

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 50604
Devine Convenience LLC d/b/a Super Mart
RN101856219
Docket No. 2015-0803-PST-E

Order Type:

Default Order

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

500 West Hondo Avenue, Devine, Medina 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: May 20, 2016

Comments Received: None

Penalty Information

Total Penalty Assessed: \$8,750

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$8,750

Compliance History Classifications:

Person/CN –High
Site/RN – High

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: March 25, 2015 through May 14, 2015
Date(s) of NOV(s): N/A
Date(s) of NOE(s): May 14, 2015

Violation Information

1. Failed to ensure the corrosion protection system was operated and maintained in a manner that will ensure corrosion protection is continuously provided to the UST system [TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(a)(2)].
2. Failed to conduct effective inventory control procedures for the UST system [30 TEX. ADMIN. CODE §§ 334.48(c) and 334.50(d)(1)(B)].
3. Failed to identify and designate for the UST system at least one named individual for each class of operator – Class A, Class B, and Class C [30 TEX. ADMIN. CODE § 334.602(a)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

1. Repaired and tested the corrosion protection system, with passing results, on April 29, 2015.
2. Implemented proper inventory control procedures on June 30, 2015.

Technical Requirements:

The Facility's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements of this Order, including payment of the administrative penalty in full.

1. Immediately cease accepting fuel at the Facility until such time as a valid delivery certificate is obtained from the TCEQ.
2. Within 10 days, send the Facility's UST fuel delivery certificate to the TCEQ.
3. Within 15 days, submit written certification to demonstrate compliance with Technical Requirements Nos. 1 and 2.
4. Within 30 days, obtain the required operator training and designate a Class A, Class B, and Class C operator.
5. Within 45 days, submit written certification to demonstrate compliance with Technical Requirement No. 4.
6. 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.

Litigation Information

Date Petition(s) Filed: January 15, 2016
Date Green Card(s) Signed: January 19, 2016
Date Answer(s) Filed: N/A

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE No. 50604
Devine Convenience LLC d/b/a Super Mart
RN101856219
Docket No. 2015-0803-PST-E

Page 3 of 3

Contact Information

TCEQ Attorneys: Meaghan M. Bailey, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Rudy Calderon, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Rebecca Boyett, Enforcement Division, (512) 239-1203

TCEQ Regional Contact: Cameron Lopez, San Antonio Regional Office, (210) 490-3096

Respondent Contact: Nahida Hussain, Director, Devine Convenience LLC, 500 West Hondo Avenue, Devine, Texas 78016

Respondent's Attorney: N/A

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Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

| | | | | |
|--------------|-----------------|-------------|------------------|-------------|
| DATES | Assigned | 18-May-2015 | | |
| | PCW | 14-Jan-2016 | Screening | 27-May-2015 |
| | | | EPA Due | |

| | |
|--|---------------------------------------|
| RESPONDENT/FACILITY INFORMATION | |
| Respondent | Devine Convenience LLC dba Super Mart |
| Reg. Ent. Ref. No. | RN101856219 |
| Facility/Site Region | 13-San Antonio |
| Major/Minor Source | Minor |

| | | | |
|--|------------------------|------------------------------|--------------------|
| CASE INFORMATION | | | |
| Enf./Case ID No. | 50604 | No. of Violations | 3 |
| Docket No. | 2015-0803-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 | \$8,750 |
|---|-------------------|---------|

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% Reduction | Subtotals 2, 3, & 7 | -\$875 |
|---------------------------|------------------|--------------------------------|--------|

Notes: Reduction for High Performer classification.

| | | | | |
|--------------------|----|------------------|-------------------|-----|
| 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: \$52
 Estimated Cost of Compliance: \$6,340
 *Capped at the Total EB \$ Amount

| | | |
|-----------------------------|-----------------------|---------|
| SUM OF SUBTOTALS 1-7 | Final Subtotal | \$7,875 |
|-----------------------------|-----------------------|---------|

| | | | |
|---|-------|-------------------|-------|
| OTHER FACTORS AS JUSTICE MAY REQUIRE | 11.1% | Adjustment | \$875 |
|---|-------|-------------------|-------|

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended adjustment to offset High Performer reduction.

| | |
|-----------------------------|---------|
| Final Penalty Amount | \$8,750 |
|-----------------------------|---------|

| | | |
|-----------------------------------|-------------------------------|---------|
| STATUTORY LIMIT ADJUSTMENT | Final Assessed Penalty | \$8,750 |
|-----------------------------------|-------------------------------|---------|

| | | | |
|-----------------|----------------|-------------------|-----|
| DEFERRAL | 0.0% Reduction | Adjustment | \$0 |
|-----------------|----------------|-------------------|-----|

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.

| | |
|------------------------|---------|
| PAYABLE PENALTY | \$8,750 |
|------------------------|---------|

Screening Date 27-May-2015

Docket No. 2015-0803-PST-E

PCW

Respondent Devine Convenience LLC dba Super Mart

Policy Revision 4 (April 2014)

Case ID No. 50604

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101856219

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>) | 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% |
| <i>Please Enter Yes or No</i> | | | |
| Other | Environmental management systems in place for one year or more | No | 0% |
| | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program | No | 0% |
| | Participation in a voluntary pollution reduction program | No | 0% |
| | Early compliance with, or offer of a product that meets future state or federal government environmental requirements | No | 0% |

Adjustment Percentage (Subtotal 2)

>> **Repeat Violator (Subtotal 3)**

Adjustment Percentage (Subtotal 3)

>> **Compliance History Person Classification (Subtotal 7)**

Adjustment Percentage (Subtotal 7)

>> **Compliance History Summary**

Compliance History Notes

Reduction for High Performer classification.

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

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100%

Screening Date 27-May-2015 **Docket No.** 2015-0803-PST-E **PCW**
Respondent Devine Convenience LLC dba Super Mart *Policy Revision 4 (April 2014)*
Case ID No. 50604 *PCW Revision March 26, 2014*
Reg. Ent. Reference No. RN101856219
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Rebecca Boyett

Violation Number

Rule Cite(s)

30 Tex. Admin. Code § 334.49(a)(2) and Tex. Water Code § 26.3475(d)

Violation Description

Failed to ensure the corrosion protection ("CP") system was operated and maintained in a manner that will ensure CP is continuously provided to the underground storage tank ("UST") system. Specifically, the UST system's rectifier was nonfunctioning on March 25, 2015, and the CP test conducted on April 3, 2015 had failing results.

Base Penalty

>> Environmental, Property and Human Health Matrix

| OR | Release | Harm | | | Percent |
|----|-----------|--------------------------------|----------------------|----------------------|------------------------------------|
| | | Major | Moderate | Minor | |
| | Actual | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text" value="15.0%"/> |
| | Potential | <input type="text" value="x"/> | <input type="text"/> | <input type="text"/> | |

>> Programmatic Matrix

| | Falsification | Major | Moderate | Minor | Percent |
|--|----------------------|----------------------|----------------------|----------------------|-----------------------------------|
| | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text" value="0.0%"/> |

Matrix Notes
 Human health or the environment will or could be exposed to pollutants that would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

| | |
|--------------|--------------------------------|
| daily | <input type="text"/> |
| weekly | <input type="text"/> |
| monthly | <input type="text"/> |
| quarterly | <input type="text" value="x"/> |
| semiannual | <input type="text"/> |
| annual | <input type="text"/> |
| single event | <input type="text"/> |

Violation Base Penalty

One quarterly event is recommended from the March 25, 2015 investigation to the April 29, 2015 compliance date.

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 type="text" value="x"/> | (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 Devine Convenience LLC dba Super Mart
Case ID No. 50604
Reg. Ent. Reference No. RN101856219
Media Violation No. 1
Media Petroleum Storage Tank

| 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 | \$5,690 | 25-Mar-2015 | 29-Apr-2015 | 0.10 | \$2 | \$36 | \$38 |
| 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 repair and test the corrosion protection system. The Date Required is the investigation date and the Final Date is the 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] | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Approx. Cost of Compliance \$5,690 **TOTAL** \$38

Screening Date 27-May-2015

Docket No. 2015-0803-PST-E

PCW

Respondent Devine Convenience LLC dba Super Mart

Case ID No. 50604

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101856219

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rebecca Boyett

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code §§ 334.48(c) and 334.50(d)(1)(B)

Violation Description

Failed to conduct effective inventory control procedures for the 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 | Major | Moderate | Minor |
|---------------|-------|----------|-------|
| | | | |

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants that 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

63 Number of violation days

mark only one with an x

| | |
|--------------|---|
| daily | |
| weekly | |
| monthly | |
| quarterly | x |
| semiannual | |
| annual | |
| single event | |

Violation Base Penalty \$3,750

One quarterly event is recommended from the March 25, 2015 investigation to the May 27, 2015 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 w th 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 \$7

Violation Final Penalty Total \$3,750

This violation Final Assessed Penalty (adjusted for limits) \$3,750

Economic Benefit Worksheet

Respondent Devine Convenience LLC dba Super Mart
Case ID No. 50604
Reg. Ent. Reference No. RN101856219
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 | \$500 | 25-Mar-2015 | 30-Jun-2015 | 0.27 | \$7 | n/a | \$7 |
| 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 conduct proper inventory control procedures. The Date Required is the investigation date and the Final Date is the 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] | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$7

Screening Date 27-May-2015

Docket No. 2015-0803-PST-E

PCW

Respondent Devine Convenience LLC dba Super Mart

Case ID No. 50604

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101856219

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rebecca Boyett

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 334.602(a)

Violation Description

Failed to identify and designate for the UST facility at least one named individual for each class of operator - Class A, Class B, and Class C.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

| Release | Harm | | |
|-----------|-------|----------|-------|
| | Major | Moderate | Minor |
| Actual | | | |
| Potential | | x | |

Percent 5.0%

>> Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---------------|-------|----------|-------|
| | | | |

Percent 0.0%

Matrix Notes

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

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

63 Number of violation days

| | |
|--------------|---|
| daily | |
| weekly | |
| monthly | |
| quarterly | x |
| semiannual | |
| annual | |
| single event | |

mark only one with an x

Violation Base Penalty \$1,250

One quarterly event is recommended from the March 25, 2015 investigation to the May 27, 2015 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 w th x) |

Notes

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

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$7

Violation Final Penalty Total \$1,250

This violation Final Assessed Penalty (adjusted for limits) \$1,250

Economic Benefit Worksheet

Respondent Devine Convenience LLC dba Super Mart
Case ID No. 50604
Reg. Ent. Reference No. RN101856219
Media Violation No. 3
Media Violation No. 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 | \$150 | 25-Mar-2015 | 18-Feb-2016 | 0.90 | \$7 | n/a | \$7 |
| 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 obtain the required operator training and designate a Class A, Class B, and Class C operator. 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 \$150

TOTAL \$7

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 CN604809483, RN101856219, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

Customer, Respondent, or Owner/Operator: CN604809483, Devine Convenience LLC **Classification:** HIGH **Rating:** 0.00
Regulated Entity: RN101856219, Super Mart **Classification:** HIGH **Rating:** 0.00
Complexity Points: 2 **Repeat Violator:** NO
CH Group: 14 - Other
Location: 500 West Hondo Avenue, Devine, Texas 78016-2802, Medina County
TCEQ Region: REGION 13 - SAN ANTONIO
ID Number(s): **PETROLEUM STORAGE TANK REGISTRATION** REGISTRATION 5764
Compliance History Period: September 01, 2009 to August 31, 2014 **Rating Year:** 2014 **Rating Date:** 09/01/2014
Date Compliance History Report Prepared: June 12, 2015
Agency Decision Requiring Compliance History: Enforcement
Component Period Selected: May 27, 2010 to May 27, 2015
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? YES
- 3) If YES for #2, who is the current owner/operator?
DEVINE CONVENIENCE LLC OPERATOR since 7/1/2014
PHILLIPS PETROLEUM CO OWNER since 1/1/1800
HUSSAIN, NAHIDA OWNER OPERATOR since 6/30/2014
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? SHEN SHEYAR INVESTMENT INC, OWNER OPERATOR, 4/1/2002 to 6/29/2014
- 5) If YES, when did the change(s) in owner or operator occur? 6/30/2014

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 17, 2012 (996798)

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
DEVINE CONVENIENCE LLC
DBA SUPER MART;
RN101856219**

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2015-0803-PST-E

On _____, 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 respondent, and revocation of the facility's fuel delivery certificate. The respondent made the subject of this Order is Devine Convenience LLC d/b/a Super Mart ("Respondent").

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

FINDINGS OF FACT

1. Respondent operates, as defined in 30 TEX. ADMIN. CODE § 334.2(70), an Underground Storage Tank ("UST") system and a convenience store with retail sales of gasoline located at 500 West Hondo Avenue in Devine, Medina County, Texas (Facility ID No. 5764) (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 or contained a regulated petroleum substance as defined in the rules of the TCEQ.
2. During an investigation conducted from March 25, 2015 through May 14, 2015, an investigator documented that Respondent:
 - a. Failed to ensure the corrosion protection system was operated and maintained in a manner that will ensure corrosion protection is continuously provided to the UST system. Specifically, the UST system's rectifier was nonfunctioning on March 25, 2015, and the corrosion protection test conducted on April 3, 2015 had failing results;
 - b. Failed to conduct effective inventory control procedures for the UST system; and
 - c. Failed to identify and designate for the UST system at least one named individual for each class of operator – Class A, Class B, and Class C.
3. The Executive Director recognizes that Respondent implemented the following corrective measures at the Facility:
 - a. Repaired and tested the corrosion protection system and received a passing result on April 29, 2015; and
 - b. Implemented proper inventory control procedures on June 30, 2015.

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 Devine Convenience LLC d/b/a Super Mart" (the "EDPRP") in the TCEQ Chief Clerk's office on January 15, 2016 .
5. By letter dated January 15, 2016, 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 cards," Respondent received notice of the EDPRP on January 19, 2016, as evidenced by the signatures on the cards.
6. 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.a., Respondent failed to ensure the corrosion protection system was operated and maintained in a manner that will ensure corrosion protection is continuously provided to the UST system, in violation of TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(a)(2).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to conduct effective inventory control procedures for the UST system, in violation of 30 TEX. ADMIN. CODE §§ 334.48(c) and 334.50(d)(1)(B).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to identify and designate for the UST system at least one named individual for each class of operator – Class A, Class B, and Class C, in violation of 30 TEX. ADMIN. CODE § 334.602(a).
5. As evidenced by Findings of Fact Nos. 4 and 5, 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).
6. As evidenced by Finding of Fact No. 6, 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.
7. 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.
8. An administrative penalty in the amount of eight thousand seven hundred fifty dollars (\$8,750.00) 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. 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 eight thousand seven hundred fifty dollars (\$8,750.00) for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondent's compliance with all the requirements set forth in this Order resolve only 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 violations which are not raised here.
2. The 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 TCEQ and shall be sent with the notation "Re: Devine Convenience LLC d/b/a Super Mart; Docket No. 2015-0803-PST-E" to:

Financial Administration Division, Revenue Operations Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088
3. The Facility's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements of this Order, including payment of the administrative penalty in full.
4. Immediately upon the effective date of this Order, Respondent 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.
5. Within 10 days after the effective date of this Order, Respondent 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
6. Within 15 days after the effective date of this Order, Respondent shall submit written certification in accordance with Ordering Provision No. 7.c., below, to demonstrate compliance with Ordering Provisions Nos. 4 and 5.
7. Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order, obtain the required operator training and designate a Class A, Class B, and Class C operator, in accordance with 30 TEX. ADMIN. CODE § 334.602.
 - b. Within 45 days after the effective date of this Order, submit written certification in accordance with Ordering Provision No. 7.c., below, to demonstrate compliance with Ordering Provision No. 7.a.
 - c. The certifications required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by Respondent, 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."

The written certification and supporting documentation necessary to demonstrate compliance with these Ordering Provisions shall be sent to:

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

and:

Waste Section Manager
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Rd
San Antonio TX 78233-4480

8. Upon obtaining a new fuel delivery certificate, Respondent 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).
9. All relief not expressly granted in this Order is denied.
10. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
11. 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. Extension requests shall be sent to the Order Compliance Team at the address listed above.
12. 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.
13. 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.
14. 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.

15. The Chief Clerk shall provide a copy of this fully executed 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

Date

AFFIDAVIT OF MEAGHAN M. BAILEY

STATE OF TEXAS

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COUNTY OF TRAVIS

"My name is Meaghan M. Bailey. 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 Devine Convenience LLC d/b/a Super Mart" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on January 15, 2016.

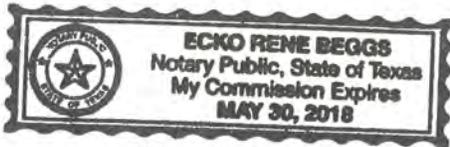
The EDPRP was mailed to Respondent's last known address on January 15, 2016, via certified mail, return receipt requested, postage prepaid. According to the return receipt "green cards," Respondent received notice of the EDPRP on January 19, 2016, as evidenced by the signatures on the cards.

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."

Meaghan M. Bailey, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Meaghan M. Bailey, 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.

Subscribed and sworn to before me on this 3rd day of May, A.D. 2016.



Notary without Bond

Notary Public, State of Texas