

Order Type:
Default Shutdown Order

Media:
PST

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
1095 East Hidalgo Avenue, Raymondville, Willacy 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: July 19, 2013

Comments Received: None

Penalty Information

Total Penalty Assessed: \$9,625
Total Paid to General Revenue: \$0
Total Due to General Revenue: \$9,625

Compliance History Classifications:
Person/CN – Unsatisfactory (QUALITY RETAIL SERVICES, INC.)
Satisfactory (WRIGHT JOSHUA INVESTMENTS, LLC)
Site/RN – Unclassified

Major Source: No
Statutory Limit Adjustment: None
Applicable Penalty Policy: September 2011

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: July 26, 2012; September 26, 2012
Date(s) of NOV(s): N/A
Date(s) of NOE(s): September 26, 2012

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)].
2. Failed to monitor the UST system for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A)].
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:

None

Technical Requirements:

1. Immediately shut down operations of all USTs at the Facility:
 - a. Cease dispensing fuel from the USTs;
 - b. Cease receiving deliveries of regulated substances into the USTs;
 - c. Padlock the dispensers;
 - d. Empty the USTs of all regulated substances; and
 - e. Temporarily remove the USTs from service.
2. The USTs shall remain out of service until such time as Respondents demonstrate to the satisfaction of the Executive Director that the release detection and corrosion protection violations have been corrected.
3. The Facility's UST fuel delivery certificate is revoked immediately. Respondents may submit an application for a new fuel delivery certificate only after Respondents have complied with all of the requirements contained in the Order, including payment of the administrative penalty.
4. Immediately upon the effective date of this Order, Respondents shall cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ.
5. Within 10 days, Respondents shall surrender the Facility's UST fuel delivery certificate to the TCEQ.
6. Within 15 days, submit a detailed written report documenting the steps taken to comply with Technical Requirements Nos. 1, 4 and 5.
7. Prior to receiving deliveries of gasoline and resuming sales of gasoline:
 - a. Begin maintaining all UST records at the Facility, and make them immediately available for inspection upon request;
 - b. Install a corrosion protection system and test the system;
 - c. Implement a release detection method for the UST system at the Facility; and
 - d. Obtain a new fuel delivery certificate.
8. Upon obtaining a new fuel delivery certificate, post the fuel delivery certificate in a location at the Facility where the delivery certificate is clearly visible at all times.
9. Within 10 days of resuming sales of gasoline, submit written certification to demonstrate compliance with Technical Requirements Nos. 7 and 8.

Litigation Information

Date Petition(s) Filed: April 4, 2013; April 24, 2013

Date Green Card(s) Signed: Unclaimed; April 26, 2013

Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Jennifer Cook, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Eli Martinez, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Rebecca Boyett, Enforcement Division, (512) 239-2503

TCEQ Regional Contact: Francisco J. Chavero, Jr., Harlingen Regional Office, 956-425-6010

Respondent: W. Christopher Wright, President, QUALITY RETAIL SERVICES, INC., 1317 North FM 509, Harlingen, Texas 78550

W. Christopher Wright, President, WRIGHT JOSHUA INVESTMENTS, LLC, 1317 North FM 509, Harlingen, Texas 78550

Respondent's Attorney: N/A

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Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	1-Oct-2012	Screening	10-Oct-2012	EPA Due	
	PCW	21-May-2013				

RESPONDENT/FACILITY INFORMATION

Respondent	QUALITY RETAIL SERVICES, INC. and WRIGHT JOSHUA INVESTMENTS, LLC dba Breaktime 341		
Reg. Ent. Ref. No.	RN102425691		
Facility/Site Region	15-Harlingen	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	45599	No. of Violations	3
Docket No.	2012-2456-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Had Darling
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$8,750
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	10.0% Enhancement	Subtotals 2, 3, & 7	\$875
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Notes	Enhancement due to unsatisfactory performer classification.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondents do not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$410	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$8,000	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$9,625
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$9,625
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$9,625
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$9,625
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Screening Date 10-Oct-2012

Docket No. 2012-2456-PST-E

PCW

Respondent QUALITY RETAIL SERVICES, INC. and WRIGHT JOSHUA INVESTMENTS,

Policy Revision 3 (September 2011)

Case ID No. 45599

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102425691

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Had Darling

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)

Unsatisfactory Performer

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance History Notes

Enhancement due to unsatisfactory performer classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 10%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 10%

Screening Date 10-Oct-2012

Docket No. 2012-2456-PST-E

PCW

Respondent QUALITY RETAIL SERVICES, INC. and WRIGHT JOSHUA INVESTMENTS, LLC dba Breaktime 341

Policy Revision 3 (September 2011)

Case ID No. 45599

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102425691

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Had Darling

Violation Number

1

Rule Cite(s)

30 Tex. Admin. Code § 334.49(a) and Tex. Water Code § 26.3475(d)

Violation Description

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

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	Harm		
	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

14 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 from the September 26, 2012 record review date to the October 10, 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 Respondents do 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 \$331

Violation Final Penalty Total \$4,125

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

Economic Benefit Worksheet

Respondent QUALITY RETAIL SERVICES, INC. and WRIGHT JOSHUA INVESTMENTS, LLC dba Breaktime 341
Case ID No. 45599
Reg. Ent. Reference No. RN102425691
Media Violation No. 1
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	26-Jul-2012	10-May-2013	0.79	\$16	\$316	\$331
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 \$331

Screening Date 10-Oct-2012

Docket No. 2012-2456-PST-E

PCW

Respondent QUALITY RETAIL SERVICES, INC. and WRIGHT JOSHUA INVESTMENTS, LLC dba Breaktime 341

Policy Revision 3 (September 2011)

Case ID No. 45599

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102425691

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Had Darling

Violation Number 2

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 UST system 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		
	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 14 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 26, 2012 record review date to the October 10, 2012 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

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

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$59

Violation Final Penalty Total \$4,125

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

Economic Benefit Worksheet

Respondent QUALITY RETAIL SERVICES, INC. and WRIGHT JOSHUA INVESTMENTS, LLC dba Breaktime 341
Case ID No. 45599
Reg. Ent. Reference No. RN102425691
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
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	26-Jul-2012	10-May-2013	0.79	\$59	n/a	\$59

Notes for DELAYED costs

Estimated cost to provide release detection 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

\$1,500

TOTAL

\$59

Screening Date 10-Oct-2012

Docket No. 2012-2456-PST-E

PCW

Respondent QUALITY RETAIL SERVICES, INC. and WRIGHT JOSHUA INVESTMENTS, LLC dba Breaktime 341

Policy Revision 3 (September 2011)

Case ID No. 45599

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102425691

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Had Darling

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
		x	

Percent 5.0%

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

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 Number of violation days 1

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$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 Respondents do 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 \$20

Violation Final Penalty Total \$1,375

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

Economic Benefit Worksheet

Respondent QUALITY RETAIL SERVICES, INC. and WRIGHT JOSHUA INVESTMENTS, LLC dba Breaktime 341
Case ID No. 45599
Reg. Ent. Reference No. RN102425691
Media Violation No. Petroleum Storage Tank
3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	26-Jul-2012	10-May-2013	0.79	\$20	n/a	\$20
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

\$20

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

PUBLISHED Compliance History Report for CN601252992, RN102425691, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator: CN601252992, QUALITY RETAIL SERVICES, INC.
Regulated Entity: RN102425691, Breaktime 341
Complexity Points: 2
CH Group: 1 - Gas Stations w/Convenience Stores
Location: 1095 E HIDALGO AVE RAYMONDVILLE, TX 78580-4097, WILLACY COUNTY
TCEQ Region: REGION 15 - HARLINGEN
ID Number(s):

Classification: UNSATISFACTORY **Rating:** 250.00
Classification: UNCLASSIFIED **Rating:** -----
Repeat Violator: NO

PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 66024

Compliance History Period: September 01, 2007 to August 31, 2012 **Rating Year:** 2012 **Rating Date:** 9/1/2012

Date Compliance History Report Prepared: November 27, 2012

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: October 10, 2007 to October 10, 2012

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

Name: Herbert Darling

Phone: (512) 239-2570

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? YES
- 3) If YES for #2, who is the current owner/operator? WRIGHT JOSHUA INVESTMENTS, LLC OWNER since 3/31/2006
Quality Retail Services, Inc. OPERATOR since 3/1/2012
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? HEART'S DELIGHT TRAVEL PLAZA, INC., OPR, 4/1/2011 to 3/1/2012
Quality Retail Services, Inc., OPERATOR, 3/31/2006 to 4/1/2011
- 5) If YES, when did the change(s) in owner or operator occur? 3/1/2012

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

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

PUBLISHED Compliance History Report for CN601252992, RN102425691, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator:	CN601104888, WRIGHT JOSHUA INVESTMENTS, LLC	Classification: SATISFACTORY	Rating: 10.22
Regulated Entity:	RN102425691, Breaktime 341	Classification: UNCLASSIFIED	Rating: -----
Complexity Points:	5	Repeat Violator: NO	
CH Group:	1 - Gas Stations w/Convenience Stores		
Location:	1095 E HIDALGO AVE RAYMONDVILLE, TX 78580-4097, WILLACY COUNTY		
TCEQ Region:	REGION 15 - HARLINGEN		

ID Number(s):

PETROLEUM STORAGE TANK REGISTRATION
REGISTRATION 66024

Compliance History Period: September 01, 2007 to August 31, 2012 **Rating Year:** 2012 **Rating Date:** 9/1/2012

Date Compliance History Report Prepared: October 10, 2012

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: October 10, 2007 to October 10, 2012

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

Name: Herbert Darling

Phone: (512) 239-2570

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? YES
- 3) If YES for #2, who is the current owner/operator? WRIGHT JOSHUA INVESTMENTS, LLC OWNER since 3/31/2006
Quality Retail Services, Inc. OPERATOR since 3/1/2012
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? HEART'S DELIGHT TRAVEL PLAZA, INC., OPR, 4/1/2011 to 3/1/2012
Quality Retail Services, Inc., OPERATOR, 3/31/2006 to 4/1/2011
- 5) If YES, when did the change(s) in owner or operator occur? 3/1/2012

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 QUALITY RETAIL SERVICES, INC. AND WRIGHT JOSHUA INVESTMENTS, LLC, DBA BREAKTIME 341; RN102425691	§ § § § § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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DEFAULT AND SHUTDOWN ORDER

DOCKET NO. 2012-2456-PST-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition, filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty, corrective action of the respondents, and revocation of the facility's fuel delivery certificate. The Commission also considered the Executive Director's Motion requesting the entry of an Order requiring the respondents to shut down and remove from service the underground storage tanks ("USTs") located at 1095 East Hidalgo Avenue in Raymondville, Willacy County, Texas. The respondents made the subject of this Order are QUALITY RETAIL SERVICES, INC. and WRIGHT JOSHUA INVESTMENTS, LLC, dba Breaktime 341 ("Respondents").

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

FINDINGS OF FACT

1. Respondent WRIGHT JOSHUA INVESTMENTS, LLC owns and Respondent QUALITY RETAIL SERVICES, INC. operates, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), a UST system and a convenience store with retail sales of gasoline located at 1095 East Hidalgo Avenue in Raymondville, Willacy County, Texas (Facility ID No. 66024) (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. During an investigation conducted on July 26, 2012, and a record review conducted on September 26, 2012, a TCEQ UT Arlington PST investigator (TCEQ contractor) documented that Respondents:
 - a. Failed to provide proper corrosion protection for the UST system;
 - b. Failed to monitor the UST system for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and
 - c. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel.
3. By letter dated September 26, 2012, the TCEQ Harlingen Regional Office provided Respondents with notice of the violations and of TCEQ's authority to shut down and remove from service USTs not in compliance with release detection, spill and/or

- overfill prevention, corrosion protection, and/or financial assurance requirements if the violations were not corrected.
4. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of QUALITY RETAIL SERVICES, INC. and WRIGHT JOSHUA INVESTMENTS, LLC dba Breaktime 341" (the "EDPRP") in the TCEQ Chief Clerk's office on April 4, 2013.
 5. The EDPRP was mailed to each Respondent's last known addresses on April 4, 2013, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDPRPs sent by certified mail as "unclaimed."
 6. The Executive Director re-filed the EDPRP in the TCEQ Chief Clerk's office on April 24, 2013.
 7. By letter dated April 24, 2013, sent to each Respondent's last known addresses via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served each Respondent with notice of the EDPRP. According to USPS.com "Track & Confirm" delivery confirmation records, each Respondent received notice of the EDPRP on April 26, 2013.
 8. More than 20 days have elapsed since Respondents received notice of the EDPRP. Respondents failed to file an answer and failed to request a hearing.
 9. By letters dated June 20, 2013, the Executive Director provided Respondents with notice of TCEQ's intent to order the USTs at the Facility to be shut down and removed from service if Respondents failed to correct the release detection and corrosion protection violations within 30 days after Respondents' receipt of the notice.
 10. As of the date of entry of this Order, Respondents have not provided the Executive Director with documentation demonstrating that the release detection and corrosion protection violations alleged in Findings of Fact Nos. 2.a. and 2.b. have been corrected.
 11. The USTs at the Facility do not have release detection or corrosion protection as required by TEX. WATER CODE § 26.3475(c)(1) and (d), and 30 TEX. ADMIN. CODE §§ 334.49(a) and 334.50(b)(1)(A), and may be releasing petroleum products to the environment. Therefore, conditions at the Facility constitute an imminent peril to public health, safety, and welfare.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondents are subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondents failed to 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).
3. As evidenced by Finding of Fact No. 2.b., Respondents failed to monitor the UST system for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A).

4. As evidenced by Finding of Fact No. 2.c., Respondents 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).
5. As evidenced by Findings of Fact Nos. 4, 5, 6 and 7, the Executive Director timely served Respondents with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
6. As evidenced by Finding of Fact No. 8, Respondents failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondents and assess the penalty recommended by the Executive Director.
7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondents for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
8. An administrative penalty in the amount of nine thousand six hundred twenty-five dollars (\$9,625.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
9. As evidenced by Findings of Fact Nos. 2.a., 2.b., 3, 9, and 10, Respondents failed to correct documented violations of Commission release detection and corrosion protection requirements within 30 days after Respondents received notice of the violations and notice of the Executive Director's intent to shut down the USTs at the Facility.
10. TEX. WATER CODE §§ 26.3475(e) and 26.352(i) authorize the Commission to order a UST owner or operator to shut down a UST system if, within 30 days after receiving notice of the violations, the owner or operator fails to correct violations of Commission regulatory requirements relating to release detection for tanks and/or piping, spill and/or overfill protection for tanks, corrosion protection for tanks and/or piping, and/or acceptable financial assurance.
11. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.
12. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke the Facility's UST fuel delivery certificate if the Commission finds that good cause exists.
13. Good cause for revocation of the Facility's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2 and 4 through 8, and Conclusions of Law Nos. 2 through 6.
14. As evidenced by Findings of Fact Nos. 10 and 11, current conditions at the Facility constitute an imminent peril to public health, safety, and welfare. Therefore, pursuant to the Administrative Procedure Act, TEX. GOV'T CODE § 2001.144(a)(3), this Order is final and effective on the date rendered.

ORDERING PROVISIONS

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

1. Immediately upon the effective date of this Order, Respondents shall take the following steps to shut down operations of all USTs at the Facility:

- a. Cease dispensing fuel from the USTs;
 - b. Cease receiving deliveries of regulated substances into the USTs;
 - c. Padlock the dispensers;
 - d. Empty the USTs of all regulated substances in accordance with 30 TEX. ADMIN. CODE § 334.54(d); and
 - e. Temporarily remove the USTs from service in accordance with 30 TEX. ADMIN. CODE § 334.54.
2. The USTs at the Facility shall remain out of service, pursuant to TEX. WATER CODE § 26.3475(e) and as directed by Ordering Provisions Nos. 1.a. through 1.e., until such time as Respondents demonstrate to the satisfaction of the Executive Director that the release detection and corrosion protection violations noted in Conclusions of Law Nos. 2 and 3 have been corrected.
 3. If Respondents elect to permanently remove from service any portion of the UST system at the Facility, Respondents shall, immediately upon the effective date of this Order, permanently remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.55, and within 15 days after the effective date of this Order, shall submit a written report documenting compliance with 30 TEX. ADMIN. CODE § 334.55 to:

Petroleum Storage Tank Registration Team, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
 4. The Facility's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Respondents may submit an application for a new fuel delivery certificate only after Respondents have complied with all of the requirements set forth in this Order, including payment of the administrative penalty.
 5. Immediately upon the effective date of this Order, Respondents shall cease accepting fuel at the Facility until such time as a valid delivery certificate is obtained from the TCEQ in accordance with 30 TEX. ADMIN. CODE §§ 334.7 and 334.8.
 6. Within 10 days after the effective date of this Order, Respondents shall send the Facility's UST fuel delivery certificate to:

Petroleum Storage Tank Registration Team, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
 7. Within 15 days after the effective date of this Order, Respondents shall submit a detailed written report, in accordance with Ordering Provision No. 13, below, documenting the steps taken to comply with Ordering Provisions Nos. 1.a. through 1.e., 5 and 6.
 8. Respondents are assessed an administrative penalty in the amount of nine thousand six hundred twenty-five dollars (\$9,625.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondents' compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here.

9. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: QUALITY RETAIL SERVICES, INC. and WRIGHT JOSHUA INVESTMENTS, LLC, dba Breaktime 341; Docket No. 2012-2456-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
10. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline, Respondents shall undertake the following technical requirements:
- a. Begin maintaining all UST records at the Facility, and make them immediately available for inspection upon request, in accordance with 30 TEX. ADMIN. CODE § 334.10;
 - b. Install a corrosion protection system and test the system, in accordance with 30 TEX. ADMIN. CODE § 334.49;
 - c. Implement a release detection method for the UST system at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.50; and
 - d. Obtain a new fuel delivery certificate from the TCEQ.
11. Upon obtaining a new fuel delivery certificate, Respondents shall post the fuel delivery certificate in a location at the Facility where the delivery certificate is clearly visible at all times, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii).
12. Within 10 days of resuming retail sales of gasoline, Respondents shall submit written certification, in accordance with Ordering Provision No. 13, below, to demonstrate compliance with Ordering Provisions Nos. 10 and 11.
13. The certifications required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall include the following certification language:

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

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

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

and:

Francisco J. Chavero, Jr., Waste Section Manager
Texas Commission on Environmental Quality
Harlingen Regional Office
1804 W. Jefferson Ave.
Harlingen TX 78550-5247

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

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF JENNIFER COOK

STATE OF TEXAS

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COUNTY OF TRAVIS

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

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of QUALITY RETAIL SERVICES, INC. and WRIGHT JOSHUA INVESTMENTS, LLC dba Breaktime 341" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on April 4, 2013.

The EDPRP was mailed to each Respondent's last known addresses on April 4, 2013, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDPRPs sent by certified mail as "unclaimed."

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the EDPRP was re-filed in the TCEQ Chief Clerk's office on April 24, 2013.

The EDPRP was mailed to each Respondent's last known addresses on April 24, 2013, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to USPS.com "Track & Confirm" delivery confirmation records, each Respondent received notice of the EDPRP on April 26, 2013.

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

By letters dated June 20, 2013, sent via first class mail and certified mail, return receipt requested article nos. 7012 3460 0001 7518 3464 and 7012 3460 0001 7518 3471, I provided Respondents with notice of the TCEQ's intent to order the USTs at the Facility be shut down and removed from service if the violations pertaining to release detection and corrosion protection were not corrected within 30 days of Respondents' receipt of the letter. According to the return receipt "green cards," Respondents received the notice on June 22, 2013."

As of the date of this affidavit, I am not aware of any evidence that indicates that Respondents have corrected the release detection and corrosion protection violations noted during the July 26, 2012, investigation."



Jennifer Cook, Special Counsel
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 19 day of July, A.D. 2013.


Notary Signature

