, 2011
Evidentiary hearing: August 25, 2011 (remanded August 19, 2011)
Settlement Date: August 11, 2011

Contact Information

TCEQ Attorneys: Rudy Calderon, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
TCEQ SEP Coordinator: N/A
TCEQ Enforcement Coordinator: Rajesh Acharya, Waste Enforcement Section, (512) 239- 0577
TCEQ Regional Contact: Barry Kalda, Austin Regional Office, (512) 339-2929
Respondent: Zulfiqar M. Ali, Director, Bluff Springs Enterprises, Inc. 7612 Bluff Springs Road,
Austin, Texas 78744
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	12-Apr-2010	Screening	14-Apr-2010	EPA Due	
	PCW	18-Aug-2010				

RESPONDENT/FACILITY INFORMATION	
Respondent	Bluff Springs Enterprises Inc. dba Texan Food Mart
Reg. Ent. Ref. No.	RN102351111
Facility/Site Region	11-Austin
Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	39526	No. of Violations	5	
Docket No.	2010-0616-PST-E	Order Type	1660	
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No	
Multi-Media		Enf. Coordinator	Rajesh Acharya	
		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	\$9,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes	No adjustments due to compliance history.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$2,473	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$6,200	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$9,500
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OTHER FACTORS AS JUSTICE MAY REQUIRE	25.2%	Adjustment	\$2,397
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Recommended enhancement to capture the avoided cost of compliance associated with violation nos. 3 and 5.
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Final Penalty Amount	\$11,897
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$11,897
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$11,897
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Screening Date 14-Apr-2010

Docket No. 2010-0616-PST-E

PCW

Respondent Bluff Springs Enterprises Inc. dba Texan Food Mart

Policy Revision 2 (September 2002)

Case ID No. 39526

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102351111

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of 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%
<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) 0%

>> 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

No adjustments due to compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date	14-Apr-2010	Docket No.	2010-0616-PST-E	PCW
Respondent	Bluff Springs Enterprises Inc. dba Texan Food Mart			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	39526			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN102351111			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Rajesh Acharya			
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 334.10(b)			
Violation Description	Failed to maintain underground storage tank ("UST") records and make them immediately available for inspection upon request by agency personnel. Specifically, records of corrosion protection and release detection records were not available for review.			
		Base Penalty	\$10,000	

>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual				Percent 0%
Potential					

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
		x			Percent 10%
Matrix Notes	100% of the rule requirement was not met.				
					Adjustment \$9,000

Violation Events

Number of Violation Events	1	72	Number of violation days
<i>mark only one with an x</i>	daily		Violation Base Penalty \$1,000
	weekly		
	monthly		
	quarterly		
	semiannual		
	annual		
	single event	x	
One single event is recommended based on documentation of the violation during the February 1, 2010 investigation.			

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOV	NOV to EDPRP/Settlement
Extraordinary		
Ordinary		
N/A	x	(mark with x)
Notes	The Respondent came into compliance on July 6, 2010, after the initial proposed order mailed on May 25, 2010, therefore, good faith reduction is not applicable.	
	Violation Subtotal	\$1,000

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

Estimated EB Amount	\$11	Violation Final Penalty Total	\$1,252
This violation Final Assessed Penalty (adjusted for limits)		\$1,252	

Economic Benefit Worksheet

Respondent Bluff Springs Enterprises Inc. dba Texan Food Mart
Case ID No. 39526
Reg. Ent. Reference No. RN102351111
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	\$500	1-Feb-2010	6-Jul-2010	0.42	\$11	n/a	\$11
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. Date Required is the date of the investigation. 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

\$500

TOTAL

\$11

Screening Date 14-Apr-2010 **Docket No.** 2010-0616-PST-E **PCW**
Respondent Bluff Springs Enterprises Inc. dba Texan Food Mart *Policy Revision 2 (September 2002)*
Case ID No. 39526 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102351111
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Rajesh Acharya

Violation Number 2
Rule Cite(s) 30 Tex. Admin. Code § 334.7(d)(3)
Violation 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. Specifically, the registration was not updated to reflect current method of release detection for the USTs and piping associated with the USTs and current Stage I and overfill prevention information.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual			
Potential					

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			x		
100% of the rule requirement was not met.					

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 72 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the February 1, 2010 investigation.

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 \$1,000

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

Estimated EB Amount \$4

Violation Final Penalty Total \$1,252

This violation Final Assessed Penalty (adjusted for limits) \$1,252

Economic Benefit Worksheet

Respondent Bluff Springs Enterprises Inc. dba Texan Food Mart
Case ID No. 39526
Reg. Ent. Reference No. RN102351111
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	1-Feb-2010	1-Nov-2010	0.75	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to prepare and submit a UST registration. Date Required is the investigation date. Final Date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$4

Screening Date 14-Apr-2010 **Docket No.** 2010-0616-PST-E **PCW**
Respondent Bluff Springs Enterprises Inc. dba Texan Food Mart *Policy Revision 2 (September 2002)*
Case ID No. 39526 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102351111
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Rajesh Acharya

Violation Number 3
Rule Cite(s) 30 Tex. Admin. Code § 334.49(a), 334.49(c)(2)(C), 334.49(c)(4)(C) and Tex. Water Code § 26.3475(d)
Violation Description Failed to provide proper corrosion protection for the UST system. Specifically, the investigator documented that the corrosion protection system was not functioning as designed. Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly. Also, failed to inspect and test the cathodic protection system for operability and adequacy of protection at a frequency of at least once every three years .
Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	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 64 Number of violation days
 mark only one with an x
 daily
 weekly
 monthly
 quarterly x
 semiannual
 annual
 single event
Violation Base Penalty \$2,500

One quarterly event is recommended based on documentation of the violation during the February 1, 2010 investigation to the April 6, 2010 compliance 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 \$1,321 **Violation Final Penalty Total** \$3,131
This violation Final Assessed Penalty (adjusted for limits) \$3,131

Economic Benefit Worksheet

Respondent Bluff Springs Enterprises Inc. dba Texan Food Mart
Case ID No. 39526
Reg. Ent. Reference No. RN102351111
Media Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment	\$1,500	1-Feb-2010	6-Apr-2010	0.18	\$1	\$18	\$18
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to repair the corrosion protection system. Date Required is the investigation date. Final Date is the compliance date.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$100	1-Dec-2009	6-Apr-2010	1.26	\$6	\$100	\$106
Other (as needed)	\$1,000	1-Feb-2007	1-Feb-2010	3.92	\$196	\$1,000	\$1,196

Notes for AVOIDED costs

Estimated avoided cost for conducting bimonthly inspection (\$100) and completing the triennial test (\$1,000). Dates required are 60 days before the investigation date and three years before the investigation date respectively. Final Dates are the compliance date and investigation date.

Approx. Cost of Compliance

\$2,600

TOTAL

\$1,321

Screening Date 14-Apr-2010 **Docket No.** 2010-0616-PST-E **PCW**
Respondent Bluff Springs Enterprises Inc. dba Texan Food Mart *Policy Revision 2 (September 2002)*
Case ID No. 39526 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102351111
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Rajesh Acharya

Violation Number 4
Rule Cite(s) 30 Tex. Admin. Code § 334.48(c)
Violation Description Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	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 72 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$2,500

One quarterly event is recommended based on documentation of the violation during the February 1, 2010 investigation to the April 14, 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 came into compliance on July 6, 2010, after the initial proposed order mailed on May 25, 2010, therefore, good faith reduction is not applicable.

Violation Subtotal \$2,500

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

Estimated EB Amount \$11

Violation Final Penalty Total \$3,131

This violation Final Assessed Penalty (adjusted for limits) \$3,131

Economic Benefit Worksheet

Respondent Bluff Springs Enterprises Inc. dba Texan Food Mart
Case ID No. 39526
Reg. Ent. Reference No. RN102351111
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

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	1-Feb-2010	6-Jul-2010	0.42	\$11	n/a	\$11
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 conduct inventory control procedures for all USTs. Date Required is the investigation date. 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

\$500

TOTAL

\$11

Screening Date 14-Apr-2010 **Docket No.** 2010-0616-PST-E **PCW**
Respondent Bluff Springs Enterprises Inc. dba Texan Food Mart *Policy Revision 2 (September 2002)*
Case ID No. 39526 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102351111
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Rajesh Acharya

Violation Number 5
Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A), 334.50(b)(2), 334.50(b)(2)(A)(i)(III), and 334.50(d)(1)(B)(ii), 334.50(d)(1)(B)(iii)(I) and Tex. Water Code § 26.3475(a) and (c)(1)
Violation Description 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). Failed to provide release detection for the piping associated with the UST system. Specifically, the Respondent did not conduct the annual piping tightness test. Failed to test the line leak detectors at least once per year for performance and operational reliability. Failed 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 1.0% of the total substance flow-through for the month plus 130 gallons. Also, failed to record the inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	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 72 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$2,500

One quarterly event is recommended based on documentation of the violation during the February 1, 2010 investigation to the April 14, 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 came into compliance on July 6, 2010, after the initial proposed order mailed on May 25, 2010, therefore, good faith reduction is not applicable.

Violation Subtotal \$2,500

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

Estimated EB Amount \$1,127 **Violation Final Penalty Total** \$3,131

This violation Final Assessed Penalty (adjusted for limits) \$3,131

Economic Benefit Worksheet

Respondent Bluff Springs Enterprises Inc. dba Texan Food Mart
Case ID No. 39526
Reg. Ent. Reference No. RN102351111
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)	\$1,500	1-Feb-2010	6-Jul-2010	0.42	\$32	n/a	\$32

Notes for DELAYED costs

Estimated cost to provide release detection for the UST system including volume measurement and reconciliation of inventory control records. Date Required is the date of investigation. 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]	\$1,000	1-Feb-2009	29-Jan-2010	1.91	\$95	\$1,000	\$1,095
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost for conducting the piping tightness and line leak detector tests. Date Required is one year prior to the investigation date. Final Date is the compliance date.

Approx. Cost of Compliance

\$2,500

TOTAL

\$1,127

Compliance History Report

Customer/Respondent/Owner-Operator: CN603652090 Bluff Springs Enterprises Inc. Classification: AVERAGE BY DEFAULT Rating: 3.01
Regulated Entity: RN102351111 TEXAN FOOD MART Classification: AVERAGE BY DEFAULT Site Rating: 3.01
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 66956
Location: 7612 BLUFF SPRINGS RD, AUSTIN, TX, 78744
TCEQ Region: REGION 11 - AUSTIN
Date Compliance History Prepared: April 14, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: April 14, 2005 to April 14, 2010
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:
Name: Rajesh Acharya Phone: (512) 239-0577

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? Bluff Springs Enterprises Inc.
4. If Yes, who was/were the prior owner(s)/operator(s) ? Shani Food Mart Inc.
Convenient Food Mart LLC
5. When did the change(s) in owner or operator occur? 08/11/2006
07/07/2004
6. Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDES Inv. Track. No.)
04/02/2010 (790941)
 - E. Written notices of violations (NOV). (CCEDES 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

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
BLUFF SPRINGS ENTERPRISES
INC. DBA TEXAN FOOD MART;
RN102351111**

§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2010-0616-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Bluff Springs Enterprises Inc. d/b/a Texan Food Mart ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent appear before the Commission and together stipulate that:

1. Respondent owns and operates, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), an underground storage tank ("UST") system and a convenience store with retail sales of gasoline located at 7612 Bluff Springs Road in Austin, Travis 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. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Executive Director and Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondent is subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of eleven thousand eight hundred ninety-seven dollars (\$11,897.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid five hundred twenty-two dollars (\$522.00) of the administrative penalty. The remaining amount of eleven thousand three hundred seventy-five dollars (\$11,375.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of three hundred twenty-five dollars (\$325.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order,

including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Respondent's failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Agreed Order.

6. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
7. The Executive Director of the TCEQ and Respondent agree on a settlement of the matters addressed in this Agreed Order, subject to the approval of the Commission.
8. The Executive Director recognizes that Respondent implemented the following corrective measures at the Facility:
 - a. Updated the UST registration on or about May 9, 2011 (Allegation 1.b.);
 - b. As of April 6, 2010, has a properly operating cathodic protection system and began to properly test all components of the cathodic protection system in accordance with TCEQ rules (Allegation 1.c.);
 - c. As of June 4, 2010, implemented effective manual inventory control procedures (Allegation 1.d.);
 - d. As of June 4, 2010, began using Statistical Inventory Reconciliation ("SIR") as their method of inventory control, began monitoring the UST system for releases at least once every month, began to reconcile inventory control records in accordance with TCEQ rules, and began to record the inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tanks each operating day (Allegation 1.e.);
 - e. As of June 4, 2010, began providing release detection for piping associated with the UST system (Allegation 1.e.);
 - f. On June 4, 2010, conducted the annual piping tightness test (Allegation 1.e.); and
 - g. On June 4, 2010, tested the line leak detectors for performance and operational reliability (Allegation 1.e.).
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

1. During an investigation conducted on February 1, 2010, a TCEQ Austin Regional Office investigator documented that Respondent:

- a. 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);
 - b. Failed to notify the agency of any change or additional information regarding the USTs within 30 days from the date of occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3);
 - c. Failed to provide proper corrosion protection for the UST system; failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly; and failed to inspect and test the cathodic protection system for operability and adequacy of protection at a frequency of at least once every three years, in violation of 30 TEX. ADMIN. CODE §§ 334.49(a), (c)(2)(C) and (c)(4)(C), and TEX. WATER CODE § 26.3475(d);
 - d. Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel, in violation of 30 TEX. ADMIN. CODE § 334.48(c); and
 - e. 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); failed to provide release detection for the piping associated with the UST system; failed to test the line leak detectors at least once per year for performance and operational reliability; failed 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 1.0% of the total substance flow-through for the month plus 130 gallons; and failed to record the inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day, in violation of 30 TEX. ADMIN. CODE §§ 334.50(b)(1)(A), (b)(2), (b)(2)(A)(i)(III), (d)(1)(B)(ii) and (d)(1)(B)(iii)(I), and TEX. WATER CODE §§ 26.3475(a) and (c)(1).
2. Respondent received notice of the violations on or about April 7, 2010.

III. DENIALS

Respondent generally denies each Allegation in Section II.

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Respondent pay an administrative penalty as set forth in Section I, Paragraph 5, above. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the Allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective actions or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Bluff Springs Enterprises Inc. d/b/a Texan Food Mart, Docket No. 2010-0616-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

2. Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, Respondent shall begin maintaining all UST records, in accordance with 30 TEX. ADMIN. CODE § 334.10 (Allegation 1.a.).
 - b. Within 30 days after the effective date of this Agreed Order, Respondent shall submit written certification and detailed supporting documentation, in accordance with Ordering Provision No. 2.c., below, to demonstrate compliance with Ordering Provision No. 2.a.
 - c. The certification 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 certification 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:

Waste Section Manager
Texas Commission on Environmental Quality
Austin Regional Office
2800 S IH 35, Suite 100
Austin, Texas 78704-5712

3. All relief not expressly granted in this Agreed Order is denied.
4. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. If Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Agreed 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.
6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by 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.
 7. This Agreed Order, issued by the Commission, shall not be admissible against Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
 8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission" "owner" "person" "writing" and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
 9. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Bluff Springs Enterprises Inc. d/b/a Texan Food Mart
Docket No. 2010-0616-PST-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

For the Executive Director

10/28/2011

Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of Bluff Springs Enterprises Inc. d/b/a Texan Food Mart, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions in this order and/or failure to timely pay the penalty amount may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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

Signature - Zulfiqar M. Ali, Director
Bluff Springs Enterprises, Inc.

8/11/11

Date