

Executive Summary – Enforcement Matter – Case No. 40029  
AA ENTERPRISES, INC. D/B/A CAPTAIN FOOD STORE  
RN101780906  
Docket No. 2010-1136-PST-E

**Order Type:**  
Agreed Order

**Findings Order Justification:**  
N/A

**Media:**  
PST

**Small Business:**  
Yes

**Location(s) Where Violation(s) Occurred:**  
12800 Walden Road, Montgomery, Montgomery 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:** May 27, 2011

**Comments Received:** None

***Penalty Information***

**Total Penalty Assessed:** \$25,595

**Amount Deferred for Expedited Settlement:** N/A

**Amount Deferred for Financial Inability to Pay:** \$5,580

**Total Paid to General Revenue:** \$590

**Total Due to General Revenue:** \$19,425

Payment Plan: 35 payments of \$555 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:** April 29, 2010  
**Date(s) of NOV(s):** March 6, 2007  
**Date(s) of NOE(s):** July 1, 2010

***Violation Information***

1. Failed to maintain a record of any maintenance conducted on any part of the Stage II equipment [30 TEX. ADMIN. CODE § 115.246(3) and TEX. HEALTH & SAFETY CODE § 382.085(b)].
2. Failed to maintain all UST records and make them immediately available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b)].
3. Failed to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date [30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)].
4. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)].
5. 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(c)(2)(c) and (c)(4) and TEX. WATER CODE § 26.3475(d)].
6. Failed to monitor USTs for releases at a frequency of at least once every 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; failed to conduct reconciliation of inventory control at least once a month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; and failed to record 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)(A)(i)(III), (d)(1)(B)(ii), (d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(a) and (c)(1)].
7. Failed to conduct effective manual or automatic inventory control procedures for the UST system [30 TEX. ADMIN. CODE § 334.48(c)].
8. Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the UST registration and self-certification form [30 TEX. ADMIN. CODE § 334.48(c)(5)(C)].
9. Failed to equip the tank with a valve or other appropriate device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level no higher than 95% capacity level of the tank [30 TEX. ADMIN. CODE § 334.51(b)(2)(C) and TEX. WATER CODE § 26.3475(c)(2)].
10. Failed to inspect all sumps, man-ways, overspill containers or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight and free of liquid or debris [30 TEX. ADMIN. CODE § 334.42(i)].

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11. Failed to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first [30 TEX. ADMIN. CODE § 115.245(2)].
12. Failed to ensure that at least one Station representative received training in the operation and maintenance of the Stage II vapor recovery system [30 TEX. ADMIN. CODE § 115.248(1) and TEX. HEALTH & SAFETY CODE § 382.085(b)].
13. Failed to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system [30 TEX. ADMIN. CODE § 115.242(3) and TEX. HEALTH & SAFETY CODE § 382.085(b)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

1. Successfully conducted the required Stage II testing on June 18, 2010; and;
2. Successfully conducted the required line leak detector tests on June 18, 2010.

**Technical Requirements:**

1. Immediately:
  - a. Cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ by submitting a properly completed UST registration and self-certification form; and
  - b. Begin conducting proper inventory control procedures for all USTs at the Station.
2. Within 30 days:
  - a. Conduct the required triennial testing of the corrosion protection system and begin conducting bimonthly inspections of the rectifier;
  - b. Implement a release detection method for all USTs at the Station including volume measurement and reconciliation of inventory control;
  - c. Install an overfill prevention device for the UST system; and
  - d. Begin to maintain Stage II vapor recovery system in proper operating condition including, but not limited to, replacing the damaged dry break vapor caps.
3. Within 45 days:
  - a. Begin maintain a log of all maintenance conducted on the Stage II equipment at the Station;
  - b. Begin maintaining all UST records;
  - c. Appropriately mark the top of each fill tube or nonremovable point in the immediate area of the fill tube of each UST with an identification number that matches the number listed on the UST registration and self-certification form;
  - d. Begin conducting bimonthly inspections of all sumps, man-ways, and overspill containers or catchment basins; and
  - e. Ensure that at least one Station representative successfully completed the required Stage II training regarding the purpose and correct operating procedures of the Stage II vapor recovery system.
4. Within 60 days, submit written certification demonstrating compliance.

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***Litigation Information***

**Date Petition(s) Filed:** February 23, 2011  
**Date Answer(s) Filed:** March 2, 2011  
**SOAH Referral Date:** April 4, 2011  
**Hearing Date(s):** N/A  
**Settlement Date:** April 11, 2011

***Contact Information***

**TCEQ Attorneys:** Ms. Stephanie Frazee, Litigation Division, (512) 239-3400  
Ms. Lena Roberts, Litigation Division, (512) 239-3400

**TCEQ SEP Coordinator:** N/A

**TCEQ Enforcement Coordinator:** Mr. Tate Barrett, Waste Enforcement Section, (713) 422-8968

**TCEQ Regional Contact:** Ms. Nicole Bealle, Houston Regional Office, (713) 767-3623

**Respondent:** Mr. Ali Hirani, President, AA Enterprises, Inc., 22997 Ridgemoor Estates Court, Conroe, Texas 77385

**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	6-Jul-2010	<b>Screening</b>	7-Jul-2010	<b>EPA Due</b>	
	<b>PCW</b>	27-Jan-2011				

<b>RESPONDENT/FACILITY INFORMATION</b>			
<b>Respondent</b>	AA Enterprises, Inc. dba Captain Food Store		
<b>Reg. Ent. Ref. No.</b>	RN101780906		
<b>Facility/Site Region</b>	12-Houston	<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	40029	<b>No. of Violations</b>	13
<b>Docket No.</b>	2010-1136-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>	Tate Barrett
		<b>EC's Team</b>	Enforcement Team 7
<b>Admin. Penalty \$ Limit 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>	\$21,500
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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.

<b>Compliance History</b>	5.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$1,075
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Notes: Enhancement for one previous Notice of Violation with same/similar violations.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$625
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$3,860
Approx. Cost of Compliance	\$7,875

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$21,950
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	16.6%	<b>Adjustment</b>	\$3,645
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to capture avoided costs of compliance associated with violation nos. 3,5,6,10, and 11.

<b>Final Penalty Amount</b>	\$25,595
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$25,595
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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.)

Notes: Deferral not offered for non-expedited settlement.

<b>PAYABLE PENALTY</b>	\$25,595
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**Screening Date** 7-Jul-2010

**Docket No.** 2010-1136-PST-E

**PCW**

**Respondent** AA Enterprises, Inc. dba Captain Food Store

*Policy Revision 2 (September 2002)*

**Case ID No.** 40029

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN101780906

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** Tate Barrett

### 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 ( <i>number of NOVs meeting criteria</i> )	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of</i>	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 5%

**>> 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 Notice of Violation with same/similar violations.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 5%

Screening Date 7-Jul-2010

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PCW

Respondent AA Enterprises, Inc. dba Captain Food Store

Policy Revision 2 (September 2002)

Case ID No. 40029

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101780906

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Tate Barrett

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 115.246(3) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to maintain a record of any maintenance conducted on any part of the Stage II equipment. Specifically, the Stage II maintenance log was not current.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (10%). Includes Matrix Notes: 100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 69 Number of violation days

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

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the April 29, 2010 investigation.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (marked with x).

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

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$21

Violation Final Penalty Total \$1,224

This violation Final Assessed Penalty (adjusted for limits) \$1,224

## Economic Benefit Worksheet

**Respondent** AA Enterprises, Inc. dba Captain Food Store  
**Case ID No.** 40029  
**Req. Ent. Reference No.** RN101780906  
**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	29-Apr-2010	7-Mar-2011	0.85	\$21	n/a	\$21
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 Stage II records. The date required is the date of the investigation and the final date is the estimated date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

**TOTAL**

\$21

Screening Date 7-Jul-2010

Docket No. 2010-1136-PST-E

PCW

Respondent AA Enterprises, Inc. dba Captain Food Store

Policy Revision 2 (September 2002)

Case ID No. 40029

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101780906

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Tate Barrett

Violation Number 2

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

Violation Description Failed to maintain all 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

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			10%
100% of the rule requirement was not met.					

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 69 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 April 29, 2010 investigation.

Good Faith Efforts to Comply

0.0% Reduction \$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark w th 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 \$21

Violation Final Penalty Total \$1,224

This violation Final Assessed Penalty (adjusted for limits) \$1,224

## Economic Benefit Worksheet

**Respondent** AA Enterprises, Inc. dba Captain Food Store  
**Case ID No.** 40029  
**Req. Ent. Reference No.** RN101780906  
**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	\$500	29-Apr-2010	7-Mar-2011	0.85	\$21	n/a	\$21
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to maintain UST records. The date required is the date of the investigation and the final date is the estimated date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

**TOTAL**

\$21

Screening Date 7-Jul-2010

Docket No. 2010-1136-PST-E

PCW

Respondent AA Enterprises, Inc. dba Captain Food Store

Policy Revision 2 (September 2002)

Case ID No. 40029

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101780906

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Tate Barrett

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)

Violation Description Failed to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date. Specifically, the delivery certificate expired on May 31, 2007.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			10%
100% of the rule requirement was not met.					

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 4 1133 Number of violation days

mark only one with an x	daily		Violation Base Penalty \$4,000
	weekly		
	monthly		
	quarterly		
	semiannual		
	annual	x	
	single event		

Four annual events are recommended based on documentation of the violation during the April 29, 2010 investigation.

Good Faith Efforts to Comply

0.0% Reduction \$0

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

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

Violation Subtotal \$4,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$365 Violation Final Penalty Total \$4,897

This violation Final Assessed Penalty (adjusted for limits) \$4,897

## Economic Benefit Worksheet

**Respondent** AA Enterprises, Inc. dba Captain Food Store  
**Case ID No.** 40029  
**Req. Ent. Reference No.** RN101780906  
**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)	\$100	29-Apr-2010	7-Mar-2011	0.85	\$0	\$6	\$6
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 accurately prepare and submit an updated UST registration and obtain a current TCEQ delivery certificate. The date required is the date of the investigation and the final date is the estimated date of compliance.

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$300	1-May-2007	29-Apr-2010	3.92	\$59	\$300	\$359
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost (\$100 per full year) to accurately prepare and submit an updated UST registration and obtain a TCEQ delivery certificate. The date required is 30 days prior to the expiration date of the delivery certificate and the final date is the date of the investigation.

Approx. Cost of Compliance

\$400

**TOTAL**

\$365

Screening Date 7-Jul-2010

Docket No. 2010-1136-PST-E

PCW

Respondent AA Enterprises, Inc. dba Captain Food Store

Policy Revision 2 (September 2002)

Case ID No. 40029

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101780906

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Tate Barrett

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(A)(i) and Tex. Water Code § 26.3467(a)

Violation Description Failed to make available to a common carrier a valid, current Texas Commission on Environmental Quality ("TCEQ") delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, one fuel delivery was accepted without a delivery certificate.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual					5%
Potential			x		

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0%

Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 1 Number of violation days 1

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

Violation Base Penalty \$500

One single event is recommended for accepting one fuel delivery.

Good Faith Efforts to Comply

0.0% Reduction Before NOV NOV to EDPRP/Settlement Offer

\$0

Extraordinary		
Ordinary		
N/A	x	(mark w th x)

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

Violation Subtotal \$500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$612

This violation Final Assessed Penalty (adjusted for limits) \$612

## Economic Benefit Worksheet

**Respondent** AA Enterprises, Inc. dba Captain Food Store  
**Case ID No.** 40029  
**Req. Ent. Reference No.** RN101780906  
**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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Economic benefit included in violation no. 3.

### 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

\$0

**TOTAL**

\$0

Screening Date 7-Jul-2010

Docket No. 2010-1136-PST-E

PCW

Respondent AA Enterprises, Inc. dba Captain Food Store

Policy Revision 2 (September 2002)

Case ID No. 40029

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101780906

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Tate Barrett

Violation Number 5

Rule Cite(s) 30 Tex. Admin. Code § 334.49(c)(2)(C) and (c)(4) and Tex. Water Code § 26.3475(d)

Violation Description 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. Specifically, the triennial test had not been conducted.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (25%).

>> Programmatic Matrix

Table with columns: 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 69 Number of violation days

Table with columns: Frequency (daily, weekly, monthly, quarterly, semiannual, annual, single event), mark only one with an x.

Violation Base Penalty \$2,500

One quarterly event is recommended based on documentation of the violation during the April 29, 2010 investigation to the July 7, 2010 screening date.

Good Faith Efforts to Comply

0.0% Reduction \$0

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

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

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2,497

Violation Final Penalty Total \$3,061

This violation Final Assessed Penalty (adjusted for limits) \$3,061

## Economic Benefit Worksheet

**Respondent** AA Enterprises, Inc. dba Captain Food Store  
**Case ID No.** 40029  
**Req. Ent. Reference No.** RN101780906  
**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)				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	28-Feb-2010	29-Apr-2010	1.08	\$5	\$100	\$105
Other (as needed)	\$2 000	29-Apr-2007	29-Apr-2010	3.92	\$392	\$2 000	\$2 392

Notes for AVOIDED costs

Estimated avoided cost for conducting bimonthly inspection (\$100) and for completing the triennial test (\$500 per tank for four tanks). The dates required are 60 days before the investigation and three years before the investigation respectively and the final date is the date of the investigation.

Approx. Cost of Compliance

\$2,100

**TOTAL**

\$2,497

Screening Date 7-Jul-2010

Docket No. 2010-1136-PST-E

PCW

Respondent AA Enterprises, Inc. dba Captain Food Store

Policy Revision 2 (September 2002)

Case ID No. 40029

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101780906

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Tate Barrett

Violation Number 6

Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A), (b)(2)(A)(i)(III), (d)(1)(B)(ii), (d)(1)(B)(iii)(I) and Tex. Water Code § 26.3475(a) and (c)(1)

Violation Description Failed to monitor USTs for releases at a frequency of at least once every 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. Failed to conduct reconciliation of inventory control at least once a month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons. Also, failed to record 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

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (25%).

>> Programmatic Matrix

Table with columns: 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 Number of violation days 69

Table with columns: Frequency (daily, weekly, monthly, quarterly, semiannual, annual, single event), mark only one with an x.

Violation Base Penalty \$2,500

One quarterly event is recommended based on documentation of the violation during the April 29, 2010 investigation to the July 7, 2010 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$147

Violation Final Penalty Total \$3,061

This violation Final Assessed Penalty (adjusted for limits) \$3,061

## Economic Benefit Worksheet

**Respondent** AA Enterprises, Inc. dba Captain Food Store  
**Case ID No.** 40029  
**Req. Ent. Reference No.** RN101780906  
**Media** Petroleum Storage Tank  
**Violation No.** 6

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	29-Apr-2010	7-Mar-2011	0.85	\$64	n/a	\$64

Notes for DELAYED costs

Estimated cost to provide a method of release detection for the UST system including volume measurement and reconciliation of inventory control. The date required is the date of the investigation and the final date is the estimated date of compliance.

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$75	29-Apr-2009	18-Jun-2010	2.05	\$8	\$75	\$83
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct performance tests for line leak detectors. The date required is one year prior to the investigation and the final date is the date of compliance.

Approx. Cost of Compliance

\$1,575

**TOTAL**

\$147

Screening Date 7-Jul-2010

Docket No. 2010-1136-PST-E

PCW

Respondent AA Enterprises, Inc. dba Captain Food Store

Policy Revision 2 (September 2002)

Case ID No. 40029

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101780906

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Tate Barrett

Violation Number 7

Rule Cite(s) 30 Tex. Admin. Code § 334.48(c)

Violation Description Failed to conduct effective manual or automatic inventory control procedures for the UST system.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (25%).

>> Programmatic Matrix

Table with columns: 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

Table for violation events including frequency (daily, weekly, monthly, quarterly, semiannual, annual, single event) and duration (1, 69 days).

Violation Base Penalty \$2,500

One quarterly violation is recommended based on documentation of the violation during the April 29, 2010 investigation to the July 7, 2010 screening date.

Good Faith Efforts to Comply

Table for Good Faith Efforts to Comply with columns: Reduction (0.0%), Before NOV, NOV to EDPRP/Settlement Offer.

\$0

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 \$64

Violation Final Penalty Total \$3,061

This violation Final Assessed Penalty (adjusted for limits) \$3,061

## Economic Benefit Worksheet

**Respondent** AA Enterprises, Inc. dba Captain Food Store  
**Case ID No.** 40029  
**Req. Ent. Reference No.** RN101780906  
**Media** Petroleum Storage Tank  
**Violation No.** 7

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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	\$1,500	29-Apr-2010	7-Mar-2011	0.85	\$64	n/a	\$64
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 proper inventory control procedures. The date required is the date of the investigation and the final date is the estimated date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

**TOTAL**

\$64

Screening Date 7-Jul-2010

Docket No. 2010-1136-PST-E

PCW

Respondent AA Enterprises, Inc. dba Captain Food Store

Policy Revision 2 (September 2002)

Case ID No. 40029

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101780906

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Tate Barrett

Violation Number 8

Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(C)

Violation Description Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (10%).

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

Adjustment \$9,000

\$1,000

Violation Events

Table for Violation Events including violation days (69), frequency (single event), and Violation Base Penalty (\$1,000).

One single event is recommended based on documentation of the violation during the April 29, 2010 investigation.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table for Good Faith Efforts to Comply with columns: Before NOV, NOV to EDPRP/Settlement Offer.

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 \$1,224

This violation Final Assessed Penalty (adjusted for limits) \$1,224

## Economic Benefit Worksheet

**Respondent** AA Enterprises, Inc. dba Captain Food Store  
**Case ID No.** 40029  
**Req. Ent. Reference No.** RN101780906  
**Media** Petroleum Storage Tank  
**Violation No.** 8

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	29-Apr-2010	7-Mar-2011	0.85	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to label the tank fill ports. The date required is the date of the investigation and the final date is the estimated date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

**TOTAL**

\$4

Screening Date 7-Jul-2010

Docket No. 2010-1136-PST-E

PCW

Respondent AA Enterprises, Inc. dba Captain Food Store

Policy Revision 2 (September 2002)

Case ID No. 40029

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101780906

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Tate Barrett

Violation Number 9

Rule Cite(s) 30 Tex. Admin. Code § 334.51(b)(2)(C) and Tex. Water Code § 26.3475(c)(2)

Violation Description Failed to equip the tank with a valve or other appropriate device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level no higher than 95% capacity level for the tank.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (10%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (0%).

Matrix Notes Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 69 Number of violation days

Table for violation frequency: daily, weekly, monthly, quarterly (marked with x), semiannual, annual, single event. Violation Base Penalty \$1,000.

One quarterly event is recommended based on documentation of the violation during the April 29, 2010 investigation to the July 7, 2010 screening date.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (marked with x), (mark w th 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 \$24 Violation Final Penalty Total \$1,224

This violation Final Assessed Penalty (adjusted for limits) \$1,224

## Economic Benefit Worksheet

**Respondent** AA Enterprises, Inc. dba Captain Food Store  
**Case ID No.** 40029  
**Req. Ent. Reference No.** RN101780906  
**Media** Petroleum Storage Tank  
**Violation No.** 9

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment	\$400	29-Apr-2010	7-Mar-2011	0.85	\$1	\$23	\$24
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 properly install overfill prevention devices (\$100 per tank). The date required is the date of the investigation and the final date is the estimated date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$400

**TOTAL**

\$24

Screening Date 7-Jul-2010

Docket No. 2010-1136-PST-E

PCW

Respondent AA Enterprises, Inc. dba Captain Food Store

Policy Revision 2 (September 2002)

Case ID No. 40029

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101780906

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Tate Barrett

Violation Number 10

Rule Cite(s) 30 Tex. Admin. Code § 334.42(i)

Violation Description Failed to inspect all sumps, manways, overspill containers or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid-tight, and free of liquid or debris.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (10%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (0%).

Matrix Notes Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 69 Number of violation days

Table with columns: Frequency (daily, weekly, monthly, quarterly, semiannual, annual, single event), mark only one with an x.

Violation Base Penalty \$1,000

One quarterly event is recommended based on documentation of the violation during the April 29, 2010 investigation to the July 7, 2010 screening date.

Good Faith Efforts to Comply

0.0% Reduction \$0

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

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

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$105 Violation Final Penalty Total \$1,224

This violation Final Assessed Penalty (adjusted for limits) \$1,224

## Economic Benefit Worksheet

**Respondent** AA Enterprises, Inc. dba Captain Food Store  
**Case ID No.** 40029  
**Req. Ent. Reference No.** RN101780906  
**Media** Petroleum Storage Tank  
**Violation No.** 10

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	28-Feb-2010	29-Apr-2010	1.08	\$5	\$100	\$105
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 the investigation.

Approx. Cost of Compliance \$100

**TOTAL** \$105

Screening Date 7-Jul-2010

Docket No. 2010-1136-PST-E

PCW

Respondent AA Enterprises, Inc. dba Captain Food Store

Policy Revision 2 (September 2002)

Case ID No. 40029

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101780906

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Tate Barrett

Violation Number 11

Rule Cite(s) 30 Tex. Admin. Code § 115.245(2) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first. Specifically, the Stage II annual and triennial testing had not been conducted.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (25%).

>> Programmatic Matrix

Table with columns: 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 1095 Number of violation days

Table with columns: Frequency (daily, weekly, monthly, quarterly, semiannual, annual, single event), mark only one with an x.

Violation Base Penalty \$2,500

One single event is recommended for the three-year period prior to the April 29, 2010 investigation.

Good Faith Efforts to Comply

25.0% Reduction Before NOV NOV to EDPRP/Settlement Offer

\$625

Table with columns: Extraordinary, Ordinary (x), N/A, (mark w th x).

Notes The Respondent came into compliance on June 18, 2010, prior to the July 1, 2010 Notice of Enforcement.

Violation Subtotal \$1,875

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$601

Violation Final Penalty Total \$2,332

This violation Final Assessed Penalty (adjusted for limits) \$2,332

## Economic Benefit Worksheet

**Respondent** AA Enterprises, Inc. dba Captain Food Store  
**Case ID No.** 40029  
**Req. Ent. Reference No.** RN101780906  
**Media** Petroleum Storage Tank  
**Violation No.** 11

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]	\$500	29-Apr-2007	18-Jun-2010	4.06	\$101	\$500	\$601
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost for annual and triennial testing to verify proper operation of the Stage II equipment. The date required is three years prior to the investigation and the final date is the compliance date.

Approx. Cost of Compliance

\$500

**TOTAL**

\$601

Screening Date 7-Jul-2010

Docket No. 2010-1136-PST-E

PCW

Respondent AA Enterprises, Inc. dba Captain Food Store

Policy Revision 2 (September 2002)

Case ID No. 40029

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101780906

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Tate Barrett

V12 12

Rule Cite(s) 30 Tex. Admin. Code § 115.248(1) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to ensure that at least one Station representative received training in the operation and maintenance of the Stage II vapor recovery system.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (10%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (0%).

Matrix Notes Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 69 Number of violation days

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

Violation Base Penalty \$1,000

One quarterly event is recommended based on documentation of the violation during the April 29, 2010 investigation to the July 7, 2010 screening date.

Good Faith Efforts to Comply

0.0% Reduction Before NOV NOV to EDPRP/Settlement Offer

\$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (marked with x), (mark w th 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 \$6

Violation Final Penalty Total \$1,224

This violation Final Assessed Penalty (adjusted for limits) \$1,224

## Economic Benefit Worksheet

**Respondent** AA Enterprises, Inc. dba Captain Food Store  
**Case ID No.** 40029  
**Req. Ent. Reference No.** RN101780906  
**Media** Petroleum Storage Tank  
**Violation No.** 12

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	\$150	29-Apr-2010	7-Mar-2011	0.85	\$6	n/a	\$6
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 of training a Stage II Station representative. The date required is the date of the investigation and the final date is the estimated date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$150

**TOTAL**

\$6

Screening Date 7-Jul-2010

Docket No. 2010-1136-PST-E

PCW

Respondent AA Enterprises, Inc. dba Captain Food Store

Policy Revision 2 (September 2002)

Case ID No. 40029

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101780906

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Tate Barrett

Violation Number 13

Rule Cite(s) 30 Tex. Admin. Code § 115.242(3) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system. Specifically, the vapor cap and cover over the dry break were damaged.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				10%
	Potential		x		

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 69 Number of violation days

mark only one with an x	daily		Violation Base Penalty \$1,000
	weekly		
	monthly		
	quarterly	x	
	semiannual		
	annual		
	single event		

One quarterly event is recommended based on documentation of the violation during the April 29, 2010 investigation to the July 7, 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 w th 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 \$3 Violation Final Penalty Total \$1,224

This violation Final Assessed Penalty (adjusted for limits) \$1,224

## Economic Benefit Worksheet

**Respondent** AA Enterprises, Inc. dba Captain Food Store  
**Case ID No.** 40029  
**Req. Ent. Reference No.** RN101780906  
**Media** Petroleum Storage Tank  
**Violation No.** 13

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment	\$50	29-Apr-2010	7-Mar-2011	0.85	\$0	\$3	\$3
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 a new dry break cap. The date required is the date of the investigation and the final date is the estimated date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$50

**TOTAL**

\$3

# Compliance History Report

Customer/Respondent/Owner-Operator: CN602647968 AA Enterprises, Inc. Classification: AVERAGE Rating: 2.00  
Regulated Entity: RN101780906 Captain Food Store Classification: AVERAGE Site Rating: 1.50  
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 14098  
REGISTRATION  
Location: 12800 WALDEN RD, MONTGOMERY, TX, 77356  
TCEQ Region: REGION 12 - HOUSTON  
Date Compliance History Prepared: July 07, 2010  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: July 07, 2005 to July 07, 2010

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

Name: Tate Barrett Phone: (713) 422-8968

## 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 judgments, and consent decrees of the State of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- |   |            |          |
|---|------------|----------|
| 1 | 03/06/2007 | (531970) |
| 2 | 07/01/2010 | (827539) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |              |   |          |                       |
|--------------|---|----------|-----------------------|
| Date:        | 03/06/2007  | (531970) | CN602647968           |
| Self Report? | NO  |          | Classification: Minor |
| Citation:    | 30 TAC Chapter 115, SubChapter C 115.246(3)   |          |                       |
| Description: | Failure to maintain a maintenance log for all repair/replacements conducted at the facility.<br>At the time of the investigation there was a maintenance log available for review but the last entry was August 17, 1999.   |          |                       |
| Self Report? | NO  |          | Classification: Minor |
| Citation:    | 30 TAC Chapter 115, SubChapter C 115.246(6)   |          |                       |
| Description: | Failure to maintain a daily inspection log according to 115.244 (Inspection Requirements).<br>At the time of the investigation, a Stage II daily inspection log was not available for review but the last entry was August 15, 2006.                                  |          |                       |
| Self Report? | NO  |          | Classification: Minor |
| Citation:    | 30 TAC Chapter 115, SubChapter C 115.246(4)   |          |                       |
| Description: | Failure to maintain proof of attendance and completion of training as specified in 115.248 (state approved Stage II training course).<br>At the time of the investigation, Stage II training documentation of a facility representative was not available for review. |          |                       |
- 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  
AA ENTERPRISES, INC. D/B/A  
CAPTAIN FOOD STORE;  
RN101780906**

§  
§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER**

**DOCKET NO. 2010-1136-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 AA Enterprises, Inc. d/b/a Captain Food Store ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26 and TEX. HEALTH & SAFETY CODE ch. 382. 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 12800 Walden Road in Montgomery, Montgomery County, Texas (the "Station"). The USTs at the Station 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. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
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, TEX. HEALTH & SAFETY CODE ch. 382, 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 twenty-five thousand five hundred ninety-five dollars (\$25,595.00) is assessed by the Commission in settlement of the violations alleged in Section II. The Financial Assurance Section of the Commission's Financial Administration Division reviewed the financial documentation submitted by Respondent and determined that Respondent is unable to pay part of the

administrative penalty. Therefore, five thousand five hundred eighty dollars (\$5,580.00) of the administrative penalty is deferred contingent upon Respondent's timely and satisfactory compliance with all the terms of this Agreed Order and shall be waived only upon full compliance with all the terms and conditions contained in this Agreed Order. If Respondent fails to timely and satisfactorily comply with any requirement contained in this Agreed Order, including any payment schedule, the Executive Director may require Respondent to pay all or part of the deferred administrative penalty.

Respondent paid five hundred ninety dollars (\$590.00) of the undeferred administrative penalty. The remaining amount of nineteen thousand four hundred twenty-five dollars (\$19,425.00) shall be payable in thirty-five (35) monthly payments of five hundred fifty-five dollars (\$555.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, 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, the acceleration of any remaining balance constitutes the failure by Respondent to timely and satisfactorily comply with all the terms of this Agreed Order and the Executive Director may demand payment of the deferred penalty amount.

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 Station:
  - a. Successfully conducted the required Stage II testing on June 18, 2010 (Allegation 1.k.); and
  - b. Successfully conducted the required line leak detector tests on June 18, 2010 (Allegation 1.f.).
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 April 29, 2010, a TCEQ Houston Regional Office investigator documented that Respondent violated:
  - a. 30 TEX. ADMIN. CODE § 115.246(3) and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to maintain a record of any maintenance conducted on any part of the Stage II equipment. Specifically, the Stage II equipment maintenance log was not current.
  - b. 30 TEX. ADMIN. CODE § 334.10(b), by failing to maintain all UST records and make them immediately available for inspection upon request by agency personnel.
  - c. 30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date. Specifically, the delivery certificate expired on May 31, 2007.
  - d. 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, one fuel delivery was accepted without a delivery certificate.
  - e. 30 TEX. ADMIN. CODE § 334.49(c)(2)(C) and (c)(4) and TEX. WATER CODE § 26.3475(d), by failing 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 by failing 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. Specifically, the triennial test had not been conducted.
  - f. 30 TEX. ADMIN. CODE § 334.50(b)(1)(A), (b)(2)(A)(i)(III), (d)(1)(B)(ii), (d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(a) and (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); by failing to test the line leak detectors at least once per year for performance and operational reliability; by failing to conduct reconciliation of inventory control at least once a month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; and by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day.
  - g. 30 TEX. ADMIN. CODE § 334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system.
  - h. 30 TEX. ADMIN. CODE § 334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form.

- i. 30 TEX. ADMIN. CODE § 334.51(b)(2)(C) and TEX. WATER CODE § 26.3475(c)(2), by failing to equip the tank with a valve or other appropriate device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level no higher than 95% capacity level for the tank.
  - j. 30 TEX. ADMIN. CODE § 334.42(i), by failing to inspect all sumps, manways, overflow containers or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight and free of liquid or debris.
  - k. 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifold and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first. Specifically, the Stage II annual and triennial testing had not been conducted.
  - l. 30 TEX. ADMIN. CODE § 115.248(1) and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to ensure that at least one Station representative received training in the operation and maintenance of the Stage II vapor recovery system.
  - m. 30 TEX. ADMIN. CODE § 115.242(3) and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system. Specifically, the vapor cap and cover over the dry break were damaged.
2. Respondent received notice of the violations on or about July 6, 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 No. 5. 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 that 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: AA Enterprises, Inc. d/b/a Captain Food Store, Docket No. 2010-1136-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:
    - i. Cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ by submitting a properly completed UST registration and self-certification form, in accordance with 30 TEX. ADMIN. CODE § 334.8 (Allegation 1.c. and 1.d.); and
    - ii. Begin conducting proper inventory control procedures for all USTs at the Station, in accordance with 30 TEX. ADMIN. CODE § 334.48 (Allegation 1.g.).
  - b. Within 30 days after the effective date of this Agreed Order, Respondent shall:
    - i. Conduct the required triennial testing of the corrosion protection system and begin conducting bimonthly inspections of the rectifier, in accordance with 30 TEX. ADMIN. CODE § 334.49 (Allegation 1.e.);
    - ii. Implement a release detection method for all USTs at the Station including volume measurement and reconciliation of inventory control, in accordance with 30 TEX. ADMIN. CODE § 334.50 (Allegation 1.f.);
    - iii. Install an overfill prevention device for the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.51 (Allegation 1.i.); and
    - iv. Begin maintaining the Stage II vapor recovery system in proper operating condition including, but not limited to, replacing the damaged dry break vapor caps, in accordance with 30 TEX. ADMIN. CODE § 115.242 (Allegation 1.m.).
  - c. Within 45 days after the effective date of this Agreed Order, Respondent shall:
    - i. Begin maintaining a log for all maintenance conducted on the Stage II equipment at the Station, in accordance with 30 TEX. ADMIN. CODE § 115.246 (Allegation 1.a.);
    - ii. Begin maintaining all UST records in accordance with 30 TEX. ADMIN. CODE § 334.10 (Allegation 1.b.);
    - iii. Appropriately mark the top of each fill tube or nonremovable point in the immediate area of the fill tube of each UST with an identification number that matches the number listed on the UST registration and self-certification form, in accordance with 30 TEX. ADMIN. CODE § 334.8 (Allegation 1.h.);
    - iv. Begin conducting bimonthly inspections of all sumps, manways, and overspill containers or catchment basins, in accordance with 30 TEX. ADMIN. CODE § 334.42 (Allegation 1.j.); and
    - v. Ensure that at least one Station representative successfully completes the required Stage II training regarding the purpose and correct operating procedures of the Stage II vapor recovery system, in accordance with 30 TEX. ADMIN. CODE § 115.248 (Allegation 1.l.).

- d. Within 60 days after the effective date of this Agreed Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision Nos. 2.a through 2.c. The certification shall be notarized by a State of Texas Notary Public and shall include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

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

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

and:

Waste Section Manager  
Texas Commission on Environmental Quality  
Houston Regional Office  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486

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 Station 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

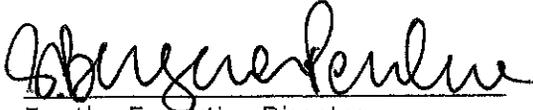
not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

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.

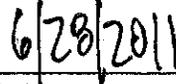
SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission



\_\_\_\_\_  
For the Executive Director



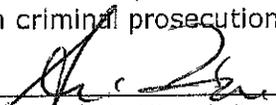
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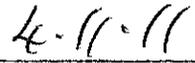
I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of AA Enterprises, Inc. d/b/a Captain Food Store, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, 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 - Ali A. Hirani, President  
AA Enterprises, Inc.

  
\_\_\_\_\_  
Date