

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 51379
MIDWAY AUTOMOTIVE, INC.
RN101783181
Docket No. 2015-1526-PST-E

Order Type:

Agreed Order

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

6737 United States Highway 181 North, Floresville, Wilson County

Type of Operation:

inactive underground storage tank ("UST") system and an automotive repair shop

Other Significant Matters:

Additional Pending Enforcement Actions: None
Past-Due Penalties: None
Past-Due Fees: \$4,109.98 (UST Acct. No. 0019822U; returned uncollected)
Other: None
Interested Third-Parties: None

Texas Register Publication Date: July 29, 2016

Comments Received: None

Penalty Information

Total Penalty Assessed: \$8,500

Total Paid to General Revenue: \$240

Total Due to General Revenue: \$8,260

Payment Plan: 35 payments of \$236 each

Compliance History Classifications:

Person/CN – Unclassified
Site/RN – Unclassified

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2002 (PCW 1); April 2014 (PCW 2)

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: July 24, 2009; June 3, 2015
Date(s) of NOV(s): N/A
Date(s) of NOE(s): September 17, 2015

Violation Information

1. Failed to notify the agency of any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)].
2. Failed to provide corrosion protection for the UST system [TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(a)(1)].
3. Failed to designate, train, and certify at least one named individual for each class of operator - Class A, Class B, and Class C - for the Facility [30 TEX. ADMIN. CODE § 334.602(a)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:
None

Technical Requirements:

1. Within 60 days, either:
 - a. Designate, train, and certify at least one individual for each class of operator - Class A, Class B, and Class C - for the Facility; and
 - b. Install and test a corrosion protection system for the UST system at the Facility; or
 - c. Permanently remove the UST system from service, which includes the following actions:
 - i. Providing a Construction Notification to the TCEQ at least 30 days prior to any removal activities; and
 - ii. Employing a Licensed Underground Storage Tank Contractor to perform all removal activities, including:
 - A. Removing the USTs from the ground, abandoning the USTs in-place, or conducting a permanent change-in-service;
 - B. Emptying the USTs of all regulated substances and accumulated sludges or residues and purging the USTs of all residual vapors;
 - C. Handling, transporting, and properly disposing of the empty USTs, the regulated substances removed from the UST system, and any contaminated soils, backfill material, groundwater, wash water or other similar materials removed from the UST system or Facility; and
 - D. Determining whether or not there has been a release of regulated substance from the UST system, performance of a comprehensive site assessment, reporting confirmed or suspected releases to the TCEQ, preparing a detailed written record of the release determination, and compliance with all applicable corrective action requirements.
2. Within 75 days, submit an amended registration to indicate the current operational status of the USTs.
3. Within 90 days, submit written certification to demonstrate compliance.

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 51379
MIDWAY AUTOMOTIVE, INC.
RN101783181
Docket No. 2015-1526-PST-E

Litigation Information

Date Petition(s) Filed: March 4, 2016

Settlement Date: July 8, 2016

Contact Information

TCEQ Attorneys: Amanda Patel, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Rudy Calderon, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Abigail Lindsey, Enforcement Division, (512) 239-2576

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

Respondent Contact: Gene Walls, President, MIDWAY AUTOMOTIVE, INC., 6737 United States Highway 181 North, Floresville, Texas 78114

Respondent's Attorney: N/A

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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	21-Sep-2015		
	PCW	7-Jan-2016	Screening	25-Sep-2015
			EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	MIDWAY AUTOMOTIVE, INC.		
Reg. Ent. Ref. No.	RN101783181		
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	51379	No. of Violations	2
Docket No.	2015-1526-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Abigail Lindsey
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$6,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **0.0%** Adjustment **Subtotals 2, 3, & 7** **\$0**

Notes: No adjustment for compliance history.

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: \$2,916
 Estimated Cost of Compliance: \$6,100
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$6,000**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0.0%** Adjustment **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$6,000**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$6,000**

DEFERRAL 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 **\$6,000**

Screening Date 25-Sep-2015	Docket No. 2015-1526-PST-E	PCW
Respondent MIDWAY AUTOMOTIVE, INC.	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 51379	<i>PCW Revision October 30, 2008</i>	
Reg. Ent. Reference No. RN101783181		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Abigail Lindsey		

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%

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) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Unclassified

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

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

Screening Date 25-Sep-2015	Docket No. 2015-1526-PST-E	PCW
Respondent MIDWAY AUTOMOTIVE, INC.		<i>Policy Revision 2 (September 2002)</i>
Case ID No. 51379		<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No. RN101783181		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Abigail Lindsey		

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

		Harm			
		Major	Moderate	Minor	
OR	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	x	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10%"/>

Matrix Notes

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"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	x

Violation Base Penalty

Good Faith Efforts to Comply

Reduction

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

Notes

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 MIDWAY AUTOMOTIVE, INC.
Case ID No. 51379
Reg. Ent. Reference No. RN101783181
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)	\$100	24-Jul-2009	1-Jun-2016	6.86	\$34	n/a	\$34

Notes for DELAYED costs

Estimated cost to accurately prepare and submit an updated UST registration. The date required is the initial 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

\$100

TOTAL

\$34

Screening Date	25-Sep-2015	Docket No.	2015-1526-PST-E	PCW
Respondent	MIDWAY AUTOMOTIVE, INC.	Policy Revision 2 (September 2002)		
Case ID No.	51379	PCW Revision October 30, 2008		
Reg. Ent. Reference No.	RN101783181			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Abigail Lindsey			
Violation Number	2			
Rule Cite(s)	30 Tex. Admin. Code § 334.49(a)(1) and Tex. Water Code § 26.3475(d)			
Violation Description	Failed to provide corrosion protection for the UST system.			
Base Penalty				\$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			
	Release	Major	Moderate	Minor
	Actual			
	Potential	x		
				Percent 25%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
					Percent 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 \$7,500

\$2,500

Violation Events

Number of Violation Events: 2 114 Number of violation days

<i>mark only one with an x</i>	daily	
	weekly	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$5,000

Two quarterly events are recommended from the June 3, 2015 investigation date to the date of screening on September 25, 2015.

Good Faith Efforts to Comply **0.0%** Reduction \$0

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

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

Violation Subtotal \$5,000

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount \$2,881 Violation Final Penalty Total \$5,000

This violation Final Assessed Penalty (adjusted for limits) \$5,000

Economic Benefit Worksheet

Respondent MIDWAY AUTOMOTIVE, INC.
Case ID No. 51379
Reg. Ent. Reference No. RN101783181
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	\$6,000	24-Jul-2009	1-Jun-2016	6.86	\$137	\$2,744	\$2,881
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to install and test a corrosion protection system for the UST system at the Facility. The date required is the initial investigation date and the final date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$6,000

TOTAL

\$2,881



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	21-Sep-2015	Screening	25-Sep-2015	EPA Due	
	PCW	7-Jan-2016				

RESPONDENT/FACILITY INFORMATION

Respondent	MIDWAY AUTOMOTIVE, INC.		
Reg. Ent. Ref. No.	RN101783181		
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	51379	No. of Violations	1
Docket No.	2015-1526-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Abigail Lindsey
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$2,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **0.0%** Adjustment **Subtotals 2, 3, & 7** **\$0**

Notes No adjustment for compliance history.

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 **\$7**
 Estimated Cost of Compliance **\$150**
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$2,500**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0.0%** Adjustment **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$2,500**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$2,500**

DEFERRAL 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 **\$2,500**

Screening Date	25-Sep-2015	Docket No.	2015-1526-PST-E	PCW
Respondent	MIDWAY AUTOMOTIVE, INC.			<i>Policy Revision 4 (April 2014)</i>
Case ID No.	51379			<i>PCW Revision March 26, 2014</i>
Reg. Ent. Reference No.	RN101783181			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Abigail Lindsey			

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

No adjustment for compliance history.

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

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100%

Screening Date	25-Sep-2015	Docket No.	2015-1526-PST-E	PCW
Respondent	MIDWAY AUTOMOTIVE, INC.			<i>Policy Revision 4 (April 2014)</i>
Case ID No.	51379			<i>PCW Revision March 26, 2014</i>
Reg. Ent. Reference No.	RN101783181			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Abigail Lindsey			
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 334.602(a)			
Violation Description	Failed to designate, train, and certify at least one named individual for each class of operator - Class A, Class B, and Class C for the Facility.			
		Base Penalty	\$25,000	

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			
		Major	Moderate	Minor	
	Actual				
	Potential		x		Percent 5.0%
>> Programmatic Matrix					
	Falsification	Major	Moderate	Minor	
					Percent 0.0%
Matrix Notes	Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.				
				Adjustment	\$23,750

\$1,250

Violation Events

Number of Violation Events	2	114	Number of violation days	
<i>mark only one with an x</i>	daily			
	weekly			
	monthly			
	quarterly	x		Violation Base Penalty \$2,500
	semiannual			
	annual			
single event				
Two quarterly events are recommended from the June 3, 2015 investigation date to the date of screening on September 25, 2015.				

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	\$2,500

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount \$7	Violation Final Penalty Total \$2,500
This violation Final Assessed Penalty (adjusted for limits) \$2,500	

Economic Benefit Worksheet

Respondent MIDWAY AUTOMOTIVE, INC.
Case ID No. 51379
Reg. Ent. Reference No. RN101783181
Media Violation No. Petroleum Storage Tank
 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	\$150	3-Jun-2015	1-Jun-2016	1.00	\$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 designate, train, and certify one individual for each class of 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

PENDING Compliance History Report for CN604925024, RN101783181, Rating Year 2015 which includes Compliance History (CH) components from September 1, 2010, through August 31, 2015.

Customer, Respondent, or Owner/Operator: CN604925024, MIDWAY AUTOMOTIVE, INC. **Classification:** UNCLASSIFIED **Rating:** -----

Regulated Entity: RN101783181, MIDWAY AUTOMOTIVE & WELDING **Classification:** UNCLASSIFIED **Rating:** -----

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

CH Group: 14 - Other

Location: 6737 US HIGHWAY 181 N FLORESVILLE, TX 78114-6252, WILSON COUNTY

TCEQ Region: REGION 13 - SAN ANTONIO

ID Number(s): **PETROLEUM STORAGE TANK REGISTRATION** REGISTRATION 42871

Compliance History Period: September 01, 2010 to August 31, 2015 **Rating Year:** 2015 **Rating Date:** 09/01/2015

Date Compliance History Report Prepared: October 08, 2015

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: October 08, 2010 to October 08, 2015

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

Name: Abigail Lindsey

Phone: (512) 239-2576

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If **YES** for #2, who is the current owner/operator? N/A
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If **YES**, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

N/A

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
MIDWAY AUTOMOTIVE, INC.;
RN101783181**

**§
§
§
§
§**

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2015-1526-PST-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding MIDWAY AUTOMOTIVE, INC. ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, together stipulate that:

1. Respondent owns and operates, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), an underground storage tank ("UST") system and an automotive repair shop located at 6737 United States Highway 181 North in Floresville, Wilson County, Texas (Facility ID No. 42871) (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. The Executive Director and Respondent agree that TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, and 7.073, and that Respondent is subject to TCEQ's jurisdiction. The TCEQ has jurisdiction in this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and the rules of the TCEQ.
3. The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of eight thousand five hundred dollars (\$8,500.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid two hundred forty dollars (\$240.00) of the penalty. The remaining amount of eight thousand two hundred sixty dollars (\$8,260.00) shall be paid in thirty-five (35) monthly payments of two hundred thirty-six dollars (\$236.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until the penalty is paid in full. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Order, including the payment schedule, the Executive Director may accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Respondent's failure to meet the payment schedule of this Order and/or the acceleration of any remaining balance constitutes the failure by Respondent to timely and satisfactorily comply with all the terms of this Order.

5. The Executive Director and Respondent agree on a settlement of the matters addressed in this Order, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a). 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.
6. 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 Respondent has not complied with one or more of the terms or conditions contained in this Order.
7. This Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
8. This Order shall terminate five years from its effective date or upon full compliance with all the terms and conditions set forth in this Order, whichever is later.

II. ALLEGATIONS

1. During investigations conducted on July 24, 2009 and June 3, 2015, an investigator documented that Respondent:
 - a. Failed to notify the agency of any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3). Specifically, the registration was not updated to reflect the current operational status of the USTs; and
 - b. Failed to provide corrosion protection for the UST system, in violation of TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(a)(1).
2. During an investigation conducted on June 3, 2015, an investigator documented that Respondent failed to designate, train, and certify at least one named individual for each class of operator – Class A, Class B, and Class C - for the Facility, in violation of 30 TEX. ADMIN. CODE § 334.602(a).

III. DENIALS

Respondent generally denies each Allegation in Section II.

IV. ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty as set forth in Section I, Paragraph 4. The payment of this penalty and Respondent's compliance with all of the requirements set forth in this Order resolve only the Allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations which are not raised here. Penalty payments shall be made payable to TCEQ and shall be sent with the notation "Re: MIDWAY AUTOMOTIVE, INC., Docket No. 2015-1526-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

2. Respondent shall undertake the following technical requirements:
 - a. Within 60 days after the effective date of this Order:
 - i. Designate, train, and certify at least one individual for each class of operator - Class A, Class B, and Class C - for the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.602; and
 - ii. Install and test a corrosion protection system for the UST system at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.49; or
 - b. In lieu of Ordering Provision No. 2.a., within 60 days after the effective date of this Order, permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55, which includes the following actions:
 - i. Providing a Construction Notification to the TCEQ at least 30 days prior to any removal activities; and
 - ii. Employing a Licensed Underground Storage Tank Contractor to perform all removal activities, including:
 - A. Removing the USTs from the ground, abandoning the USTs in-place, or conducting a permanent change-in-service;
 - B. Emptying the USTs of all regulated substances and accumulated sludges or residues and purging the USTs of all residual vapors;
 - C. Handling, transporting, and properly disposing of the empty USTs, the regulated substances removed from the UST system, and any contaminated soils, backfill material, groundwater, wash water or other similar materials removed from the UST system or Facility; and
 - D. Determining whether or not there has been a release of regulated substance from the UST system, performance of a comprehensive site assessment, reporting confirmed or suspected releases to the TCEQ, preparing a detailed written record of the release determination, and compliance with all applicable corrective action requirements.
 - c. Within 75 days after the effective date of this Order, submit an amended registration to indicate the current operational status of the USTs, in accordance with 30 TEX. ADMIN. CODE § 334.7, to:

Registration and Reporting Section
Permitting and Registration Support Division, MC 129
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
 - d. Within 90 days after the effective date of this Order, submit written certification to demonstrate compliance with either Ordering Provision No. 2.a. or 2.b. as applicable, and Ordering Provision No. 2.c. The certification 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
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

and:

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

3. All relief not expressly granted in this Order is denied.
4. The duties and provisions imposed by 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.
5. 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.
6. 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.
7. This Order, issued by the Commission, shall not be admissible against Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Order, or (2) pursue violations of a statute within TCEQ's jurisdiction or of a rule adopted or an order or permit issued by the TCEQ under such a statute.
8. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this 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 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.

9. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

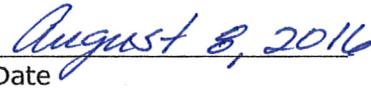
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date



For the Executive Director



Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, 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.

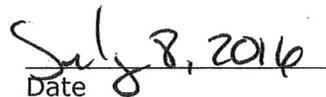
I also understand that failure to comply with the Ordering Provisions in this Order and/or failure to timely pay the penalty amount may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.



Signature - Gene Walls, President
MIDWAY AUTOMOTIVE, INC.
6737 United States Highway 181 North
Floresville, Texas 78114



Date

If mailing address has changed, please check this box and provide the new address below:
