

Bryan W. Shaw, Ph.D., *Chairman*  
Buddy Garcia, *Commissioner*  
Carlos Rubinstein, *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

January 21, 2011

Ms. Kimberlie Murphy, President and Director  
Boo Kooz, Inc. d/b/a Boo Kooz C-S  
104 East Avenue L  
San Angelo, Texas 76903

Ms. Kimberlie Murphy, President and Director  
Boo Kooz, Inc. d/b/a Boo Kooz C-S  
5765 South Loop 306  
San Angelo, Texas 76905

Re: TCEQ Enforcement Action  
Boo Kooz, Inc. d/b/a Boo Kooz C-S  
Docket No. 2010-0471-MWD-E

Dear Ms. Murphy:

Enclosed for your records, are copies of documents which were filed in the Chief Clerk's Office of the Texas Commission on Environmental Quality (TCEQ) so that the above-referenced matter may be included on the agenda of items to be considered for approval by the commission at a public meeting scheduled for **February 9, 2011, at 9:30 a.m.** The meeting will be held at the TCEQ Park 35 Campus, located at 12118 North I-35, in Building E, Room 201S, in Austin, Texas. If you have any questions you may contact me at the TCEQ Litigation Division at (512) 239-3400 or my e-mail address listed below.

Sincerely,

/s/

Tammy L. Mitchell  
Attorney  
Litigation Division  
[Tammy.Mitchell@tceq.texas.gov](mailto:Tammy.Mitchell@tceq.texas.gov)

Enclosures

cc: Keith Frank, Waste Enforcement Section  
Christopher Mayben, San Angelo Regional Office  
Lena Roberts, Litigation Division

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

DOCKET NO. 2010-0547-PST-E

RN102790805

CASE NO. 39467

**RESPONDENT NAME: BOO KOOZ, INC. DBA BOOK KOOZ C-S**

ORDER TYPE:		
<input type="checkbox"/> AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	

CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

**SITE WHERE VIOLATION(S) OCCURRED:** 104 East Avenue L, San Angelo, Tom Green County

**TYPE OF OPERATION:** convenience store with retail sales of gasoline

**SMALL BUSINESS:**  Yes  No  N/A

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

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

**COMMENTS RECEIVED:** The *Texas Register* comment period expired November 22, 2010. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Tammy L. Mitchell, Litigation Division, MC 175, (512) 239-3400  
Lena Roberts, Litigation Division, MC 175, (512) 239-3400

**TCEQ Enforcement Coordinator:** Keith Frank, Waste Enforcement Section, MC 128, (512) 239-1203

**TCEQ Regional Contact:** Chris Mayben, San Angelo Regional Office, MC R-8, (325) 655-9479

**Respondent:** Kimberlie Murphy, President, BOO KOOZ, INC., 104 East Avenue L, San Angelo, Texas 76903

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

<b>VIOLATION SUMMARY CHART:</b>		
<b>VIOLATION INFORMATION</b>	<b>PENALTY CONSIDERATIONS</b>	<b>CORRECTIVE ACTIONS TAKEN/REQUIRED</b>
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaint(s):</b> N/A</p> <p><b>Date(s) of Investigation:</b> February 5, 2010</p> <p><b>Date(s) of NOE(s):</b> March 25, 2010</p> <p><b>Background Facts:</b> The EDCRP was filed on July 22, 2010, and mailed to Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDCRP on July 31, 2010. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Current Compliance Status:</b> Respondent no longer owns or operates the facility.</p> <p><b>PST:</b></p> <ol style="list-style-type: none"> <li>Failed to maintain the required UST records and make them immediately available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b)].</li> <li>Failed to demonstrate acceptable financial assurance for taking corrective action for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].</li> <li>Failed to maintain all components electrically isolated from the corrosive elements of the surrounding soil, backfill, groundwater or any other water, and from other metallic components; 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 have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years [30 TEX. ADMIN. CODE § 334.49(b)(2), (c)(2)(C) and (c)(4), and TEX. WATER CODE § 26.3475(d)]</li> </ol>	<p><b>Total Assessed:</b> \$13,625</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Due to General Revenue:</b> \$13,625</p> <p>This is a Default Order. Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p><b>Compliance History Classifications:</b>  <i>Person/CN</i> – Average  <i>Site/RN</i> – Average</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b> The Executive Director recognizes that Respondent no longer owns the Facility.</p>

**VIOLATION SUMMARY CHART:**

<b>VIOLATION INFORMATION</b>	<b>PENALTY CONSIDERATIONS</b>	<b>CORRECTIVE ACTIONS TAKEN/REQUIRED</b>
<p>4. Failed to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); failed to test the line leak detectors at least once per year for performance and operational reliability; and failed to provide proper release detection for the pressurized piping associated with USTs. [30 TEX. ADMIN. CODE § 334.50(b)(1)(A), (b)(2) and (b)(2)(A)(i)(III), and TEX. WATER CODE § 26.3475(a) and (c)(1)].</p>		



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	29-Mar-2010			
	<b>PCW</b>	21-Jun-2010	<b>Screening</b>	7-Apr-2010	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>					
<b>Respondent</b>	BOO KOOZ, INC. dba Boo Kooz C-S				
<b>Reg. Ent. Ref. No.</b>	RN102790805				
<b>Facility/Site Region</b>	8-San Angelo	<b>Major/Minor Source</b>	Minor		

<b>CASE INFORMATION</b>					
<b>Enf./Case ID No.</b>	39467	<b>No. of Violations</b>	4		
<b>Docket No.</b>	2010-0547-PST-E	<b>Order Type</b>	1660		
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Government/Non-Profit</b>	No		
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Keith Frank		
		<b>EC's Team</b>	Enforcement Team 7		
<b>Admin. Penalty \$ Limit</b>	<b>Minimum</b>	\$0	<b>Maximum</b>	\$10,000	

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$9,000
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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.

<b>Compliance History</b>	2.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$180
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<b>Notes</b>	Enhancement for one previous NOV with dissimilar violations.
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<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$4,555	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$6,550	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$9,180
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	48.4%	<b>Adjustment</b>	\$4,445
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	Recommended enhancement to capture the avoided cost of compliance associated with violation nos. 2, 3, and 4.
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<b>Final Penalty Amount</b>	\$13,625
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$13,625
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<b>DEFERRAL</b>	0.0%	Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>Notes</b>	Deferral not offered for non-expedited settlement.
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<b>PAYABLE PENALTY</b>	\$13,625
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Screening Date 7-Apr-2010

Docket No. 2010-0547-PST-E

PCW

Respondent BOO KOOZ, INC. dba Boo Kooz C-S

Policy Revision 2 (September 2002)

Case ID No. 39467

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102790805

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Keith Frank

### 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	1	2%
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) 2%

#### >> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

#### >> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

#### >> Compliance History Summary

Compliance History Notes

Enhancement for one previous NOV with dissimilar violations.

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

Screening Date 7-Apr-2010

Docket No. 2010-0547-PST-E

PCW

Respondent BOO KOOZ, INC. dba Boo Kooz C-S

Policy Revision 2 (September 2002)

Case ID No. 39467

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102790805

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Keith Frank

Violation Number 1

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

Violation Description Failed to maintain the required underground storage tank ("UST") records and make them immediately available for inspection upon request by agency personnel.

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			10%

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 61

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$1,000

One single event is recommended.

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 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 \$22

Violation Final Penalty Total \$1,514

This violation Final Assessed Penalty (adjusted for limits) \$1,514

## Economic Benefit Worksheet

**Respondent** BOO KOOZ, INC. dba Boo Kooz C-S  
**Case ID No.** 39467  
**Reg. Ent. Reference No.** RN102790805  
**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	5-Feb-2010	24-Dec-2010	0.88	\$22	n/a	\$22
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to maintain UST records. Date Required is the investigation date. Final Date is the estimated date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

**TOTAL**

\$22

**Screening Date** 7-Apr-2010 **Docket No.** 2010-0547-PST-E **PCW**  
**Respondent** BOO KOOZ, INC. dba Boo Kooz C-S *Policy Revision 2 (September 2002)*  
**Case ID No.** 39467 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN102790805  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Keith Frank

**Violation Number**   
**Rule Cite(s)**   
**Violation Description**

**Base Penalty**

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

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

**>> Programmatic Matrix**

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

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

*mark only one with an x*

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

**Violation Base Penalty**

**Good Faith Efforts to Comply**  Reduction

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

Notes

**Violation Subtotal**

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

**Estimated EB Amount**  **Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** BOO KOOZ, INC. dba Boo Kooz C-S  
**Case ID No.** 39467  
**Reg. Ent. Reference No.** RN102790805  
**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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]	\$1,950	5-Feb-2009	5-Feb-2010	1.00	\$98	\$1,950	\$2,048
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to provide financial assurance for three USTs (\$650 per tank). Date Required is one year prior to the investigation date. Final Date is the investigation date.

Approx. Cost of Compliance

\$1,950

**TOTAL**

\$2,048

**Screening Date** 7-Apr-2010 **Docket No.** 2010-0547-PST-E **PCW**  
**Respondent** BOO KOOZ, INC. dba Boo Kooz C-S *Policy Revision 2 (September 2002)*  
**Case ID No.** 39467 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN102790805  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Keith Frank

**Violation Number** 3  
**Rule Cite(s)** 30 Tex. Admin. Code § 334.49(b)(2), (c)(2)(C) and (c)(4) and Tex. Water Code § 26.3475(d)  
**Violation Description** Failed to maintain all components electrically isolated from the corrosive elements of the surrounding soil, backfill, groundwater or any other water, and from other metallic components. Specifically, the sumps for tank nos. 1 and 2 were not electrically isolated from the backfill material. 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 have the cathodic protection system inspected and tested 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 61 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 5, 2010 investigation to the April 7, 2010 screening date.

**Good Faith Efforts to Comply** 0.0% Reduction \$0

Before NOV NOV to EDRP/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** \$1,323 **Violation Final Penalty Total** \$3,785  
**This violation Final Assessed Penalty (adjusted for limits)** \$3,785

## Economic Benefit Worksheet

**Respondent** BOO KOOZ, INC. dba Boo Kooz C-S  
**Case ID No.** 39467  
**Reg. Ent. Reference No.** RN102790805  
**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				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)	\$500	5-Feb-2010	24-Dec-2010	0.88	\$22	n/a	\$22

Notes for DELAYED costs

Estimated cost to electrically isolate the components from corrosive elements. 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]	\$1,000	5-Feb-2007	5-Feb-2010	3.92	\$196	\$1,000	\$1,196
Other (as needed)	\$100	7-Dec-2009	5-Feb-2010	1.08	\$5	\$100	\$105

Notes for AVOIDED costs

Estimated avoided cost for conducting the triennial test (\$1,000). Date Required is three years prior to the investigation date. Final Date is the investigation date. Estimated avoided cost to conduct bimonthly inspections of the rectifier and other components of the cathodic protection system (\$100). Date Required is 60 days prior to the investigation date. Final Date is the investigation date.

Approx. Cost of Compliance

\$1,600

**TOTAL**

\$1,323

<b>Screening Date</b>	7-Apr-2010	<b>Docket No.</b>	2010-0547-PST-E	<b>PCW</b>
<b>Respondent</b>	BOO KOOZ, INC. dba Boo Kooz C-S		Policy Revision 2 (September 2002)	
<b>Case ID No.</b>	39467		PCW Revision October 30, 2008	
<b>Reg. Ent. Reference No.</b>	RN102790805			
<b>Media [Statute]</b>	Petroleum Storage Tank			
<b>Enf. Coordinator</b>	Keith Frank			
<b>Violation Number</b>	4			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 334.50(b)(1)(A), (b)(2) and (b)(2)(A)(i)(III) and Tex. Water Code § 26.3475(a) and (c)(1)			
<b>Violation Description</b>	Failed to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring). Failed to provide proper release detection for the pressurized piping associated with the USTs. Specifically, the Respondent did not conduct the annual piping tightness test. Also, failed to test the line leak detectors at least once per year for performance and operational reliability.			
			<b>Base Penalty</b>	\$10,000

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

OR	<b>Harm</b>				
	<b>Release</b>	Major	Moderate		Minor
	Actual				
Potential	x			<b>Percent</b> 25%	

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	<b>Percent</b> 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      61 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 5, 2010 investigation to the April 7, 2010 screening date.

**Good Faith Efforts to Comply** 0.0% Reduction \$0

	Before NOV	NOV to EDRP/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** \$1,162

**Violation Final Penalty Total** \$3,785

**This violation Final Assessed Penalty (adjusted for limits)** \$3,785

## Economic Benefit Worksheet

**Respondent** BOO KOOZ, INC. dba Boo Kooz C-S  
**Case ID No.** 39467  
**Reg. Ent. Reference No.** RN102790805  
**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				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	5-Feb-2010	24-Dec-2010	0.88	\$66	n/a	\$66

Notes for DELAYED costs

Estimated cost to provide release detection for the USTs. 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]	\$1,000	5-Feb-2009	5-Feb-2010	1.92	\$96	\$1,000	\$1,096
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

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

Approx. Cost of Compliance

\$2,500

TOTAL

\$1,162

# Compliance History Report

Customer/Respondent/Owner-Operator: CN601417892 BOO KOOZ, INC. Classification: AVERAGE Rating: 2.25  
Regulated Entity: RN102790805 Boo Kooz C-S Classification: AVERAGE Site Rating: 2.25  
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 17005  
REGISTRATION  
Location: 104 E AVENUE L, SAN ANGELO, TX, 76903  
TCEQ Region: REGION 08 - SAN ANGELO  
Date Compliance History Prepared: April 06, 2010  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: April 06, 2005 to April 06, 2010

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

Name: Keith Frank Phone: (512) 239-1203

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2009 Repeat Violator: NO

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
  - B. Any criminal convictions of the state of Texas and the federal government.  
N/A
  - C. Chronic excessive emissions events.  
N/A
  - D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
1 11/14/2008 (706179)  
2 03/25/2010 (795753)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
Date: 11/14/2008 (706179) CN601417892  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 334, SubChapter D 334.72(3)(B)  
Description: Failure to report a suspected release within 24 hours.
  - F. Environmental audits.  
N/A
  - G. Type of environmental management systems (EMSs).  
N/A
  - H. Voluntary on-site compliance assessment dates.  
N/A
  - I. Participation in a voluntary pollution reduction program.  
N/A
  - J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
BOO KOOZ, INC. DBA BOO KOOZ  
C-S;  
RN102790805**

§  
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§  
§  
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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

### **DOCKET NO. 2010-0547-PST-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary 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 and corrective action of the respondent. The respondent made the subject of this order is BOO KOOZ, INC. DBA Boo Kooz C-S ("Respondent").

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

#### **FINDINGS OF FACT**

1. Respondent owned and operated, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), three underground storage tanks ("USTs") and a convenience store with retail sales of gasoline located at 104 East Avenue L, in San Angelo, Tom Green 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 February 5, 2010 a TCEQ San Angelo Regional Office investigator documented that Respondent:
  - a. Failed to maintain the required UST records and make them immediately available for inspection upon request by agency personnel;
  - b. Failed to demonstrate acceptable financial assurance for taking corrective action for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs;
  - c. Failed to maintain all components electrically isolated from the corrosive elements of the surrounding soil, backfill, groundwater or any other water, and from other metallic components. Specifically, the sumps for tanks nos. 1 and 2 were not electrically isolated from the backfill material. Also, 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 have the cathodic protection system

inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; and

- d. Failed to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring), failed to test the line leak detectors at least once per year for performance and operational reliability, and failed to provide proper release detection for the pressurized piping associated with USTs. Specifically, the Respondent did not conduct the annual piping tightness test.
3. Respondent received notice of the violations on or about March 29, 2010.
  4. The Executive Director recognizes that Respondent no longer owns or operates the Facility.
  5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of BOO KOOZ, INC. DBA Boo Kooz C-S," (the "EDPRP") in the TCEQ Chief Clerk's office on July 22, 2010.
  6. By letter dated July 22, 2010, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on July 31, 2010, as evidenced by the signature on the card.
  7. More than 20 days have elapsed since Respondent received notice of the EDPRP provided by the Executive Director. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.

#### **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. 3.a., Respondent failed to maintain the required UST records and make them immediately available for inspection upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 334.10(b).
3. As evidenced by Finding of Fact No. 3.b., Respondent failed to demonstrate acceptable financial assurance for taking corrective action for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum UST, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b).
4. As evidenced by Finding of Fact No. 3.c., Respondent failed to maintain all components electrically isolated from the corrosive elements of the surrounding soil, backfill, groundwater or any other water, and from other metallic components. Specifically, the sumps for tanks nos. 1 and 2 were not electrically isolated from the backfill material. Also 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 have the cathodic protection system inspected and tested 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(b)(2), (c)(2)(C) and (c)(4), and TEX. WATER CODE § 26.3475(d).
5. As evidenced by Finding of Fact No. 3.d., Respondent failed to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring), failed to test the line leak detectors at least once per year for performance and operational reliability, and failed to provide proper release detection for the pressurized piping associated with USTs. Specifically, the Respondent did not conduct the annual piping tightness test, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A), (b)(2) and (b)(2)(A)(i)(III), and TEX. WATER CODE § 26.3475(a) and (c)(1).
  6. As evidenced by Findings of Fact Nos. 6 and 7, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
  7. As evidenced by Finding of Fact No. 8, Respondent failed to file a timely answer, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
  8. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of the Texas Water Code and the Texas Health & Safety Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
  9. An administrative penalty in the amount of thirteen thousand six hundred twenty-five dollars (\$13,625.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
  10. 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.

### **ORDERING PROVISIONS**

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Respondent is assessed an administrative penalty in the amount of thirteen thousand six hundred twenty-five dollars (\$13,625.00) 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.

2. 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: BOO KOOZ, INC. DBA Boo Kooz C-S; Docket No. 2010-0547-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

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Respondent.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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 the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

**S I G N A T U R E   P A G E**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF TAMMY L. MITCHELL**

STATE OF TEXAS                   §  
  §  
COUNTY OF TRAVIS               §

"My name is Tammy L. Mitchell. 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 BOO KOOZ, INC. DBA Boo Kooz C-S," (the "EDPRP") was filed in the TCEQ Chief Clerk's office on July 22, 2010.

The EDPRP was mailed to Respondent's last known address on July 22, 2010 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on July 26, 2010, as evidenced by the signature on the card.

More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference."

  
\_\_\_\_\_  
Tammy L. Mitchell, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Tammy L. Mitchell, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 10<sup>th</sup> day of January, A.D. 2011.

  
\_\_\_\_\_  
Notary Signature

