

**Executive Summary – Enforcement Matter – Case No. 45115
MCALLEN PETROLEUM, INC. dba Kwik Stop Gasoline Station
RN102220530
Docket No. 2012-1988-PST-E**

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Kwik Stop Gasoline Station, 1202 West Tyler Avenue, Harlingen, Cameron 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: May 31, 2013

Comments Received: No

Penalty Information

Total Penalty Assessed: \$11,553

Amount Deferred for Expedited Settlement: \$2,310

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$353

Total Due to General Revenue: \$0

Payment Plan: 35 payments of \$254 each

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Unclassified

Site/RN - Unclassified

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2011

**Executive Summary – Enforcement Matter – Case No. 45115
MCALLEN PETROLEUM, INC. dba Kwik Stop Gasoline Station
RN102220530
Docket No. 2012-1988-PST-E**

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: September 7, 2011 and September 12, 2012

Date(s) of NOE(s): September 12, 2012

Violation Information

1. Failed to ensure that a valid, current TCEQ delivery certificate was posted in a location where it is clearly visible at all times. Specifically, Respondent's delivery certificate was not posted in a clearly visible location [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii)].
2. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks ("USTs") [30 TEX. ADMIN. CODE § 37.815(a) and (b)].
3. Failed to monitor the USTs for releases at a frequency of at least once per 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)].
4. Failed to provide proper release detection for the piping associated with the USTs. Specifically, the annual pressurized line tightness and line leak detector tests for the piping associated with the USTs were not conducted [30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a)].
5. Failed to equip the UST system with spill containment and overflow prevention equipment [30 TEX. ADMIN. CODE § 334.51(b)(2) and TEX. WATER CODE § 26.3475(c)(2)].
6. Failed to maintain all UST records and make them immediately available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

Respondent has implemented the following corrective measures:

- a. Obtained acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs on January 10, 2012;
- b. Conducted the annual pressurized line tightness and line leak detector tests on December 4, 2012, with passing results;

Executive Summary – Enforcement Matter – Case No. 45115
MCALLEN PETROLEUM, INC. dba Kwik Stop Gasoline Station
RN102220530
Docket No. 2012-1988-PST-E

c. Installed spill containment and overfill prevention equipment on December 13, 2012; and

d. Submitted documents on January 29, 2013, demonstrating that a method of release detection is being implemented at the Facility.

Technical Requirements:

The Order will require Respondent to:

a. Immediately:

i. Begin maintaining all UST records and ensure they are made immediately available for inspection upon request by agency personnel; and

ii. Post a valid, current TCEQ delivery certificate at the Facility, in a location where it is clearly visible at all times.

b. Within 45 days, submit written certification demonstrating compliance with Ordering Provisions a.i. and a.ii.

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

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Danielle Porras, Enforcement Division, Enforcement Team 7, MC R-12, (713) 767-3682; Debra Barber, Enforcement Division, MC 219, (512) 239-0412

TCEQ SEP Coordinator: N/A

Respondent: M.A. Chughtai, President, MCALLEN PETROLEUM, INC., 313 Saint Cloud Road, San Antonio, Texas 78228

Respondent's Attorney: N/A

Penalty Calculation Worksheet (PCW)
 Policy Revision 3 (September 2011) PCW Revision August 3, 2011

TCEQ
DATES Assigned PCW Screening EPA Due

RESPONDENT/FACILITY INFORMATION
 Respondent
 Reg. Ent. Ref. No.
 Facility/Site Region Major/Minor Source

CASE INFORMATION
 Enf./Case ID No. No. of Violations
 Docket No. Order Type
 Media Program(s) Government/Non-Profit
 Multi-Media Enf. Coordinator
 EC's Team
 Admin. Penalty \$ Limit Minimum Maximum

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 24-Sep-2012

Docket No. 2012-1988-PST-E

PCW

Respondent MCALLEN PETROLEUM, INC. dba Kwik Stop Gasoli

Policy Revision 3 (September 2011)

Case ID No. 45115

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102220530

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Danielle Porras

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) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Unclassified

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

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

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 0%

Screening Date 24-Sep-2012

Docket No. 2012-1988-PST-E

PCW

Respondent MCALLEN PETROLEUM, INC. dba Kwik Stop Gasoline Station

Policy Revision 3 (September 2011)

Case ID No. 45115

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102220530

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Danielle Porras

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 334.8(c)(5)(A)(iii)

Violation Description

Failed to ensure that a valid, current TCEQ delivery certificate was posted in a location where it is clearly visible at all times. Specifically, the Respondent's delivery certificate was not posted in a clearly visible location.

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
			x

Percent 1.0%

Matrix Notes

Less than 30% of the rule requirement was not met.

Adjustment \$24,750

\$250

Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$250

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

Violation Subtotal \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$310

This violation Final Assessed Penalty (adjusted for limits) \$310

Economic Benefit Worksheet

Respondent MCALLEN PETROLEUM, INC. dba Kwik Stop Gasoline Station
Case ID No. 45115
Reg. Ent. Reference No. RN102220530
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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)	\$10	7-Sep-2011	7-Jun-2013	1.75	\$1	n/a	\$1

Notes for DELAYED costs

Estimated cost to post a valid, current TCEQ delivery certificate. 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

\$10

TOTAL

\$1

Screening Date 24-Sep-2012

Docket No. 2012-1988-PST-E

PCW

Respondent MCALLEN PETROLEUM, INC. dba Kwik Stop Gasoline Station

Policy Revision 3 (September 2011)

Case ID No. 45115

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102220530

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Danielle Porras

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 37.815(a) and (b)

Violation Description

Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks ("USTs").

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0.0%
Potential				

>> Programmatic Matrix

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

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 3 365 Number of violation days

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

Violation Base Penalty \$3,750

Three single events (one per tank) are recommended.

Good Faith Efforts to Comply

25.0% Reduction \$937

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

Notes The Respondent came into compliance on January 10, 2012, prior to the Notice of Enforcement dated September 12, 2012.

Violation Subtotal \$2,813

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2,103

Violation Final Penalty Total \$3,490

This violation Final Assessed Penalty (adjusted for limits) \$3,490

Economic Benefit Worksheet

Respondent MCALLEN PETROLEUM, INC. dba Kwik Stop Gasoline Station
Case ID No. 45115
Reg. Ent. Reference No. RN102220530
Media Petroleum Storage Tank
Violation No. 2

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment	0.00				\$0	\$0	\$0
Buildings	0.00				\$0	\$0	\$0
Other (as needed)	0.00				\$0	\$0	\$0
Engineering/construction	0.00				\$0	\$0	\$0
Land	0.00				\$0	n/a	\$0
Record Keeping System	0.00				\$0	n/a	\$0
Training/Sampling	0.00				\$0	n/a	\$0
Remediation/Disposal	0.00				\$0	n/a	\$0
Permit Costs	0.00				\$0	n/a	\$0
Other (as needed)	0.00				\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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]	\$1,980	12-Sep-2011	10-Jan-2012	1.25	\$123	\$1,980	\$2,103
Other (as needed)	0.00				\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to provide financial assurance for three petroleum USTs (\$660 per tank). The Date Required is one year prior to the record review date and the Final Date is the date of compliance.

Approx. Cost of Compliance

\$1,980

TOTAL

\$2,103

Screening Date 24-Sep-2012

Docket No. 2012-1988-PST-E

PCW

Respondent MCALLEN PETROLEUM, INC. dba Kwik Stop Gasoline Station

Policy Revision 3 (September 2011)

Case ID No. 45115

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102220530

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Danielle Porras

Violation Number 3

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 per month (not to exceed 35 days between each monitoring). Also, failed to provide proper release detection for the piping associated with the USTs. Specifically, the annual pressurized line tightness and line leak detector tests for the piping associated with the USTs were not conducted.

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

12 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$3,750

One monthly event is recommended from the September 12, 2012 record review to the September 24, 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 \$241

Violation Final Penalty Total \$4,652

This violation Final Assessed Penalty (adjusted for limits) \$4,652

Economic Benefit Worksheet

Respondent MCALLEN PETROLEUM, INC. dba Kwik Stop Gasoline Station
Case ID No. 45115
Reg. Ent. Reference No. RN102220530
Media Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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	7-Sep-2011	29-Jan-2013	1.40	\$105	n/a	\$105

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 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	7-Sep-2010	4-Dec-2012	3.16	\$19	\$118	\$137
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct the annual pressurized line tightness and line leak detector tests. The Date Required is one year prior to the investigation date and the Final Date is the compliance date.

Approx. Cost of Compliance

\$1,618

TOTAL

\$241

Screening Date 24-Sep-2012

Docket No. 2012-1988-PST-E

PCW

Respondent MCALLEN PETROLEUM, INC. dba Kwik Stop Gasoline Station

Policy Revision 3 (September 2011)

Case ID No. 45115

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102220530

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Danielle Porras

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code § 334.51(b)(2) and Tex. Water Code § 26.3475(c)(2)

Violation Description

Failed to equip the UST system with spill containment and overfill prevention equipment.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 5.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

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

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

12 Number of violation days

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

Violation Base Penalty \$1,250

One quarterly event is recommended from the September 12, 2012 record review to the September 24, 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 came into compliance on December 13, 2012 after the settlement offer dated November 12, 2012.

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$107

Violation Final Penalty Total \$1,551

This violation Final Assessed Penalty (adjusted for limits) \$1,551

Economic Benefit Worksheet

Respondent MCALLEN PETROLEUM, INC. dba Kwik Stop Gasoline Station
Case ID No. 45115
Reg. Ent. Reference No. RN102220530
Media Petroleum Storage Tank
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment	\$1,200	7-Sep-2011	13-Dec-2012	1.27	\$5	\$101	\$107
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 equip the UST system with spill and overfill equipment. The Date Required is the investigation date and the Final Date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,200

TOTAL

\$107

Screening Date 24-Sep-2012

Docket No. 2012-1988-PST-E

PCW

Respondent MCALLEN PETROLEUM, INC. dba Kwik Stop Gasoline Station

Policy Revision 3 (September 2011)

Case ID No. 45115

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102220530

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Danielle Porras

Violation Number 5

Rule Cite(s)

30 Tex. Admin. Code § 334.10(b)

Violation Description

Failed to maintain all 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
	x		

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

1 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

\$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 \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$44

Violation Final Penalty Total \$1,551

This violation Final Assessed Penalty (adjusted for limits) \$1,551

Economic Benefit Worksheet

Respondent MCALLEN PETROLEUM, INC. dba Kwik Stop Gasoline Station
Case ID No. 45115
Reg. Ent. Reference No. RN102220530
Media Petroleum Storage Tank
Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	7-Sep-2011	7-Jun-2013	1.75	\$44	n/a	\$44
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

\$44

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.



Compliance History Report

PENDING Compliance History Report for CN601056179, RN102220530, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator: CN601056179, MCALLEN PETROLEUM, INC. **Classification:** UNCLASSIFIED **Rating:** -----

Regulated Entity: RN102220530, KWIK STOP GASOLINE STATION **Classification:** UNCLASSIFIED **Rating:** -----

Complexity Points: 8 **Repeat Violator:** NO

CH Group: 01 - Gas Stations with convenience Stores and other Gas Stations

Location: 1202 W TYLER AVE HARLINGEN, TX 78550-6165, CAMERON COUNTY

TCEQ Region: REGION 15 - HARLINGEN

ID Number(s):

AIR NEW SOURCE PERMITS REGISTRATION 49991 **AIR NEW SOURCE PERMITS ACCOUNT NUMBER 949991K**

AIR NEW SOURCE PERMITS REGISTRATION 56782 **PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 38588**

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

Date Compliance History Report Prepared: October 03, 2012

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: October 03, 2007 to October 03, 2012

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

Name: Danielle Porras **Phone** (713) 767-3682

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:**
N/A
- 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
MCALLEN PETROLEUM, INC.
DBA KWIK STOP GASOLINE
STATION
RN102220530**

§
§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2012-1988-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 MCALLEN PETROLEUM, INC. dba Kwik Stop Gasoline Station ("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 1202 West Tyler Avenue in Harlingen, Cameron 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 September 17, 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 Eleven Thousand Five Hundred Fifty-Three Dollars (\$11,553) is assessed by the Commission in settlement of the violations alleged in

Section II ("Allegations"). The Respondent has paid Three Hundred Fifty-Three Dollars (\$353) of the administrative penalty and Two Thousand Three Hundred Ten Dollars (\$2,310) 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 Eight Thousand Eight Hundred Ninety Dollars (\$8,890) of the administrative penalty shall be payable in 35 monthly payments of Two Hundred Fifty-Four Dollars (\$254) 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 recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. Obtained acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs on January 10, 2012;
 - b. Conducted the annual pressurized line tightness and line leak detector tests on December 4, 2012, with passing results;
 - c. Installed spill containment and overfill prevention equipment on December 13, 2012; and
 - d. Submitted documents on January 29, 2013, demonstrating that a method of release detection is being implemented at the Facility.
10. 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.

11. 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.
12. 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 ensure that a valid, current TCEQ delivery certificate was posted in a location where it is clearly visible at all times, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii), as documented during an investigation conducted on September 7, 2011 and a record review conducted on September 12, 2012. Specifically, the Respondent's delivery certificate was not posted in a clearly visible location.
2. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b), as documented during an investigation conducted on September 7, 2011 and a record review conducted on September 12, 2012.
3. Failed to monitor the USTs for releases at a frequency of at least once per 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 September 7, 2011 and a record review conducted on September 12, 2012.
4. Failed to provide proper release detection for the piping associated with the USTs, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a), as documented during an investigation conducted on September 7, 2011 and a record review conducted on September 12, 2012. Specifically, the annual pressurized line tightness and line leak detector tests for the piping associated with the USTs were not conducted.
5. Failed to equip the UST system with spill containment and overflow prevention equipment, in violation of 30 TEX. ADMIN. CODE § 334.51(b)(2) and TEX. WATER CODE § 26.3475(c)(2), as documented during an investigation conducted on September 7, 2011 and a record review conducted on September 12, 2012.
6. Failed to maintain all 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 September 7, 2011 and a record review conducted on September 12, 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: MCALLEN PETROLEUM, INC. dba Kwik Stop Gasoline Station, Docket No. 2012-1988-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:
 - i. 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; and
 - ii. Post a valid, current TCEQ delivery certificate at the Facility, in a location where it is clearly visible at all times.
 - b. 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.a.ii. 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
Harlingen Regional Office
Texas Commission on Environmental Quality
1804 West Jefferson Avenue
Harlingen, Texas 78550-5247

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 Newitz
For the Executive Director

6/7/13

~~3/8/2013~~

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.

FUTURE COMPLIANCE WILL BE DONE BY TWT INVESTMENT INC AS THE BUSINESS WAS SOLD ON 9/2012.

[Signature]
Signature

3/28/2013
Date

M.A. CHUGHZAI
Name (Printed or typed)
Authorized Representative of
MCALLEN PETROLEUM, INC. dba Kwik Stop Gasoline Station

PRESIDENT.
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.