

**Executive Summary – Enforcement Matter – Case No. 45575  
Kenneth Dupuis dba Dupuis Chevron  
RN101778025  
Docket No. 2012-2435-PST-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

PST

**Small Business:**

Yes

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

Dupuis Chevron, 2490 Texas Avenue, Bridge City, Orange County

**Type of Operation:**

Convenience store with retail sales of gasoline

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** March 22, 2013

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$9,625

**Amount Deferred for Expedited Settlement:** \$1,925

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$245

**Total Due to General Revenue:** \$7,455

Payment Plan: 35 payments of \$213 each

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - High

Site/RN - High

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2011

**Executive Summary – Enforcement Matter – Case No. 45575**  
**Kenneth Dupuis dba Dupuis Chevron**  
**RN101778025**  
**Docket No. 2012-2435-PST-E**

***Investigation Information***

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

**Complaint Information:** N/A

**Date(s) of Investigation:** October 21, 2011 and November 6, 2012

**Date(s) of NOE(s):** November 6, 2012

***Violation Information***

1. Failed to monitor the underground storage tanks ("USTs") for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].
2. Failed to provide corrosion protection for the UST system [30 TEX. ADMIN. CODE § 334.49(a)(1) and TEX. WATER CODE § 26.3475(d)].
3. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

The Order will require Respondent to:

- a. Immediately, begin maintaining all UST records and ensure they are made immediately available for inspection upon request by agency personnel.
- b. Within 30 days:
  - i. Implement a release detection method for all USTs at the Facility; and
  - ii. Install a corrosion protection system and test the system.
- c. Within 45 days, submit written certification demonstrating compliance with Ordering Provisions a. and b.

***Litigation Information***

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

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

**SOAH Referral Date:** N/A

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

**Settlement Date:** N/A

**Executive Summary – Enforcement Matter – Case No. 45575**  
**Kenneth Dupuis dba Dupuis Chevron**  
**RN101778025**  
**Docket No. 2012-2435-PST-E**

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Mike Pace, Enforcement Division, Enforcement Team 6, MC R-04, (817) 588-5933; Debra Barber, Enforcement Division, MC 219, (512) 239-0412

**TCEQ SEP Coordinator:** N/A

**Respondent:** Kenneth Dupuis, Owner, Dupuis Chevron, 2490 Texas Avenue, Bridge City, Texas 77611

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





# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	12-Nov-2012	<b>Screening</b>	19-Nov-2012	<b>EPA Due</b>	
	<b>PCW</b>	19-Nov-2012				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Kenneth Dupuis dba Dupuis Chevron		
<b>Reg. Ent. Ref. No.</b>	RN101778025		
<b>Facility/Site Region</b>	10-Beaumont	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	45575	<b>No. of Violations</b>	3	
<b>Docket No.</b>	2012-2435-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>	Mike Pace	
		<b>EC's Team</b>	Enforcement Team 6	
<b>Admin. Penalty \$ Limit</b>	<b>Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History**  Enhancement **Subtotals 2, 3, & 7**

Notes

**Culpability**   Enhancement **Subtotal 4**

Notes

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5**

**Economic Benefit**  Enhancement\* **Subtotal 6**

Total EB Amounts    
 Approx. Cost of Compliance    
 \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal**

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL**  Reduction **Adjustment**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

**PAYABLE PENALTY**

Screening Date 19-Nov-2012

Docket No. 2012-2435-PST-E

PCW

Respondent Kenneth Dupuis dba Dupuis Chevron

Policy Revision 3 (September 2011)

Case ID No. 45575

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101778025

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Mike Pace

### 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> )	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 order containing a denial of liability and reduction for high performer classification.

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

>> Final Compliance History Adjustment

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

Screening Date 19-Nov-2012

Docket No. 2012-2435-PST-E

PCW

Respondent Kenneth Dupuis dba Dupuis Chevron

Policy Revision 3 (September 2011)

Case ID No. 45575

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101778025

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Mike Pace

Violation Number 1

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

Violation Description Failed to monitor the underground storage tanks ("USTs") for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual					15.0%
Potential	x				

>> 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 Number of violation days 13

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 the documentation of the violation during the November 6, 2012 record review to the November 19, 2012 screening date.

Good Faith Efforts to Comply

0.0% Reduction Before NOV NOV to EDPRP/Settlement Offer \$0

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 \$125

Violation Final Penalty Total \$4,125

This violation Final Assessed Penalty (adjusted for limits) \$4,125

# Economic Benefit Worksheet

**Respondent** Kenneth Dupuis dba Dupuis Chevron  
**Case ID No.** 45575  
**Reg. Ent. Reference No.** RN101778025  
**Media** Petroleum Storage Tank  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
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	21-Oct-2011	19-Jun-2013	1.66	\$125	n/a	\$125

Notes for DELAYED costs

Estimated cost of monitoring 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]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

**TOTAL**

\$125

Screening Date 19-Nov-2012

Docket No. 2012-2435-PST-E

PCW

Respondent Kenneth Dupuis dba Dupuis Chevron

Policy Revision 3 (September 2011)

Case ID No. 45575

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101778025

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Mike Pace

Violation Number 2

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

Violation Description Failed to provide corrosion protection for the UST system.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (15.0%).

>> Programmatic Matrix

Table with columns: 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 Number of violation days 13

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

Violation Base Penalty \$3,750

One monthly event is recommended based on the documentation of the violation during the November 6, 2012 record review to the November 19, 2012 screening date.

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 \$3,750

Economic Benefit (EB) for this violation

Estimated EB Amount \$698

Statutory Limit Test

Violation Final Penalty Total \$4,125

This violation Final Assessed Penalty (adjusted for limits) \$4,125

# Economic Benefit Worksheet

**Respondent** Kenneth Dupuis dba Dupuis Chevron

**Case ID No.** 45575

**Reg. Ent. Reference No.** RN101778025

**Media** Petroleum Storage Tank

**Violation No.** 2

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

No commas or \$

**Delayed Costs**

Equipment	\$6,000	21-Oct-2011	19-Jun-2013	1.66	\$33	\$665	\$698
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 corrosion protection system and test the 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**

\$698

Screening Date 19-Nov-2012

Docket No. 2012-2435-PST-E

PCW

Respondent Kenneth Dupuis dba Dupuis Chevron

Policy Revision 3 (September 2011)

Case ID No. 45575

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101778025

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Mike Pace

Violation Number 3

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 \$25,000

>> Environmental, Property and Human Health Matrix

OR Release Harm Major Moderate Minor Actual Potential Percent 0.0%

>> Programmatic Matrix

Falsification Major Moderate Minor Percent 5.0%

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

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 13 Number of violation days

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

Violation Base Penalty \$1,250

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction Before NOV NOV to EDPRP/Settlement Offer \$0

Extraordinary Ordinary N/A x (mark with x)

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

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$39

Violation Final Penalty Total \$1,375

This violation Final Assessed Penalty (adjusted for limits) \$1,375

# Economic Benefit Worksheet

**Respondent** Kenneth Dupuis dba Dupuis Chevron  
**Case ID No.** 45575  
**Reg. Ent. Reference No.** RN101778025  
**Media** Petroleum Storage Tank  
**Violation No.** 3

<b>Percent Interest</b>	<b>Years of Depreciation</b>
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	21-Oct-2011	19-May-2013	1.58	\$39	n/a	\$39
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**

\$39

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



# TCEQ Compliance History Report

**PUBLISHED** Compliance History Report for CN602823163, RN101778025, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

**Customer, Respondent, or Owner/Operator:** CN602823163, Dupuis, Kenneth **Classification:** HIGH **Rating:** 0.00  
**Regulated Entity:** RN101778025, Dupuis Chevron **Classification:** HIGH **Rating:** 0.00  
**Complexity Points:** 4 **Repeat Violator:** NO  
**CH Group:** 14 - Other  
**Location:** 2490 TEXAS AVE BRIDGE CITY, TX 77611-2844, ORANGE COUNTY  
**TCEQ Region:** REGION 10 - BEAUMONT

**ID Number(s):** PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 45125

**Compliance History Period:** September 01, 2007 to August 31, 2012 **Rating Year:** 2012 **Rating Date:** 09/01/2012

**Date Compliance History Report Prepared:** November 19, 2012

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** November 19, 2007 to November 19, 2012

**TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.**

**Name:** Mike Pace

**Phone:** (817) 588-5933

## **Site and Owner/Operator History:**

- 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 for #2, who is the current owner/operator? N/A
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If YES, when did the change(s) in owner or operator occur? N/A

## **Components (Multimedia) for the Site Are Listed in Sections A - J**

### **A. Final Orders, court judgments, and consent decrees:**

1 Effective Date: 09/29/2012 ADMINORDER 2012-0192-PST-E (1660 Order-Agreed Order With Denial)

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3467(a)  
30 TAC Chapter 334, SubChapter A 334.8(c)(5)(A)(i)

Description: Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a), as documented during an investigation conducted on October 25, 2011. Specifically, seven fuel deliveries were accepted without a delivery certificate.

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.8(c)(4)(A)(vii)  
30 TAC Chapter 334, SubChapter A 334.8(c)(5)(B)(ii)

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, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii), as documented during an investigation conducted on October 25, 2011. Specifically, the delivery certificate expired on July 31, 2011.

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.246(1)  
5C THSC Chapter 382 382.085(b)

Description: Failure to maintain a copy of the correct California Air Resources Board (CARB) Executive Order for a Stage II

Vapor Recovery System installed at a facility.

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.245(6)  
5C THSC Chapter 382 382.085(b)

Description: Failure to submit Stage II test results to the TCEQ within 10 working days.

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.245(5)  
5C THSC Chapter 382 382.085(b)

Description: Failure to verify the proper operation of Stage II equipment by testing without valid procedure as a person not registered with the TCEQ.

**B. Criminal convictions:**

N/A

**C. Chronic excessive emissions events:**

N/A

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

N/A

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

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
KENNETH DUPUIS  
DBA DUPUIS CHEVRON  
RN101778025**

§  
§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2012-2435-PST-E**

**I. JURISDICTION AND STIPULATIONS**

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Kenneth Dupuis dba Dupuis Chevron ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a convenience store with retail sales of gasoline at 2490 Texas Avenue in Bridge City, Orange County, Texas (the "Facility").
2. The Respondent's three underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about November 11, 2012.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Nine Thousand Six Hundred Twenty-Five Dollars (\$9,625) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Hundred Forty-Five Dollars

(\$245) of the administrative penalty and One Thousand Nine Hundred Twenty-Five Dollars (\$1,925) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Seven Thousand Four Hundred Fifty-Five Dollars (\$7,455) of the administrative penalty shall be payable in 35 monthly payments of Two Hundred Thirteen Dollars (\$213) each. The next 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 the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's 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 failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. 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.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
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 the 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**

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on October 21, 2011 and a record review conducted on November 6, 2012.

2. Failed to provide corrosion protection for the UST system, in violation of 30 TEX. ADMIN. CODE § 334.49(a)(1) and TEX. WATER CODE § 26.3475(d), as documented during an investigation conducted on October 21, 2011 and a record review conducted on November 6, 2012.
3. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 334.10(b), as documented during an investigation conducted on October 21, 2011 and a record review conducted on November 6, 2012.

### III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the 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 requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Kenneth Dupuis dba Dupuis Chevron, Docket No. 2012-2435-PST-E" to:

Financial Administration Division, Revenue Operations Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, begin maintaining all UST records and ensure they are made immediately available for inspection upon request by agency personnel, in accordance with 30 TEX. ADMIN. CODE § 334.10.
  - b. Within 30 days after the effective date of this Agreed Order:
    - i. Implement a release detection method for all USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.50; and
    - ii. Install a corrosion protection system and test the system, in accordance with 30 TEX. ADMIN. CODE § 334.49.
  - c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation

including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a and 2.b. The certification shall be notarized by a State of Texas Notary Public and 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 fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

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

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the 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, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

Pam Monica  
For the Executive Director

4/9/13  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, 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, if any, 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 submitted;
- 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, any falsification of any compliance documents may result in criminal prosecution.

Kenneth Dupuis  
Signature

2/5/13  
Date

KENNETH DUPUIS  
Name (Printed or typed)  
Authorized Representative of  
Kenneth Dupuis dba Dupuis Chevron

OWNER  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.