

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 44593  
Happyle Corporation d/b/a Melbos Food Store  
RN102719606  
Docket No. 2012-1466-PST-E

**Order Type:**

Agreed Order

**Media:**

PST

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

212 E. Church Street, Livingston, Polk 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:** March 1, 2013

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$7,632

**Total Paid to General Revenue:** \$632

**Total Due to General Revenue:** \$7,000

Payment Plan: 35 payments of \$ 200

**SEP Conditional Offset:** N/A

**Compliance History Classifications:**

Person/CN – Average  
Site/RN – Average by Default

**Major Source:** No

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** September 2011

**Investigation Information**

**Complaint Date(s):** N/A

**Date(s) of Investigation:** February 16, 2012; July 10, 2012

**Date(s) of NOV(s):** N/A

**Date(s) of NOE(s):** July 10, 2012

**Happyle Corporation d/b/a Melbos Food Store**

**RN102719606**

**Docket No. 2012-1466-PST-E**

**Violation Information**

1. Failed to provide proper corrosion protection for the UST system [TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(a)(1)].
2. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and failed to provide release detection for the piping associated with the UST system [TEX. WATER CODE § 26.3475(a) and (c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and (b)(2)].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**

None

**Technical Requirements:**

1. Within 30 days:
  - a. Install a corrosion protection system and test the system, with passing results; and
  - b. Implement a release detection method for the USTs and conduct the annual piping tightness test and line leak detector tests.
2. Within 45 days, submit written certification to demonstrate compliance.

**Litigation Information**

**Date Petition(s) Filed:** December 12, 2012

**Date Answer(s) Filed:** N/A

**Settlement Date:** January 31, 2013

**Contact Information**

**TCEQ Attorneys:** Ryan Rutledge, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
James Murphy, Public Interest Counsel, (512) 239-6363

**TCEQ SEP Coordinator:** N/A

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

**TCEQ Regional Contact:** Sarah Kirksey, Beaumont Regional Office, 409-898-3838

**Respondent:** Julie Le, Director, Happyle Corporation, 9815 Brilliant Lake, Humble, TX 77396

**Respondent's Attorney:** Scott K. Bui, Bui & Nhann, PLLC, 3921 Ocee, Houston, Texas 77063



# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

<b>DATES</b>	Assigned	16-Jul-2012	Screening	23-Jul-2012	EPA Due	
	PCW	28-Nov-2012				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Happyle Corporation dba Melbos Food Store		
Reg. Ent. Ref. No.	RN102719606		
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	44593	No. of Violations	2
Docket No.	2012-1466-PST-E	Order Type	1660
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	\$25,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$7,500
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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>	0.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$0
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Notes: No adjustment for compliance history.

<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>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts: \$659  
 Approx. Cost of Compliance: \$7,618  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$7,500
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	1.8%	<b>Adjustment</b>	\$132
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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. 2.

<b>Final Penalty Amount</b>	\$7,632
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$7,632
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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 indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

<b>PAYABLE PENALTY</b>	\$7,632
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**Screening Date** 23-Jul-2012

**Docket No.** 2012-1466-PST-E

**PCW**

**Respondent** Happyle Corporation dba Melbos Food Store

*Policy Revision 3 (September 2011)*

**Case ID No.** 44593

*PCW Revision August 3, 2011*

**Reg. Ent. Reference No.** RN102719606

**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> )	0	0%
	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 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**

No adjustment for compliance history.

**Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)**

**>> Final Compliance History Adjustment**

**Final Adjustment Percentage \*capped at 100%**

<b>Screening Date</b>	23-Jul-2012	<b>Docket No.</b>	2012-1466-PST-E	<b>PCW</b>
<b>Respondent</b>	Happyle Corporation dba Melbos Food Store			<i>Policy Revision 3 (September 2011)</i>
<b>Case ID No.</b>	44593			<i>PCW Revision August 3, 2011</i>
<b>Reg. Ent. Reference No.</b>	RN102719606			
<b>Media [Statute]</b>	Petroleum Storage Tank			
<b>Enf. Coordinator</b>	Steven Van Landingham			

**Violation Number**

**Rule Cite(s)**  
30 Tex. Admin. Code § 334.49(a)(1) and Tex. Water Code § 26.3475(d)

**Violation Description**  
Failed to provide proper corrosion protection for the underground storage tank ("UST") system.

**Base Penalty**

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

<b>OR</b>	<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	X	<input type="text"/>	<input type="text"/>
				<b>Percent</b> <input type="text" value="15.0%"/>

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0.0%"/>

**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	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 July 10, 2012 record review to the July 23, 2012 screening date.

**Good Faith Efforts to Comply**

Reduction

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

**Notes**  
The Respondent does 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** Happylye Corporation dba Melbos Food Store  
**Case ID No.** 44593  
**Reg. Ent. Reference No.** RN102719606  
**Media Violation No.** 1

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	\$6,000	16-Feb-2012	11-Mar-2013	1.07	\$21	\$426	\$448
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 provide corrosion protection for the UST system. 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

\$6,000

**TOTAL**

\$448

Screening Date 23-Jul-2012

Docket No. 2012-1466-PST-E

PCW

Respondent Happyle Corporation dba Melbos Food Store

Policy Revision 3 (September 2011)

Case ID No. 44593

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102719606

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Van Landingham

Violation Number 2

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 USTs 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 USTs. Specifically, the Respondent did not conduct the annual piping tightness and line leak detector tests.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	X		

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

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 \$21,250

\$3,750

Violation Events

Number of Violation Events 1

13 Number of violation days

mark only one with an x

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$3,750

One monthly event is recommended based on documentation of the violation during the July 10, 2012 record review to the July 23, 2012 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

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

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$212

Violation Final Penalty Total \$3,816

This violation Final Assessed Penalty (adjusted for limits) \$3,816

## Economic Benefit Worksheet

**Respondent** Happyle Corporation dba Melbos Food Store  
**Case ID No.** 44593  
**Reg. Ent. Reference No.** RN102719606  
**Media Violation No.** Petroleum Storage Tank  
 2

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				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	16-Feb-2012	11-Mar-2013	1.07	\$80	n/a	\$80

Notes for DELAYED costs

Estimated cost to monitor the USTs 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	16-Feb-2011	10-Jul-2012	2.32	\$14	\$118	\$132
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct the annual line leak detector and piping tightness tests. 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**

\$212

# Compliance History Report

Customer/Respondent/Owner-Operator: CN601672371 HAPPYLE CORPORATION Classification: AVERAGE Rating: 3.01  
Regulated Entity: RN102719606 Melbos Food Store Classification: AVERAGE BY DEFAULT Site Rating: 3.01  
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 19637  
Location: 212 E CHURCH ST, LIVINGSTON, TX, 77351  
TCEQ Region: REGION 10 - BEAUMONT  
Date Compliance History Prepared: August 21, 2012

Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: July 17, 2007 to July 17, 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? LE, JULIE, OPERATOR since 01/01/2010  
Happyale Corporation, OWNER since 10/01/2007
4. If **YES**, who was/were the prior owner(s)/operator(s)? JOICE, MELVIN, OWNER OPERATOR, 1/5/1986 to 10/1/2007  
JOICE, PATRICIA, OWNER OPERATOR, 1/5/1986 to 10/1/2007  
Happyale Corporation, OPERATOR, 10/1/2007 to 1/1/2010
5. If **YES**, when did the change(s) in owner or operator occur? 10/1/2007  
1/1/2010
6. Rating Date: 9/1/2011 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 07/10/2012 (1001934)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
  - F. Environmental audits.  
N/A
  - G. Type of environmental management systems (EMSs).  
N/A
  - H. Voluntary on-site compliance assessment dates.  
N/A
  - I. Participation in a voluntary pollution reduction program  
N/A
  - J. Early compliance  
N/A
- Sites Outside of Texas  
N/A

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# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
HAPPYLE CORPORATION D/B/A  
MELBOS FOOD STORE;  
RN102719606**

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

## **AGREED ORDER**

**DOCKET NO. 2012-1466-PST-E**

### **I. JURISDICTION AND STIPULATIONS**

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Happyle Corporation d/b/a Melbos Food Store ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, represented by Scott K. Bui of the law firm Bui & Nhann, PLLC, 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 212 East Church Street in Livingston, Polk County, Texas (Facility ID No. 19637) (the "Facility"). The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contain a regulated petroleum substance as defined in the rules of the TCEQ.
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Executive Director and Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondent is subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of seven thousand six hundred thirty-two dollars (\$7,632.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid six hundred thirty-two dollars (\$632.00) of the administrative penalty. The remaining amount of seven thousand dollars (\$7,000.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of two hundred dollars (\$200.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive

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

6. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
7. The Executive Director and Respondent agree on a settlement of the matters addressed in this Agreed Order, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
8. 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 contained in this Agreed Order.
9. 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.
10. The provisions of this Agreed Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

1. During an investigation conducted on February 16, 2012, and a record review conducted on July 10, 2012, a UT Arlington Petroleum Storage Tank investigator (TCEQ contractor) documented that Respondent:
  - a. Failed to provide proper corrosion protection for the UST system, in violation of TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(a)(1).
  - b. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and failed to provide release detection for the piping associated with the UST system by failing to conduct the annual piping tightness and line leak detector tests, in violation of TEX. WATER CODE § 26.3475(a) and (c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and (b)(2).
2. Respondent received notice of the violations on or about July 15, 2012.

## **III. DENIALS**

Respondent generally denies each Allegation in Section II.

## **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that Respondent pay an administrative penalty as set forth in Section I, Paragraph 5, above. The payment of this administrative

penalty and Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the Allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective actions or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Happyle Corporation d/b/a Melbos Food Store, Docket No. 2012-1466-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. Within 30 days after the effective date of this Agreed Order, Respondent shall:
    - i. Install a corrosion protection system and test the system, with passing results, in accordance with 30 TEX. ADMIN. CODE § 334.49; and
    - ii. Implement a release detection method for the USTs and conduct the annual piping tightness test and line leak detector tests, in accordance with 30 TEX. ADMIN. CODE § 334.50.
  - b. Within 45 days after the effective date of this Agreed Order, Respondent shall submit written certification to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall include the following certification language:

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

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

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

and:

Sarah Kirksey, Waste Section Manager  
Beaumont Regional Office  
Texas Commission on Environmental Quality  
3870 Eastex Freeway  
Beaumont, Texas 77703-1892

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

**SIGNATURE PAGE**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

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

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

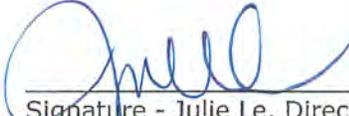
March 11, 2013  
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of Happyle Corporation d/b/a Melbos 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 - Julie Le, Director  
Happyle Corporation

1-31-2013  
Date