

**Executive Summary – Enforcement Matter – Case No. 49032
Western Refining Southwest, Inc. dba C & R Howdy's 28 and dba C & R 3
RN102388816 and RN102594603
Docket No. 2014-1051-PST-E**

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

C & R Howdy's 28, 1797 George Dieter Drive, El Paso, El Paso County ("Facility 1")

C & R 3, 7694 Alameda Avenue, El Paso, El Paso County ("Facility 2")

Type of Operation:

Convenience stores 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: February 27, 2015

Comments Received: No

Penalty Information

Total Penalty Assessed: \$87,785

Amount Deferred for Expedited Settlement: \$17,557

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$70,228

Total Due to General Revenue: \$0

Payment Plan: N/A

Supplemental Environmental Project ("SEP") Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - N/A

Site/RN - High

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: June 25, 2014

Date(s) of NOE(s): June 30, 2014

Executive Summary – Enforcement Matter – Case No. 49032
Western Refining Southwest, Inc. dba C & R Howdy's 28 and dba C & R 3
RN102388816 and RN102594603
Docket No. 2014-1051-PST-E

Violation Information

At Facility 1:

1. Failed to inspect all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the underground storage tank ("UST") system at least once every 60 days to assure that the sides, bottoms, and any penetration points are maintained liquid-tight and free of any liquid or debris [30 TEX. ADMIN. CODE § 334.42(i)].
2. Failed to report a suspected release from a UST to the TCEQ within 24 hours of discovery. Specifically, the monthly inventory control records for March and April 2013 for the super unleaded tank indicated a suspected release that was not reported [30 TEX. ADMIN. CODE § 334.72].
3. Failed to investigate a suspected release from a UST to the TCEQ within 30 days of discovery. Specifically, the monthly inventory control records for March and April 2013 for the super unleaded tank indicated a suspected release that was not investigated [30 TEX. ADMIN. CODE § 334.74].

At Facility 2:

4. Failed to inspect all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the UST system at least once every 60 days to assure that the sides, bottoms, and any penetration points are maintained liquid-tight and free of any liquid or debris [30 TEX. ADMIN. CODE § 334.42(i)].
5. Failed to report a suspected release from a UST to the TCEQ within 24 hours of discovery. Specifically, the monthly inventory control records for July and August 2013 for the regular unleaded tank indicated a suspected release that was not reported [30 TEX. ADMIN. CODE § 334.72].
6. Failed to investigate a suspected release from a UST to the TCEQ within 30 days of discovery. Specifically, the monthly inventory control records for July and August 2013 for the regular unleaded tank indicated a suspected release that was not investigated [30 TEX. ADMIN. CODE § 334.74].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent conducted investigations of the suspected releases at the Facilities and submitted release determination reports for the Facilities to the Executive Director for review and approval on December 19, 2014.

Executive Summary – Enforcement Matter – Case No. 49032
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Technical Requirements:

The Order will require the Respondent to:

a. Within 30 days:

i. Begin conducting inspections of all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the UST systems at the Facilities at least once every 60 days; and

ii. Establish and implement a process for reporting suspected releases at the Facilities.

b. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the petroleum storage tank release determination reports within 30 days after the date of such requests or by any other timeframe specified in writing.

c. Within 45 days, submit written certification to demonstrate compliance with a. through b.

Litigation Information

Date Petition(s) Filed: N/A

Date Answer(s) Filed: N/A

SOAH Referral Date: N/A

Hearing Date(s): N/A

Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Thomas Greimel, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-5690; Candy Garrett, Enforcement Division, MC 219, (512) 239-1456

TCEQ SEP Coordinator: N/A

Respondent: Leslie Ann Allen, Senior Vice President Environmental and Regulatory Affairs, Western Refining Southwest, Inc., 123 West Mills Avenue, Suite 200, El Paso, Texas 79901

Respondent's Attorney: N/A

TCEQ	DATES	Assigned 7-Jul-2014	PCW 29-Dec-2014	Screening 22-Jul-2014	EPA Due
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RESPONDENT/FACILITY INFORMATION	
Respondent	Western Refining Southwest, Inc. dba C & R Howdy's 28 (Facility 1)
Reg. Ent. Ref. No.	RN102388816
Facility/Site Region	6-El Paso Major/Minor Source Major

CASE INFORMATION			
Enf./Case ID No.	49032	No. of Violations	3
Docket No.	2014-1051-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Thomas Greimel
		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	\$45,000
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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	5.0% Enhancement	Subtotals 2, 3, & 7	\$2,250
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Notes	Enhancement for one NOV with a same/similar violation.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does 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	\$597	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$5,300	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$47,250
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.4%	Adjustment	\$205
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Recommended enhancement to capture the avoided cost of compliance associated with violation nos. 1 and 2.
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Final Penalty Amount	\$47,455
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$47,455
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DEFERRAL	20.0% Reduction	Adjustment	-\$9,491
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral offered for expedited settlement.
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PAYABLE PENALTY	\$37,964
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Screening Date 22-Jul-2014

Docket No. 2014-1051-PST-E

PCW

Respondent Western Refining Southwest, Inc. dba C & R Howdy's 28 (Facility 1)

Policy Revision 4 (April 2014)

Case ID No. 49032

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102388816

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

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>)	1	5%
	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 judgments 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%

Please Enter Yes or No

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) 5%

>> 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 NOV with a same/similar violation.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 5%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 5%

Screening Date 22-Jul-2014

Docket No. 2014-1051-PST-E

PCW

Respondent Western Refining Southwest, Inc. dba C & R Howdy's 28 (Facility 1)

Policy Revision 4 (April 2014)

Case ID No. 49032

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102388816

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 334.42(i)

Violation Description

Failed to inspect all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the underground storage tank ("UST") system at least once every 60 days to assure that the sides, bottoms, and any penetration points are maintained liquid-tight and free of any liquid or debris.

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 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 \$21,250

\$3,750

Violation Events

Number of Violation Events 1

27 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$3,750

One quarterly event is recommended based on documentation of the violation during the June 25, 2014 investigation to the July 22, 2014 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/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 \$105

Violation Final Penalty Total \$3,955

This violation Final Assessed Penalty (adjusted for limits) \$3,955

Economic Benefit Worksheet

Respondent Western Refining Southwest, Inc. dba C & R Howdy's 28 (Facility 1)
Case ID No. 49032
Reg. Ent. Reference No. RN102388816
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
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)				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)

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]	\$100	26-Apr-2014	25-Jun-2014	1.08	\$5	\$100	\$105
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct bimonthly inspections of the sumps, manways, overfill containers or catchment basins. The date required is 60 days before the investigation date, and the final date is the investigation date.

Approx. Cost of Compliance

\$100

TOTAL

\$105

Screening Date 22-Jul-2014

Docket No. 2014-1051-PST-E

PCW

Respondent Western Refining Southwest, Inc. dba C & R Howdy's 28 (Facility 1)

Policy Revision 4 (April 2014)

Case ID No. 49032

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102388816

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 334.72

Violation Description

Failed to report a suspected release from a UST to the TCEQ within 24 hours of discovery. Specifically, the monthly inventory control records for March and April 2013 for the super unleaded tank indicated a suspected release that was not reported.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
	x		

Percent 15.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$21,250

\$3,750

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 \$3,750

One single event is recommended.

Good Faith Efforts to Comply

0.0%

Reduction \$0

Before NOE/NOV NOE/NOV to EDRP/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 \$103

Violation Final Penalty Total \$3,955

This violation Final Assessed Penalty (adjusted for limits) \$3,955

Economic Benefit Worksheet

Respondent Western Refining Southwest, Inc. dba C & R Howdy's 28 (Facility 1)
Case ID No. 49032
Reg. Ent. Reference No. RN102388816
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

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)	\$100	25-Jun-2014	28-Feb-2015	0.68	\$3	n/a	\$3

Notes for DELAYED costs

Estimated delayed cost to establish and implement procedures to report a suspected release. The Date Required is the investigation date. The Final Date is the estimated compliance date.

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]	\$100	1-May-2013	2-May-2013	0.00	\$0	\$100	\$100
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to report a suspected release. The Date Required is the date of the suspected release. The Final Date is the date the report was due.

Approx. Cost of Compliance

\$200

TOTAL

\$103

Screening Date 22-Jul-2014

Docket No. 2014-1051-PST-E

PCW

Respondent Western Refining Southwest, Inc. dba C & R Howdy's 28 (Facility 1)

Policy Revision 4 (April 2014)

Case ID No. 49032

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102388816

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 334.74

Violation Description

Failed to investigate a suspected release from a UST to the TCEQ within 30 days of discovery. Specifically, the monthly inventory control records for March and April 2013 for the super unleaded tank indicated a suspected release that was not investigated.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 30.0%

>> 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 \$17,500

\$7,500

Violation Events

Number of Violation Events 5

417 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$37,500

Five quarterly events are recommended based on documentation of the violation from the May 31, 2013 release investigation due date to the July 22, 2014 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/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 \$37,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$388

Violation Final Penalty Total \$39,546

This violation Final Assessed Penalty (adjusted for limits) \$39,546

Economic Benefit Worksheet

Respondent Western Refining Southwest, Inc. dba C & R Howdy's 28 (Facility 1)
Case ID No. 49032
Reg. Ent. Reference No. RN102388816
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
<small>No commas or \$</small>							

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)	\$5,000	31-May-2013	19-Dec-2014	1.55	\$388	n/a	\$388

Notes for DELAYED costs

Estimated cost to investigate a suspected release. The Date Required is the date the release investigation was due. 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

\$5,000

TOTAL

\$388

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



TCEQ Compliance History Report

PUBLISHED Compliance History Report for CN603971136, RN102388816, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN603971136, Western Refining Southwest, Inc. **Classification:** NOT APPLICABLE **Rating:** N/A

Regulated Entity: RN102388816, C & R Howdy's 28 **Classification:** HIGH **Rating:** 0.00

Complexity Points: 3 **Repeat Violator:** NO

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

Location: 1797 GEORGE DIETER DR EL PASO, TX 79936-4925, EL PASO COUNTY

TCEQ Region: REGION 06 - EL PASO

ID Number(s):

PETROLEUM STORAGE TANK REGISTRATION
REGISTRATION 7273

Compliance History Period: September 01, 2008 to August 31, 2013 **Rating Year:** 2013 **Rating Date:** 09/01/2013

Date Compliance History Report Prepared: July 21, 2014

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: July 21, 2009 to July 21, 2014

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

Name: Thomas Greimel

Phone: (512) 239-5690

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? Western Refining Southwest, Inc. OPERATOR since 3/4/2010
C&R Distributing, LLC OWNER since 3/4/2010
Southwest Convenience Stores, LLC OWNER since 5/8/1986
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? Southwest Convenience Stores, LLC, OWNER OPERATOR, 1/1/1997 to 3/3/2010
- 5) If **YES**, when did the change(s) in owner or operator occur? 3/4/2010

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.):

Item 1	May 13, 2010	(799573)
Item 2	September 13, 2012	(1030852)
Item 3	October 22, 2012	(1041017)
Item 4	April 03, 2013	(1076809)

Item 5	May 30, 2013	(1093916)
Item 6	July 16, 2013	(1102307)
Item 7	February 26, 2014	(1122593)
Item 8	July 10, 2014	(1179954)

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.

- 1 Date: 01/10/2014 (1134348) CN603971136
- Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(C)
Description: Failure to physically label all tank fill tubes according to registration/self-certification form. It was noted during the investigation that the tanks were not labeled.
- Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.42(i)
Description: Failure to conduct and document inspections every 60 days for liquids in sumps, manways, overspill containers and catchment basins. During the investigation, the required inspections were not being conducted at the required intervals.
- Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 334, SubChapter N 334.603(b)(1)
Description: Failure to provide documentation of training acceptable to TCEQ for designated Class A and B Operator for a regulated UST facility. No documentation was provided during the investigation.
- Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 334, SubChapter C 334.45(d)(1)(E)(iv)
Description: Failure to provide documentation that all sumps and manways that are part of system's release detection system are inspected for tightness annually, were tightness tested immediately after installation, and tightness tested once every three years thereafter. Documentation was not provided during the investigation.
- Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 334, SubChapter C 334.50(e)(2)(C)
Description: Failure to maintain records adequate to demonstrate compliance with release detection requirements. Records were not provided during the investigation.
- Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)
Description: Failure to make records readily accessible and available for inspection upon request by agency personnel. During the investigation, compliance could not be determined due to a lack of records available for review.

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



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	7-Jul-2014			
	PCW	29-Dec-2014	Screening	22-Jul-2014	EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent	Western Refining Southwest, Inc. dba C & R 3 (Facility 2)				
Reg. Ent. Ref. No.	RN102594603				
Facility/Site Region	6-El Paso	Major/Minor Source	Major		

CASE INFORMATION

Enf./Case ID No.	49032	No. of Violations	3
Docket No.	2014-1051-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Thomas Greimel
		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** **\$37,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **7.0%** Enhancement **Subtotals 2, 3, & 7** **\$2,625**

Notes Enhancement for one NOV with a same/similar violation and one NOV with dissimilar violations.

Culpability **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** **\$0**

Economic Benefit **0.0%** Enhancement* **Subtotal 6** **\$0**

Total EB Amounts **\$513**
 Estimated Cost of Compliance **\$5,300**
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$40,125**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0.5%** **Adjustment** **\$205**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes Recommended enhancement to capture the avoided cost of compliance associated with violation nos. 1 and 2.

Final Penalty Amount **\$40,330**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$40,330**

DEFERRAL **20.0%** Reduction **Adjustment** **-\$8,066**

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

Notes Deferral offered for expedited settlement.

PAYABLE PENALTY **\$32,264**

Screening Date 22-Jul-2014

Docket No. 2014-1051-PST-E

PCW

Respondent Western Refining Southwest, Inc. dba C & R 3 (Facility 2)

Policy Revision 4 (April 2014)

Case ID No. 49032

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102594603

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

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>)	1	5%
	Other written NOVs	1	2%
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 judgments 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%

Please Enter Yes or No

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) 7%

>> **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 NOV with a same/similar violation and one NOV with dissimilar violations.

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

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 7%

Screening Date 22-Jul-2014

Docket No. 2014-1051-PST-E

PCW

Respondent Western Refining Southwest, Inc. dba C & R 3 (Facility 2)

Policy Revision 4 (April 2014)

Case ID No. 49032

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102594603

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 334.42(i)

Violation Description

Failed to inspect all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the underground storage tank ("UST") system at least once every 60 days to assure that the sides, bottoms, and any penetration points are maintained liquid-tight and free of any liquid or debris.

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 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 \$21,250

\$3,750

Violation Events

Number of Violation Events 1

27 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$3,750

One quarterly event is recommended based on documentation of the violation during the June 25, 2014 investigation to the July 22, 2014 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDRP/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 \$105

Violation Final Penalty Total \$4,033

This violation Final Assessed Penalty (adjusted for limits) \$4,033

Economic Benefit Worksheet

Respondent Western Refining Southwest, Inc. dba C & R 3 (Facility 2)
Case ID No. 49032
Req. Ent. Reference No. RN102594603
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
<i>No commas or +</i>							

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	\$0	\$0
Record Keeping System				0.00	\$0	\$0	\$0
Training/Sampling				0.00	\$0	\$0	\$0
Remediation/Disposal				0.00	\$0	\$0	\$0
Permit Costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Notes for DELAYED costs							

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]	\$100	26-Apr-2014	25-Jun-2014	1.08	\$5	\$100	\$105
Other (as needed)				0.00	\$0	\$0	\$0
Notes for AVOIDED costs							
Estimated avoided cost to conduct bimonthly inspections of the sumps, manways, overfill containers or catchment basins. The date required is 60 days before the investigation date, and the final date is the investigation date.							

Approx. Cost of Compliance	\$100	TOTAL	\$105
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Screening Date 22-Jul-2014 **Docket No.** 2014-1051-PST-E **PCW**
Respondent Western Refining Southwest, Inc. dba C & R 3 (Facility 2) *Policy Revision 4 (April 2014)*
Case ID No. 49032 *PCW Revision March 26, 2014*
Reg. Ent. Reference No. RN102594603
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Thomas Greimel

Violation Number

Rule Cite(s)

Violation Description

Failed to report a suspected release from a UST to the TCEQ within 24 hours of discovery. Specifically, the monthly inventory control records for July and August 2013 for the regular unleaded tank indicated a suspected release that was not reported.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
<input type="text"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Percent

Matrix Notes

100% of the rule requirement was not met.

Adjustment

Violation Events

Number of Violation Events

Number of violation days

mark only one with an x

daily	<input type="checkbox"/>
weekly	<input type="checkbox"/>
monthly	<input type="checkbox"/>
quarterly	<input type="checkbox"/>
semiannual	<input type="checkbox"/>
annual	<input type="checkbox"/>
single event	<input checked="" type="checkbox"/>

Violation Base Penalty

One single event is recommended.

Good Faith Efforts to Comply

Reduction

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

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

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Western Refining Southwest, Inc. dba C & R 3 (Facility 2)
Case ID No. 49032
Reg. Ent. Reference No. RN102594603
Media Petroleum Storage Tank
Violation No. 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)	\$100	25-Jun-2014	28-Feb-2015	0.68	\$3	n/a	\$3

Notes for DELAYED costs

Estimated delayed cost to establish and implement procedures to report a suspected release. The Date Required is the investigation date. The Final Date is the estimated compliance date.

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]	\$100	1-Sep-2013	2-Sep-2013	0.00	\$0	\$100	\$100
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to report a suspected release. The Date Required is the date of the suspected release. The Final Date is the date the report was due.

Approx. Cost of Compliance

\$200

TOTAL

\$103

Screening Date 22-Jul-2014

Docket No. 2014-1051-PST-E

PCW

Respondent Western Refining Southwest, Inc. dba C & R 3 (Facility 2)

Policy Revision 4 (April 2014)

Case ID No. 49032

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102594603

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 334.74

Violation Description

Failed to investigate a suspected release from a UST to the TCEQ within 30 days of discovery. Specifically, the monthly inventory control records for July and August 2013 for the regular unleaded tank indicated a suspected release that was not investigated.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 30.0%

>> 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 \$17,500

\$7,500

Violation Events

Number of Violation Events 4

294 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$30,000

Four quarterly events are recommended based on documentation of the violation from the October 1, 2013 release investigation due date to the July 22, 2014 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/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 \$30,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$304

Violation Final Penalty Total \$32,264

This violation Final Assessed Penalty (adjusted for limits) \$32,264

Economic Benefit Worksheet

Respondent Western Refining Southwest, Inc. dba C & R 3 (Facility 2)
Case ID No. 49032
Req. Ent. Reference No. RN102594603
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
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)	\$5,000	1-Oct-2013	19-Dec-2014	1.22	\$304	n/a	\$304

Notes for DELAYED costs

Estimated cost to investigate a suspected release. The Date Required is the date the release investigation was due. 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

\$5,000

TOTAL

\$304

The TCEQ is committed to accessibility.

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



TCEQ Compliance History Report

PUBLISHED Compliance History Report for CN603971136, RN102594603, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN603971136, Western Refining Southwest, Inc. **Classification:** NOT APPLICABLE **Rating:** N/A

Regulated Entity: RN102594603, C & R 3 **Classification:** HIGH **Rating:** 0.00

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

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

Location: 7694 ALAMEDA AVE EL PASO, TX 79915-3835, EL PASO COUNTY

TCEQ Region: REGION 06 - EL PASO

ID Number(s):

AIR NEW SOURCE PERMITS ACCOUNT NUMBER EE08971

PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 17851

Compliance History Period: September 01, 2008 to August 31, 2013 **Rating Year:** 2013 **Rating Date:** 09/01/2013

Date Compliance History Report Prepared: July 21, 2014

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: July 21, 2009 to July 21, 2014

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

Name: Thomas Greimel

Phone: (512) 239-5690

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? Chevron U.S.A. Inc. OWNER OPERATOR since 8/23/2001
Chevron U.S.A. Inc. OWNER since 9/1/1988
Western Refining Southwest, Inc. OPERATOR since 10/6/2011
C&R Distributing, LLC OWNER OPERATOR since 10/1/2009
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? C & R Distributing, Inc., OWNER, 2/27/1998 to 9/30/2009
C&R Distributing, LLC, OPERATOR, 2/27/1998 to 9/30/2009
- 5) If YES, when did the change(s) in owner or operator occur? 10/1/2009

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.):

Item 1	July 23, 2009	(760705)
Item 2	November 19, 2009	(783171)
Item 3	September 16, 2010	(849701)

Item 4	February 22, 2011	(899882)
Item 5	July 28, 2011	(942216)
Item 6	December 21, 2011	(974624)
Item 7	December 06, 2012	(1050706)
Item 8	August 01, 2013	(1105115)
Item 9	February 10, 2014	(1146409)

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.

- 1 Date: 11/21/2013 (1133700) CN603971136
- Self Report? NO Classification: Moderate
- Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(B)
- Description: Failure to maintain the Stage II Vapor Recovery System in proper operating condition, as specified by the applicable CARB Order, free of defects that would impair the effectiveness of system in accordance with 30 TAC Chapter 115, Subchapter C 115.242(3)(B).
- Self Report? NO Classification: Moderate
- Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(C)(i)
30 TAC Chapter 115, SubChapter C 115.242(3)(C)(ii)
30 TAC Chapter 115, SubChapter C 115.242(3)(C)(iii)
- Description: Failure to maintain the Stage II Vapor Recovery System in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s), and free of defects that would impair the effectiveness of system, including a torn boot on dispenser No. 2's nozzle in accordance with 30 TAC Chapter 115, Subchapter C 115.242(3) (C).
- 2 Date: 01/10/2014 (1134447) CN603971136
- Self Report? NO Classification: Minor
- Citation: 30 TAC Chapter 334, SubChapter N 334.603(b)(1)
- Description: Failure to provide documentation of training acceptable to TCEQ for designated Class A and B Operator for a regulated UST facility. No documentation was provided during the investigation.
- Self Report? NO Classification: Minor
- Citation: 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(C)
- Description: Failure to physically label all tank fill tubes according to registration/self-certification form. It was noted during the investigation that the tanks were not labeled.
- Self Report? NO Classification: Moderate
- Citation: 30 TAC Chapter 334, SubChapter C 334.42(i)
- Description: Failure to inspect and document every 60 days for liquids in sumps, manways, overspill containers and catchment basins. Documentation was not provided during the investigation.
- Self Report? NO Classification: Minor
- Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)
- Description: Failure to make records readily accessible and available for inspection upon request by agency personnel. During the investigation, compliance could not be determined due to a lack of records available for review.

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	§	BEFORE THE
ENFORCEMENT ACTION	§	
CONCERNING	§	
WESTERN REFINING	§	TEXAS COMMISSION ON
SOUTHWEST, INC. DBA C & R	§	
HOWDY'S 28 AND DBA C & R 3	§	
RN102388816 AND RN102594603	§	ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2014-1051-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 Western Refining Southwest, Inc. dba C & R Howdy's 28 and dba C & R 3 ("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 operates the following convenience stores with retail sales of gasoline (the "Facilities"):
 - a. C & R Howdy's 28, located at 1797 George Dieter Drive in El Paso, El Paso County, Texas ("Facility 1"); and
 - b. C & R 3, located at 7694 Alameda Avenue, El Paso, El Paso County, Texas ("Facility 2").
2. The Respondent's five 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 July 5, 2014.

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 Eighty-Seven Thousand Seven Hundred Eighty-Five Dollars (\$87,785) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Seventy Thousand Two Hundred Twenty-Eight Dollars (\$70,228) of the administrative penalty and Seventeen Thousand Five Hundred Fifty-Seven Dollars (\$17,557) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
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 conducted investigations of the suspected releases at the Facilities and submitted release determination reports for the Facilities to the Executive Director for review and approval on December 19, 2014.
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 operator of the Facilities, the Respondent is alleged to have:

1. At Facility 1:
 - a. Failed to inspect all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the UST system at least once every 60 days to assure that the sides, bottoms, and any penetration points are maintained liquid-tight and free of any liquid or debris, in violation of 30 TEX.

ADMIN. CODE § 334.42(i), as documented during an investigation conducted on June 25, 2014.

- b. Failed to report a suspected release from a UST to the TCEQ within 24 hours of discovery, in violation of 30 TEX. ADMIN. CODE § 334.72, as documented during an investigation conducted on June 25, 2014. Specifically, the monthly inventory control records for March and April 2013 for the super unleaded tank indicated a suspected release that was not reported.
 - c. Failed to investigate a suspected release from a UST to the TCEQ within 30 days of discovery, in violation of 30 TEX. ADMIN. CODE § 334.74, as documented during an investigation conducted on June 25, 2014. Specifically, the monthly inventory control records for March and April 2013 for the super unleaded tank indicated a suspected release that was not investigated.
2. At Facility 2:
- a. Failed to inspect all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the UST system at least once every 60 days to assure that the sides, bottoms, and any penetration points are maintained liquid-tight and free of any liquid or debris, in violation of 30 TEX. ADMIN. CODE § 334.42(i), as documented during an investigation conducted on June 25, 2014.
 - b. Failed to report a suspected release from a UST to the TCEQ within 24 hours of discovery, in violation of 30 TEX. ADMIN. CODE § 334.72, as documented during an investigation conducted on June 25, 2014. Specifically, the monthly inventory control records for July and August 2013 for the regular unleaded tank indicated a suspected release that was not reported.
 - c. Failed to investigate a suspected release from a UST to the TCEQ within 30 days of discovery, in violation of 30 TEX. ADMIN. CODE § 334.74, as documented during an investigation conducted on June 25, 2014. Specifically, the monthly inventory control records for July and August 2013 for the regular unleaded tank indicated a suspected release that was not investigated.

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: Western Refining Southwest, Inc. dba C & R Howdy's 28 and dba C & R 3, Docket No. 2014-1051-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. Within 30 days after the effective date of this Agreed Order:

- i. Begin conducting inspections of all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the UST systems at the Facilities at least once every 60 days, in accordance with 30 TEX. ADMIN. CODE § 334.42; and
- ii. Establish and implement a process for reporting suspected releases at the Facilities, in accordance with 30 TEX. ADMIN. CODE § 334.72.

b. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the petroleum storage tank release determination reports within 30 days after the date of such requests or by any other timeframe specified in writing.

c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a.i through 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

The certification shall be submitted to:

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

with a copy to:

Waste Section Manager
El Paso Regional Office
Texas Commission on Environmental Quality
401 East Franklin Avenue, Suite 560
El Paso, Texas 79901-1206

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 operations at the Facilities 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

Ramon Martinez
For the Executive Director

5/14/15
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.

Leslie Ann Allen
Signature

1/15/14
Date

Leslie Ann Allen
Name (Printed or typed)
Authorized Representative of
Western Refining Southwest, Inc. dba C & R Howdy's 28 and dba C & R 3

Sr. VP - Environmental & Regulatory
Title Affairs

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.