

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 47716
H & L TRADING INC d/b/a Exxon Food Mart
RN101353530
Docket No. 2013-1822-PST-E

Order Type:

Default Order

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

2468 Highway 69 North, Nederland, Jefferson 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: April 25, 2014

Comments Received: None

Penalty Information

Total Penalty Assessed: \$4,500

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$4,500

Compliance History Classifications:

Person/CN – N/A
Site/RN – Satisfactory

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2011

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: May 24, 2013; August 21, 2013
Date(s) of NOV(s): N/A
Date(s) of NOE(s): August 21, 2013

Violation Information

Failed to monitor the USTs 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)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

Respondent no longer owns or operates the Facility as of February 1, 2014.

Technical Requirements:

N/A

Litigation Information

Date Petition(s) Filed: February 11, 2014
Date Green Card(s) Signed: February 14, 2014
Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Ryan Rutledge, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Isabel Segarra Trevino, Public Interest Counsel, (512) 239-6363
TCEQ Enforcement Coordinator: Rebecca Boyett, Enforcement Division, (512) 239-2503
TCEQ Regional Contact: Marilyn Gates, Beaumont Regional Office, (409) 899-8758
Respondent: Hussaine A Lakhani, President, H & L TRADING, Inc., 2468 Highway 69 North, Nederland, TX 77627
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	26-Aug-2013	Screening	2-Sep-2013	EPA Due	
	PCW	31-Dec-2013				

RESPONDENT/FACILITY INFORMATION	
Respondent	H & L TRADING INC dba Exxon Food Mart
Reg. Ent. Ref. No.	RN101353530
Facility/Site Region	10-Beaumont
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	47716	No. of Violations	1
Docket No.	2013-1822-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Rebecca Boyett
		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	\$3,750
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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	20.0% Enhancement Subtotals 2, 3, & 7	\$750

Notes: Enhancement for one previous order with denial of liability.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$67	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$1,500		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$4,500
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
Reduces or enhances the Final Subtotal by the indicated percentage.			

Notes:

Final Penalty Amount \$4,500

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$4,500
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DEFERRAL		Reduction	Adjustment	\$0
Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)				

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$4,500
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Screening Date 2-Sep-2013

Docket No. 2013-1822-PST-E

PCW

Respondent H & L TRADING INC dba Exxon Food Mart

Policy Revision 3 (September 2011)

Case ID No. 47716

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101353530

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rebecca Boyett

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) 20%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one previous order with denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 20%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 20%

Screening Date 2-Sep-2013 **Docket No.** 2013-1822-PST-E **PCW**
Respondent H & L TRADING INC dba Exxon Food Mart *Policy Revision 3 (September 2011)*
Case ID No. 47716 *PCW Revision August 3, 2011*
Reg. Ent. Reference No. RN101353530
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Rebecca Boyett

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 12 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$3,750

One monthly event is recommended based on documentation of the violation during the August 21, 2013 record review to the September 2, 2013 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 \$67 **Violation Final Penalty Total** \$4,500

This violation Final Assessed Penalty (adjusted for limits) \$4,500

Economic Benefit Worksheet

Respondent H & L TRADING INC dba Exxon Food Mart
Case ID No. 47716
Reg. Ent. Reference No. RN101353530
Media Violation No. 1
Media Petroleum Storage Tank

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				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	24-May-2013	13-Apr-2014	0.89	\$67	n/a	\$67

Notes for DELAYED costs

Estimated cost to provide release detection for the USTs at the Facility. The date required is the investigation date. 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

\$67

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 CN604151662, RN101353530, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator: CN604151662, H & L TRADING INC **Classification:** NOT APPLICABLE **Rating:** N/A

Regulated Entity: RN101353530, EXXON FOOD MART **Classification:** SATISFACTORY **Rating:** 31.25

Complexity Points: 4 **Repeat Violator:** NO

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

Location: 2468 HIGHWAY 69 N NEDERLAND, TX 77627-8903, JEFFERSON COUNTY

TCEQ Region: REGION 10 - BEAUMONT

ID Number(s): PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 3361

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

Date Compliance History Report Prepared: August 27, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: August 27, 2008 to August 27, 2013

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

Name: Rebecca Boyett **Phone:** (512) 239-2503

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:** 07/08/2012 **ADMINORDER 2011-2014-PST-E (1660 Order-Agreed Order With Denial)**
 - Classification:** Major
 - Citation:** 30 TAC Chapter 115, SubChapter C 115.245(2)
5C THSC Chapter 382 382.085(b)
 - Description:** Failed to verify proper operation of the Stage II equipment at least once every 12 months, in violation of 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on September 8, 2011. Specifically, the annual testing of the Stage II equipment was not conducted.
 - Classification:** Moderate
 - Citation:** 30 TAC Chapter 115, SubChapter C 115.242(9)
5C THSC Chapter 382 382.085(b)
 - Description:** Failed to post operating instructions conspicuously on the front of each gasoline dispensing pump.

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

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
H & L TRADING INC
D/B/A EXXON FOOD MART;
RN101353530**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2013-1822-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. The respondent made the subject of this Order is H & L TRADING INC d/b/a Exxon Food Mart ("Respondent").

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

FINDINGS OF FACT

1. Respondent owned and operated, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), an underground storage tank ("UST") system and a convenience store with retail sales of gasoline located at 2468 Highway 69 North in Nederland, Jefferson County, Texas (Facility ID No. 3361) (the "Facility"). The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the rules of the TCEQ, and contain a regulated petroleum substance as defined in the rules of the TCEQ.
2. During an investigation conducted on May 24, 2013, and a record review conducted on August 21, 2013, a UT Arlington PST Program investigator (TCEQ Contractor) documented that Respondent failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).
3. Respondent received notice of the violation on or about August 26, 2013.
4. The Executive Director recognizes that Respondent no longer owns or operates the Facility as of February 1, 2014.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of H & L TRADING INC d/b/a Exxon Food Mart" (the "EDPRP") in the TCEQ Chief Clerk's office on February 11, 2014.
6. By letter dated February 11, 2014, sent to Respondent's last known address via certified mail, return receipt requested, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on February 14, 2014, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2, Respondent 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 TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A).
3. As evidenced by Findings of Fact Nos. 5 and 6, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(b)(1).
4. As evidenced by Finding of Fact No. 7, Respondent 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 Respondent and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of four thousand five hundred dollars (\$4,500.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. 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.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of four thousand five hundred dollars (\$4,500.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's 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.
2. 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: H & L TRADING INC d/b/a Exxon Food Mart; Docket No. 2013-1822-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
3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Respondent.

5. If Respondent fails 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, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
8. 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.
9. 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 the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF RYAN RUTLEDGE

STATE OF TEXAS

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§
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COUNTY OF TRAVIS

"My name is Ryan Rutledge. 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 H & L TRADING INC d/b/a Exxon Food Mart" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on February 11, 2014.

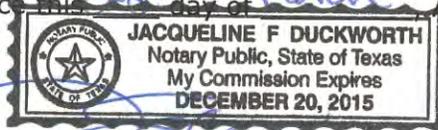
The EDPRP was mailed to Respondent's last known address on February 11, 2014, via certified mail, return receipt requested, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on February 14, 2014, as evidenced by the signature on the card.

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

Ryan Rutledge, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Given under my hand and seal of office, this 20th day of March, A.D. 2014.



Notary without Bond
Notary Signature