

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 44261
Yaser Belbisi d/b/a Econo Lube N Tune and Brakes, and
Mohamed Hafsi d/b/a Econo Lube N Tune and Brakes
RN102041910
Docket No. 2012-1336-PST-E

Order Type:
Default Shutdown Order

Media:
PST

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
9003 Huebner Road, San Antonio, Bexar County

Type of Operation:
automotive maintenance and repair facility with a used-oil underground storage tank ("UST")

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: February 15, 2013

Comments Received: None

Penalty Information

Total Penalty Assessed: \$5,908

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$5,908

Compliance History Classifications:
Person/CN – Poor (Both Respondents)
Site/RN – Poor

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): N/A

Date(s) of Investigation: August 30, 2011, May 14, 2012

Date(s) of NOV(s): May 9, 2008; February 5, 2010

Date(s) of NOE(s): May 14, 2012

Violation Information

1. Failed to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A)].
2. Failed to provide release detection for the piping associated with the UST system [TEX. WATER CODE § 26.3475(a) and 30 TEX. ADMIN. CODE § 334.50(b)(2)].
3. Failed to maintain UST records and make the immediately available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b)]

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

Conducted the annual piping tightness test on August 7, 2012, with passing results.

Technical Requirements:

1. Immediately shut down operation of the UST at the Facility:
 - a. Cease adding used oil and/or other regulated substances to the UST;
 - b. Empty the UST of all regulated substances; and
 - c. Temporarily remove the UST from service;
2. The UST shall remain out of service until such time as Respondents demonstrate to the satisfaction of the Executive Director that the UST release detection violation has been corrected.
3. Within 15 days, submit a detailed written report documenting the steps taken to comply with Technical Requirement No. 1.
4. Prior to placing the UST back into service:
 - a. Begin maintaining all UST records and ensure that they are made immediately available upon request by agency personnel; and
 - b. Implement a release detection method for the UST.
5. Within 10 days of placing the UST back into service, submit written certification demonstrating compliance with Technical Requirement No. 4.

Litigation Information

Date Petition(s) Filed: October 25, 2012

Date Green Card(s) Signed: October 27, 2012

Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Phillip M. Goodwin, P.G., Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Amy Swanholm, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Steven Van Landingham, Enforcement Division, (512) 239-5717

TCEQ Regional Contact: Cameron Lopez, San Antonio Regional Office, (210) 490-3096

Respondent: Yaser Belbisi and Mohamed Hafsi, 9003 Huebner Road #3,
San Antonio, Texas 78240

Respondents' Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	21-May-2012		
	PCW	7-Jan-2013	Screening	1-Jun-2012
			EPA Due	

RESPONDENT/FACILITY INFORMATION	
Respondent	Yaser Belbisi and Mohamed Hafsi dba Econo Lube N Tune and Brakes
Reg. Ent. Ref. No.	RN102041910
Facility/Site Region	13-San Antonio
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	44261	No. of Violations	2
Docket No.	2012-1336-PST-E	Order Type	Findings
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Steven Van Landingham
		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	\$3,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1		
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.		
Compliance History	65.0% Enhancement Subtotals 2, 3, & 7	\$2,275

Notes: Enhancement for one agreed order containing a denial of liability, two NOV's with same/similar violations, poor performer classification, and repeat violator.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondents do not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$275
 Approx. Cost of Compliance: \$2,118
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$5,775
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OTHER FACTORS AS JUSTICE MAY REQUIRE	2.3%	Adjustment	\$133
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with violation no. 1.

Final Penalty Amount	\$5,908
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$5,908
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$5,908
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Screening Date 1-Jun-2012

Docket No. 2012-1336-PST-E

PCW

Respondent Yaser Belbisi and Mohamed Hafsi dba Econo Lube N Tune and Brakes

Policy Revision 2 (September 2002)

Case ID No. 44261

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102041910

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Van Landingham

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	2	10%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	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 counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

Enhancement for one agreed order containing a denial of liability, two NOVs with same/similar violations, poor performer classification, and repeat violator.

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

Screening Date 1-Jun-2012 **Docket No.** 2012-1336-PST-E **PCW**
Respondent Yaser Belbisi and Mohamed Hafsi dba Econo Lube N Tune and Brakes *Policy Revision 2 (September 2002)*
Case ID No. 44261 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102041910
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Steven Van Landingham

Violation Number

Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A) and (b)(2), and Tex. Water Code § 26.3475(a) and (c)(1)

Violation Description Failed to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Also, failed to provide release detection for the piping associated with the UST. Specifically, the annual piping tightness test was not conducted.

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 checked="" type="text" value="X"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

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

Matrix Notes Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty

One monthly event is recommended based on documentation of the violation during the May 14, 2012 record review date to the June 1, 2012 screening date.

Good Faith Efforts to Comply

Reduction

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="X"/>	(mark with x)

Notes The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Yaser Belbisi and Mohamed Hafsi dba Econo Lube N Tune and Brakes
Case ID No. 44261
Reg. Ent. Reference No. RN102041910
Media Violation No. 1
Media Petroleum Storage Tank

Percent Interest	Years of Depreciation
5.0	15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description 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	30-Aug-2011	28-Jan-2013	1.42	\$106	n/a	\$106

Notes for DELAYED costs Estimated cost to monitor the UST for releases. The date required is the investigation date, and the final date is the estimated date of compliance.

Avoided Costs

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

Disposal			0.00	\$0	\$0	\$0	
Personnel			0.00	\$0	\$0	\$0	
Inspection/Reporting/Sampling			0.00	\$0	\$0	\$0	
Supplies/equipment			0.00	\$0	\$0	\$0	
Financial Assurance [2]			0.00	\$0	\$0	\$0	
ONE-TIME avoided costs [3]	\$118	30-Aug-2010	14-May-2012	2.62	\$15	\$118	\$133
Other (as needed)			0.00	\$0	\$0	\$0	

Notes for AVOIDED costs Estimated avoided cost to conduct the annual piping tightness test. The date required is one year before the investigation date, and the final date is the record review date.

Approx. Cost of Compliance \$1,618

TOTAL \$240

Screening Date 1-Jun-2012

Docket No. 2012-1336-PST-E

PCW

Respondent Yaser Belbisi and Mohamed Hafsi dba Econo Lube N Tune and Brakes

Policy Revision 2 (September 2002)

Case ID No. 44261

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102041910

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Van Landingham

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 334.10(b)

Violation Description

Failed to maintain 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		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	X		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

18 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.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

The Respondents do 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 \$35

Violation Final Penalty Total \$1,688

This violation Final Assessed Penalty (adjusted for limits) \$1,688

Economic Benefit Worksheet

Respondent Yaser Belbisi and Mohamed Hafsi dba Econo Lube N Tune and Brakes
Case ID No. 44261
Reg. Ent. Reference No. RN102041910
Media Violation No. 2 Petroleum Storage Tank

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	30-Aug-2011	28-Jan-2013	1.42	\$35	n/a	\$35
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs
 Estimated cost to maintain UST records. The date required is the investigation date, and the final date is the 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 \$35

Compliance History Report

Customer/Respondent/Owner-Operator:	CN604104778 Yaser Belbisi	Classification: POOR	Rating: 179.25
Regulated Entity:	RN102041910 Econo Lube N Tune and Brakes	Classification: POOR	Site Rating: 179.25
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		53387
Location:	9003 HUEBNER RD, SAN ANTONIO, TX, 78240		
TCEQ Region:	REGION 13 - SAN ANTONIO		
Date Compliance History Prepared:	July 09, 2012		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	July 09, 2007 to July 09, 2012		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	<u>Steven Van Landingham</u>	Phone:	<u>(512) 239-5717</u>

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? YES
2. Has there been a (known) change in ownership/operator of the site during the compliance period? YES
3. If **YES**, who is the current owner/operator?

Econo Lube N'Tune, Inc.
 Daniel Rucker
 Yaser Belbisi
 Mohamed Hafsi
 DAYCCO, INC.,
4. If **YES**, who was/were the prior owner(s)/operator(s)?

Andrew McDevitt
5. If **YES**, when did the change(s) in owner or operator occur?

7/11/2011
6. Rating Date: 9/1/2011 Repeat Violator: YES

Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.

Effective Date: 01/28/2008

ADMINORDER 2005-1909-PST-E

Classification: Moderate

Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)
30 TAC Chapter 37, SubChapter I 37.815(b)

Description: Financial assurance records not available.

Classification: Major

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)
30 TAC Chapter 334, SubChapter C 334.50(a)(1)(A)

Description: Compliance status based on apparent erratic behavior of the release detection electronics and non-responsiveness to requests for the appropriate documentation.

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)

Description: Repeat. No records were available.

Classification: Minor

Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)

Description: Based on a review of agency records the facility's tank registration has not been amended, updated, or changed as required.

Classification: Minor

Citation: 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(C)

Description: Tank not labeled.

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	11/23/2009	(689624)	3	03/22/2010	(795246)
2	02/04/2010	(787800)	4	05/14/2012	(988273)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	05/09/2008	(689624)	CN604104778
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 37, SubChapter I 37.815(a) 30 TAC Chapter 37, SubChapter I 37.815(b)		
Description:	Financial assurance records not available.		
Self Report?	NO		Classification: Major
Citation:	2D TWC Chapter 26, SubChapter A 26.3475(c)(1) 30 TAC Chapter 334, SubChapter C 334.50(a)(1)(A)		
Description:	Compliance status based on apparent erratic behavior of the release detection electronics and non-responsiveness to requests for the appropriate documentation.		
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 334, SubChapter A 334.10(b)		
Description:	Repeat. No records were available.		
Self Report?	NO		Classification: Minor
Citation:	30 TAC Chapter 334, SubChapter A 334.7(d)(3)		
Description:	Based on a review of agency records the facility's tank registration has not been amended, updated, or changed as required.		
Self Report?	NO		Classification: Minor
Citation:	30 TAC Chapter 334, SubChapter A 334.8(c)(5)(C)		
Description:	Tank not labeled.		

Date:	02/05/2010	(787800)	CN604104778
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 334, SubChapter A 334.10(b)		
Description:	Compliance documentation was unavailable at the time of the investigation.		
Self Report?	NO		Classification: Minor
Citation:	30 TAC Chapter 334, SubChapter A 334.7(d)(3)		
Description:	The PST registration has not been amended as required.		

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

Compliance History Report

Customer/Respondent/Owner-Operator:	CN604104760	HAFSI, MOHAMED	Classification: POOR	Rating: 179.25
Regulated Entity:	RN102041910	Econo Lube N Tune and Brakes	Classification: POOR	Site Rating: 179.25
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	53387
Location:	9003 HUEBNER RD, SAN ANTONIO, TX, 78240			
TCEQ Region:	REGION 13 - SAN ANTONIO			
Date Compliance History Prepared:	July 09, 2012			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	July 09, 2007 to July 09, 2012			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Steven Van Landingham		Phone:	(512) 239-5717

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? YES
2. Has there been a (known) change in ownership/operator of the site during the compliance period? YES
3. If **YES**, who is the current owner/operator?

Econo Lube N'Tune, Inc.
 Daniel Rucker
 Yaser Belbisi
 Mohamed Hafsi
 DAYCCO, INC.,
4. If **YES**, who was/were the prior owner(s)/operator(s)? MCDEVITT, ANDREW R.
5. If **YES**, when did the change(s) in owner or operator occur? 7/11/2011
6. Rating Date: 9/1/2011 Repeat Violator: YES

Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.

Effective Date: 01/28/2008

ADMINORDER 2005-1909-PST-E

Classification: Moderate

Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)
30 TAC Chapter 37, SubChapter I 37.815(b)

Description: Financial assurance records not available.

Classification: Major

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)
30 TAC Chapter 334, SubChapter C 334.50(a)(1)(A)

Description: Compliance status based on apparent erratic behavior of the release detection electronics and non-responsiveness to requests for the appropriate documentation.

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)
Description: Repeat. No records were available.

Classification: Minor

Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)

Description: Based on a review of agency records the facility's tank registration has not been amended, updated, or changed as required.

Classification: Minor

Citation: 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(C)
Description: Tank not labeled.

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	11/23/2009	(689624)	3	03/22/2010	(795246)
2	02/04/2010	(787800)	4	05/14/2012	(988273)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	05/09/2008	(689624)	CN604104778
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 37, SubChapter I 37.815(a) 30 TAC Chapter 37, SubChapter I 37.815(b)		
Description:	Financial assurance records not available.		
Self Report?	NO		Classification: Major
Citation:	2D TWC Chapter 26, SubChapter A 26.3475(c)(1) 30 TAC Chapter 334, SubChapter C 334.50(a)(1)(A)		
Description:	Compliance status based on apparent erratic behavior of the release detection electronics and non-responsiveness to requests for the appropriate documentation.		
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 334, SubChapter A 334.10(b)		
Description:	Repeat. No records were available.		
Self Report?	NO		Classification: Minor
Citation:	30 TAC Chapter 334, SubChapter A 334.7(d)(3)		
Description:	Based on a review of agency records the facility's tank registration has not been amended, updated, or changed as required.		
Self Report?	NO		Classification: Minor
Citation:	30 TAC Chapter 334, SubChapter A 334.8(c)(5)(C)		
Description:	Tank not labeled.		
Date:	02/05/2010	(787800)	CN604104778
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 334, SubChapter A 334.10(b)		
Description:	Compliance documentation was unavailable at the time of the investigation.		
Self Report?	NO		Classification: Minor
Citation:	30 TAC Chapter 334, SubChapter A 334.7(d)(3)		
Description:	The PST registration has not been amended as required.		

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN ENFORCEMENT ACTION CONCERNING YASER BELBISI D/B/A ECONO LUBE N TUNE AND BRAKES, AND MOHAMED HAFSI D/B/A ECONO LUBE N TUNE AND BRAKES; RN102041910	§ § § § § § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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DEFAULT AND SHUTDOWN ORDER

DOCKET NO. 2012-1336-PST-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition, filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondents. The Commission also considered the Executive Director's Motion requesting the entry of an Order requiring the respondents to shutdown and remove from service the underground storage tank ("UST") located at 9003 Huebner Road in San Antonio, Bexar County, Texas. The respondents made the subject of this Order are Yaser Belbisi d/b/a Econo Lube N Tune and Brakes, and Mohamed Hafsi d/b/a Econo Lube N Tune and Brakes ("Respondents").

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

FINDINGS OF FACT

1. Respondents operate, as defined in 30 TEX. ADMIN. CODE § 334.2(70), a used oil UST and an automotive maintenance and repair facility located at 9003 Huebner Road in San Antonio, Bexar County, Texas (Facility ID No. 53387) (the "Facility"). The UST at the Facility is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contains a regulated petroleum substance as defined in the rules of the TCEQ.
2. During an investigation conducted on August 30, 2011, and a record review conducted on May 14, 2012, University of Texas at Arlington Petroleum Storage Tank staff documented that Respondents:
 - a. Failed to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring);
 - b. Failed to provide release detection for the piping associated with the UST system. Specifically, the annual piping tightness test was not conducted; and
 - c. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel.
3. By letter dated May 14, 2012, University of Texas at Arlington Petroleum Storage Tank staff provided Respondents with notice of the violations and of TCEQ's authority to shut down and remove from service USTs not in compliance with release detection, spill and/or overfill prevention, corrosion protection, and/or financial assurance requirements if the violations are not corrected.

4. The Executive Director recognizes that Respondents conducted the annual piping tightness test on August 7, 2012, with passing results.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Yaser Belbisi d/b/a Econo Lube N Tune and Brakes and Mohamed Hafsi d/b/a Econo Lube N Tune and Brakes" (the "EDPRP") in the TCEQ Chief Clerk's office on October 25, 2012.
6. By letter dated October 25, 2012, sent to each Respondent's last known address via certified mail, return receipt requested, postage prepaid, the Executive Director served each Respondent with notice of the EDPRP. According to the return receipt "green cards," each Respondent received notice of the EDPRP on October 27, 2012, as evidenced by the signatures on the cards.
7. More than 20 days have elapsed since Respondents received notice of the EDPRP. Respondents failed to file an answer and failed to request a hearing.
8. By letter dated December 17, 2012, the Executive Director provided Respondents with notice of TCEQ's intent to order the UST at the Facility to be shut down and removed from service if Respondents failed to correct the UST release detection violation within 30 days after Respondents' receipt of the notice.
9. As of the date of entry of this Order, Respondents have not provided the Executive Director with documentation demonstrating that the UST release detection violation alleged in Finding of Fact No. 2.a. has been corrected.
10. The UST at the Facility does not have UST release detection as required by TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A), and may be releasing petroleum products to the environment. Therefore, conditions at the Facility constitute an imminent peril to public health, safety, and welfare.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondents are subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondents failed to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A).
3. As evidenced by Finding of Fact No. 2.b., Respondents failed to provide release detection for the piping associated with the UST system, in violation of TEX. WATER CODE § 26.3475(a) and 30 TEX. ADMIN. CODE § 334.50(b)(2). Specifically, the annual piping tightness test was not conducted.
4. As evidenced by Finding of Fact No. 2.c., Respondents failed to maintain UST records and make the immediately available for inspection upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 334.10(b).
5. As evidenced by Findings of Fact Nos. 5 and 6, the Executive Director timely served Respondents with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(b)(1).

6. As evidenced by Finding of Fact No. 7, Respondents failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondents and assess the penalty recommended by the Executive Director.
7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondents for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
8. An administrative penalty in the amount of five thousand nine hundred eight dollars (\$5,908.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
9. As evidenced by Findings of Fact Nos. 2.a., 3, 8, and 9, Respondents failed to correct documented violations of Commission UST release detection requirements within 30 days after Respondents received notice of the violations and notice of the Executive Director's intent to shut down the UST at the Facility.
10. TEX. WATER CODE §§ 26.3475(e) and 26.352(i) authorize the Commission to order a UST owner or operator to shut down a UST system if, within 30 days after receiving notice of the violations, the owner or operator fails to correct violations of Commission regulatory requirements relating to release detection for tanks and/or piping, spill and/or overflow protection for tanks, corrosion protection for tanks and/or piping, and/or acceptable financial assurance.
11. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.
12. As evidenced by Findings of Fact Nos. 9 and 10, current conditions at the Facility constitute an imminent peril to public health, safety, and welfare. Therefore, pursuant to the Administrative Procedure Act, TEX. GOV'T CODE § 2001.144(a)(3), this Order is final and effective on the date rendered.

ORDERING PROVISIONS

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

1. Immediately upon the effective date of this Order, Respondents shall take the following steps to shut down operations of the UST at the Facility:
 - a. Cease adding used oil and/or other regulated substances to the UST;
 - b. Empty the UST of all regulated substances in accordance with 30 TEX. ADMIN. CODE § 334.54(d); and
 - c. Temporarily remove the UST from service in accordance with 30 TEX. ADMIN. CODE § 334.54.
2. The UST at the Facility shall remain out of service, pursuant to TEX. WATER CODE § 26.3475(e) and as directed by Ordering Provisions Nos. 1.a. through 1.c., until such time as Respondents demonstrate to the satisfaction of the Executive Director that the UST release detection violation noted in Conclusion of Law No. 2 has been corrected.

3. If Respondents elect to permanently remove from service any portion of the UST system at the Facility, Respondents shall, immediately upon the effective date of this Order, permanently remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.55, and within 15 days after the effective date of this Order, shall submit a written report documenting compliance with 30 TEX. ADMIN. CODE § 334.55 to:

Petroleum Storage Tank Registration Team, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Within 15 days after the effective date of this Order, Respondents shall submit a detailed written report, in accordance with Ordering Provision No. 9, below, documenting the steps taken to comply with Ordering Provisions Nos. 1.a. through 1.c.
5. Respondents are assessed an administrative penalty in the amount of five thousand nine hundred eight dollars (\$5,908.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondents' compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here.
6. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Yaser Belbisi d/b/a Econo Lube N Tune and Brakes, and Mohamed Hafsi d/b/a Econo Lube N Tune and Brakes; Docket No. 2012-1336-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
7. Prior to placing the UST back into service, Respondents shall undertake the following technical requirements:
 - a. Begin maintaining all UST records and ensure that they are made immediately available upon request by agency personnel, in accordance with 30 TEX. ADMIN. CODE § 334.10(b); and
 - b. Implement a release detection method for the UST.
8. Within 10 days of placing the UST back into service, Respondents shall submit written certification, in accordance with Ordering Provision No. 9, below, to demonstrate compliance with Ordering Provision No. 7.
9. The certifications required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall include the following certification language:

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

Respondents shall submit the written certifications and supporting documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and:

Cameron Lopez, Waste Section Manager
Texas Commission on Environmental Quality
San Antonio Regional Office
14250 Judson Rd.
San Antonio TX 78233-4480

10. All relief not expressly granted in this Order is denied.
11. The provisions of this Order shall apply to and be binding upon Respondents. Respondents are ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
12. If Respondents fail to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondents' failure to comply is not a violation of this Order. Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondents shall notify the Executive Director within seven days after Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
13. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondents shall be made in writing to the Executive Director. Extensions are not effective until Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
14. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
15. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
16. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date this Order was rendered, pursuant to TEX. GOV'T CODE § 2001.144(a)(3).

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF PHILLIP M. GOODWIN

STATE OF TEXAS

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COUNTY OF TRAVIS

"My name is Phillip M. Goodwin. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Yaser Belbisi d/b/a Econo Lube N Tune and Brakes and Mohamed Hafsi d/b/a Econo Lube N Tune and Brakes" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on October 25, 2012.

The EDPRP was mailed to each Respondent's last known address on October 25, 2012, via certified mail, return receipt requested, postage prepaid. According to the return receipt "green cards," each Respondent received notice of the EDPRP on October 27, 2012, as evidenced by the signatures on the cards.

More than 20 days have elapsed since Respondents received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

By letters dated December 17, 2012, sent via first class mail and certified mail, return receipt requested article nos. 7004 1350 0002 7551 6026 (Yaser Belbisi) and 7004 1350 0002 7551 6033 (Mohamed Hafsi), I provided each Respondent with notice of the TCEQ's intent to order the USTs at the Facility be shut down and removed from service if the violations pertaining to financial assurance and UST release detection were not corrected within 30 days of Respondents' receipt of the letter. According to the return receipt "green cards," each Respondent received the notice on December 19, 2012.

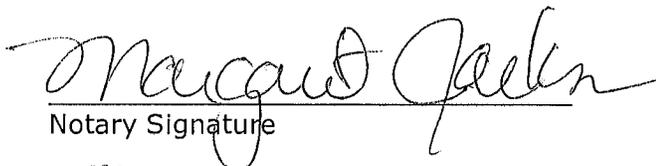
As of the date of this affidavit, I am not aware of any evidence that indicates that Respondents have corrected the financial assurance and UST release detection violations noted during the August 30, 2011, investigation."



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

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

Given under my hand and seal of office this 27th day of December, A.D. 2012.



Notary Signature

