

Executive Summary – Enforcement Matter – Case No. 39388
EVERGREEN ENTERPRISES, INC. D/B/A ESCARPMENT EXXON
RN102478609
Docket No. 2010-0478-MLM-E

Order Type:
Agreed Order

Findings Order Justification:
N/A

Media:
MLM – PST, WQ

Small Business:
Yes

Location Where Violations Occurred:
6109 West William Cannon Drive, Austin, Travis County

Type of Operation:
two underground storage tanks and a 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: April 22, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed: \$11,356

Amount Deferred for Expedited Settlement: N/A

Amount Deferred for Financial Inability to Pay: N/A

Total Paid to General Revenue: \$331

Total Due to General Revenue: \$11,025

Payment Plan: 35 payments of \$315 each

SEP Conditional Offset: N/A

Compliance History Classifications:
Person/CN – Average
Site/RN – Average

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date: N/A
Date of Investigation: January 11, 2010
Date of NOV: N/A
Date of NOE: March 10, 2010

Violation Information

1. Failed to provide a functioning continuous monitoring leak detection system that is capable of immediately alerting of possible leakages [30 TEX. ADMIN. CODE § 213.5(d)(1)].
2. Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].
3. Failed to inspect at least once every 60 days any sumps, manways, overspill containers, or catchment basins, to assure that their sides, bottoms, and any penetration points are maintained liquid-tight [30 TEX. ADMIN. CODE § 334.42(i)].
4. Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)].

Corrective Actions/Technical Requirements

Corrective Actions Completed:

1. On January 19, 2010, submitted an updated UST registration and self-certification form.
2. On February 8, 2010, submitted documentation indicating that a continuous monitoring leak detection system was installed.
3. On February 8, 2010, began conducting bimonthly inspections of all sumps, manways, and overspill containers or catchment basins.
4. On February 10, 2010, conducted automatic tank gauging (“ATG”) tests with passing results.

Technical Requirements:

N/A

Litigation Information

Date Petition Filed: August 16, 2010
Date Answer Filed: September 3, 2010
SOAH Referral Date: October 5, 2010
Hearing Dates:
Preliminary hearing: January 6, 2011 (waived)
Evidentiary hearing: April 28, 2011
Settlement Date: March 25, 2011

Executive Summary – Enforcement Matter – Case No. 39388
EVERGREEN ENTERPRISES, INC. D/B/A ESCARPMENT EXXON
RN102478609
Docket No. 2010-0478-MLM-E

Contact Information

TCEQ Attorneys: Marshall Coover, Litigation Division, MC 175, (512) 239-3400
Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ SEP Coordinator: N/A

TCEQ Enforcement Coordinator: Wallace Myers, Waste Enforcement Section, (512) 239- 6580

TCEQ Regional Contact: Barry Kalda, Austin Regional Office, MC R-11, (512) 339- 2929

Respondent: Tahseen Khan, Director and President, Evergreen Enterprises, Inc., 16310 North Farm-to-Market Road 620, Round rock, Texas 78681

Respondent's Attorney: Adam Leiber, Hay Compere PLLC, 1145 West Fifth Street, Suite 200, Austin, Texas 78703

THIS PAGE INTENTIONALLY LEFT BLANK



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	15-Mar-2010			
	PCW	21-Jun-2010	Screening	18-Mar-2010	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	EVERGREEN ENTERPRISES, INC. dba Escarpment Exxon				
Reg. Ent. Ref. No.	RN102478609				
Facility/Site Region	11-Austin	Major/Minor Source	Major		

CASE INFORMATION					
Enf./Case ID No.	39388	No. of Violations	4		
Docket No.	2010-0478-MLM-E	Order Type	1660		
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No		
Multi-Media	Edwards Aquifer	Enf. Coordinator	Wallace Myers		
		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	\$15,000
---	-------------------	----------

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
---------------------------	------------------	--------------------------------	-----

Notes	No adjustment for compliance history.
--------------	---------------------------------------

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
--------------------	----	------------------	-------------------	-----

Notes	The Respondent does not meet the culpability criteria.
--------------	--

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$3,750
--	-------------------	---------

Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
-------------------------	-------------------	-------------------	-----

Total EB Amounts	\$127	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$4,440	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$11,250
-----------------------------	-----------------------	----------

OTHER FACTORS AS JUSTICE MAY REQUIRE	0.9%	Adjustment	\$106
---	------	-------------------	-------

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Recommended enhancement to capture the avoided cost of compliance associated with violation no. 3.
--------------	--

Final Penalty Amount	\$11,356
-----------------------------	----------

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$11,356
-----------------------------------	-------------------------------	----------

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.
--------------	--

PAYABLE PENALTY	\$11,356
------------------------	----------

Screening Date 18-Mar-2010

Docket No. 2010-0478-MLM-E

PCW

Respondent EVERGREEN ENTERPRISES, INC. dba Escarpment Ex

Policy Revision 2 (September 2002)

Case ID No. 39388

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102478609

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

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 adjustment for compliance history.

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

Screening Date	18-Mar-2010	Docket No.	2010-0478-MLM-E	PCW
Respondent	EVERGREEN ENTERPRISES, INC. dba Escarpment Exxon			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	39388			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN102478609			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Wallace Myers			
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 213.5(d)(1)			
Violation Description	Failed to provide a functioning continuous monitoring leak detection system that is capable of immediately alerting of possible leakages.			
		Base Penalty	\$10,000	

>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual				
	Potential	x			Percent 50%

>> 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 \$5,000

Violation Events

Number of Violation Events	1	Number of violation days	28	
<i>mark only one with an x</i>	daily			
	weekly			
	monthly	x		
	quarterly			
	semiannual			
	annual			
	single event			
				Violation Base Penalty \$5,000
	One monthly event is recommended based on documentation of the violation during the January 11, 2010 investigation to the February 8, 2010 compliance date.			

Good Faith Efforts to Comply 25.0% Reduction \$1,250

		Before NOV	NOV to EDPRP/Settlement	
Extraordinary				
Ordinary	x			
N/A			(mark with x)	
Notes	The Respondent came into compliance on February 8, 2010, prior to the Notice of Enforcement ("NOE") issued on March 10, 2010.			
				Violation Subtotal \$3,750

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

Estimated EB Amount	\$15	Violation Final Penalty Total	\$3,785
		This violation Final Assessed Penalty (adjusted for limits)	\$3,785

Economic Benefit Worksheet

Respondent EVERGREEN ENTERPRISES, INC. dba Escarpment Exxon
Case ID No. 39388
Reg. Ent. Reference No. RN102478609
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	\$2,740	11-Jan-2010	8-Feb-2010	0.08	\$1	\$14	\$15
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 install interstitial monitoring for release detection. 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

\$2,740

TOTAL

\$15

Screening Date 18-Mar-2010 **Docket No.** 2010-0478-MLM-E **PCW**
Respondent EVERGREEN ENTERPRISES, INC. dba Escarpment Exxon *Policy Revision 2 (September 2002)*
Case ID No. 39388 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102478609
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Wallace Myers

Violation Number
Rule Cite(s)
Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
<input type="text" value="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"/>
mon hly	<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 EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text" value="x"/>	<input type="text"/>
N/A	<input type="text"/>	<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 EVERGREEN ENTERPRISES, INC. dba Escarpment Exxon
Case ID No. 39388
Reg. Ent. Reference No. RN102478609
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)	\$1,500	11-Jan-2010	10-Feb-2010	0.08	\$6	n/a	\$6

Notes for DELAYED costs

Estimated cost to provide release detection for the USTs at the Facility. 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

\$1,500

TOTAL

\$6

Screening Date 18-Mar-2010 **Docket No.** 2010-0478-MLM-E **PCW**
Respondent EVERGREEN ENTERPRISES, INC. dba Escarpment Exxon *Policy Revision 2 (September 2002)*
Case ID No. 39388 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102478609
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Wallace Myers

Violation Number
Rule Cite(s)
Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="25%"/>
	Potential	<input type="text"/>	<input checked="" type="text" value="x"/>	<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

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"/>
mon hly	<input type="text"/>
quarterly	<input checked="" type="text" value="x"/>
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"/>
Ordinary	<input checked="" type="text" value="x"/>	<input type="text"/>
N/A	<input type="text"/>	<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 EVERGREEN ENTERPRISES, INC. dba Escarpment Exxon
Case ID No. 39388
Reg. Ent. Reference No. RN102478609
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)				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]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$100	12-Nov-2009	8-Feb-2010	1.16	\$6	\$100	\$106
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost of conducting bimonthly inspections of the sumps, manways, overspill containers or catchment basins. The date required is 60 days prior to the investigation and the final date is the date of compliance.

Approx. Cost of Compliance

\$100

TOTAL

\$106

Screening Date	18-Mar-2010	Docket No.	2010-0478-MLM-E	PCW
Respondent	EVERGREEN ENTERPRISES, INC. dba Escarpment Exxon			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	39388			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN102478609			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Wallace Myers			
Violation Number	4			
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 the USTs within 30 days of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current owner's contact information.			
Base Penalty	\$10,000			

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual				
Potential				0%	

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
		x			
100% of the rule requirement was not met.					
Adjustment					\$7,500

\$2,500

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty \$2,500

One single event is recommended based on documentation of the violation during the January 11, 2010 investigation.

Good Faith Efforts to Comply Reduction \$625

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

Notes The Respondent came into compliance on January 19, 2010, prior to the NOE issued on March 10, 2010.

Violation Subtotal \$1,875

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

Estimated EB Amount \$0 **Violation Final Penalty Total** \$1,893

This violation Final Assessed Penalty (adjusted for limits) \$1,893

Economic Benefit Worksheet

Respondent EVERGREEN ENTERPRISES, INC. dba Escarpment Exxon
Case ID No. 39388
Reg. Ent. Reference No. RN102478609
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)	\$100	11-Jan-2010	19-Jan-2010	0.02	\$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

Compliance History Report

Customer/Respondent/Owner-Operator:	CN601275936	EVERGREEN ENTERPRISES, INC.	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN102478609	Escarpment Exxon	Classification: AVERAGE	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	73060
Location:	6109 W WILLIAM CANNON DR, AUSTIN, TX, 78749			
TCEQ Region:	REGION 11 - AUSTIN			
Date Compliance History Prepared:	March 10, 2010			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	March 10, 2005 to March 10, 2010			

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

Name: Wallace Myers Phone: 512-239-6580

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 03/10/2010 (787856)
 - 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

THIS PAGE INTENTIONALLY LEFT BLANK

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
EVERGREEN ENTERPRISES, INC.
D/B/A ESCARPMENT EXXON;
RN102478609**

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2010-0478-MLM-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 Evergreen Enterprises, Inc. d/b/a Escarpment Exxon ("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, represented by Adam Leiber of Hay Compere PLLC, appear before the Commission and together stipulate that:

1. Respondent owns and operates, as defined in 30 TEX. ADMIN. CODE § 334.2(70) and (73), two underground storage tanks ("USTs") and a convenience store with retail sales of gasoline located at 6109 West William Cannon Drive 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. Respondent has committed an act or engaged in an activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution in the state under TEX. WATER CODE ch. 26.
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 three hundred fifty-six dollars (\$11,356.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid three hundred thirty-one dollars (\$331.00) of the administrative penalty. The remaining amount of eleven thousand twenty-five dollars (\$11,025.00) of the administrative penalty shall be payable in thirty-five (35)

monthly payments of three hundred fifteen dollars (\$315.00) 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. On January 19, 2010, submitted an updated UST registration and self-certification form;
 - b. On February 8, 2010, submitted documentation indicating that a continuous monitoring leak detection system was installed;
 - c. On February 8, 2010, began conducting bimonthly inspections of all sumps, manways, and overspill containers or catchment basins; and
 - d. On February 10, 2010, conducted automatic tank gauging ("ATG") tests with passing results.
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 January 11, 2010, a TCEQ Austin Regional Office investigator documented that Respondent violated:

- a. 30 TEX. ADMIN. CODE § 213.5(d)(1) by failing to provide a functioning continuous monitoring leak detection system that is capable of immediately alerting of possible leakages;
 - b. 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1) by failing to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Specifically, the automatic tank gauge ("ATG") was not put into test mode at least once per month;
 - c. 30 TEX. ADMIN. CODE § 334.42(i) by failing to inspect at least once every 60 days any sumps, manways, overspill containers, or catchment basins, to assure that their sides, bottoms, and any penetration points are maintained liquid tight; and
 - d. 30 TEX. ADMIN. CODE § 334.7(d)(3) by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current owner's contact information.
2. Respondent received notice of the violations on or about March 15, 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: Evergreen Enterprises, Inc. d/b/a Escarpment Exxon, Docket No. 2010-0478-MLM-E" to:

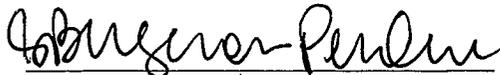
Financial Administration Division, Revenues Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088
2. All relief not expressly granted in this Agreed Order is denied.
3. The duties and provisions imposed by this Agreed Order shall 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.

4. 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.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by 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.
6. 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.
7. 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.
8. 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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

6/10/2011

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 Evergreen Enterprises, Inc. d/b/a Escarpment Exxon, 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 - Tahseen Khan
Director and President
Evergreen Enterprises, Inc.

3/25/11

Date