

Dry Creek Shell LLC
RN102399383
Docket No. 2016-0094-PST-E

Order Type:

Default Order

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

3800 Dry Creek Drive, Austin, Travis 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: September 9, 2016**Comments Received:** None**Penalty Information****Total Penalty Assessed:** \$13,552**Total Paid to General Revenue:** \$0**Total Due to General Revenue:** \$13,552**Compliance History Classifications:**

Person/CN – High
Site/RN – High

Major Source: Yes**Statutory Limit Adjustment:** None**Applicable Penalty Policy:** April 2014

**Dry Creek Shell LLC
RN102399383
Docket No. 2016-0094-PST-E**

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: November 13, 2015
Date(s) of NOV(s): N/A
Date(s) of NOE(s): January 13, 2016

Violation Information

1. Failed to control displaced vapors by a vapor control or a vapor balance system during the transfer of gasoline from a tank-truck into the UST system at the Station [TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.221].
2. Failed to comply with annual Stage I vapor recovery testing requirements [TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.225].
3. Failed to equip each tank with overfill prevention equipment [TEX. WATER CODE § 26.3475(c)(2) and 30 TEX. ADMIN. CODE § 334.51(b)(2)(C)].
4. Failed to designate, train, and certify at least one individual for each class of operator—Class A, Class B, and Class C—for the Station [30 TEX. ADMIN. CODE § 334.602(a)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

1. Successfully conducted the annual testing of the Stage I equipment on January 11, 2016.
2. Installed overfill prevention equipment on the super unleaded UST on January 21, 2016.
3. Completed the required Class A, Class B, and Class C operator training on January 10, 2016.

Technical Requirements:

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

1. Immediately cease accepting fuel at the Station until such time as a valid delivery certificate is obtained from the TCEQ.
2. Within 10 days, send the Station's UST fuel delivery certificate to the TCEQ.
3. Within 30 days, install a vapor recovery adaptor on the regular and super unleaded USTs.
4. Upon obtaining a new fuel delivery certificate, post the fuel delivery certificate in a location at the Station where the delivery certificate is clearly visible at all times.
5. Submit written certification to demonstrate compliance:
 - a. Within 15 days for Technical Requirements Nos. 1 and 2;
 - b. Within 45 days for Technical Requirement No. 3; and
 - c. Within 15 days for Technical Requirement No. 4.

Litigation Information

Date Petition(s) Filed: June 21, 2016
Date Green Card(s) Signed: June 24, 2016
Date Answer(s) Filed: N/A

Dry Creek Shell LLC

RN102399383

Docket No. 2016-0094-PST-E

Contact Information

TCEQ Attorneys: Isaac Ta, Litigation Division, (512) 239-3400
Ryan Rutledge, Litigation Division, (512) 239-3400
Rudy Calderon, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Jonathan Nguyen, Enforcement Division, (512) 239-1661

TCEQ Regional Contact: David Mann, Austin Regional Office, (512) 339-2929

Respondent Contact: Mohammad Amer Massood, Manager, 2904 Feathercrest Drive, Austin, Texas 78728; Vasu Mekala, Manager, 8302 Fern Bluff Drive, Round Rock, Texas 78681

Respondent's Attorney: William C. Dufour, 3301 Northland Drive, Suite 213, Austin, Texas 78731



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	20-Jan-2016		
	PCW	16-May-2016	Screening	21-Jan-2016
			EPA Due	

RESPONDENT/FACILITY INFORMATION	
Respondent	Dry Creek Shell LLC
Reg. Ent. Ref. No.	RN102399383
Facility/Site Region	11-Austin
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	51769	No. of Violations	4
Docket No.	2016-0094-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Jonathan Nguyen
		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	\$13,000
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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	-10.0%	Adjustment	Subtotals 2, 3, & 7	-\$1,300
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Notes: Reduction for High Performer classification.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0%	Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$580
 Estimated Cost of Compliance: \$2,050
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$11,700
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OTHER FACTORS AS JUSTICE MAY REQUIRE	15.8%	Adjustment	\$1,852
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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 no. 2 (\$552) and to offset High Performer classification (\$1,300).

Final Penalty Amount	\$13,552
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$13,552
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$13,552
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Screening Date 21-Jan-2016

Docket No. 2016-0094-PST-E

PCW

Respondent Dry Creek Shell LLC

Policy Revision 4 (April 2014)

Case ID No. 51769

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102399383

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jonathan Nguyen

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) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Reduction for High Performer classification.

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

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% -10%

Screening Date 21-Jan-2016
Respondent Dry Creek Shell LLC
Case ID No. 51769
Reg. Ent. Reference No. RN102399383
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Jonathan Nguyen

Docket No. 2016-0094-PST-E

PCW

Policy Revision 4 (April 2014)
PCW Revision March 26, 2014

Violation Number

Rule Cite(s)

30 Tex. Admin. Code § 115.221 and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to control displaced vapors by a vapor control or a vapor balance system during the transfer of gasoline from a tank-truck into the underground storage tank ("UST") system at the Station. Specifically, the regular unleaded and super unleaded USTs were not equipped with vapor recovery adaptors.

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 checked="" type="text" value="x"/>

Percent

>> Programmatic Matrix

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

Percent

Matrix Notes

Human health or the environment will or could be exposed to insignificant amounts of pollutants that would not 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

<i>mark only one with an x</i>	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	<input checked="" type="text" value="x"/>

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="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 Dry Creek Shell LLC
Case ID No. 51769
Reg. Ent. Reference No. RN102399383
Media Violation No. 1
Media 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	\$200	13-Nov-2015	16-Oct-2016	0.93	\$1	\$12	\$13
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to install a vapor recovery adaptor on the regular and super unleaded USTs. The Date Required is the investigation date. The Final Date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance \$200

TOTAL \$13

Screening Date 21-Jan-2016
Respondent Dry Creek Shell LLC
Case ID No. 51769
Reg. Ent. Reference No. RN102399383
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Jonathan Nguyen

Docket No. 2016-0094-PST-E

PCW

Policy Revision 4 (April 2014)
PCW Revision March 26, 2014

Violation Number

Rule Cite(s)

Violation Description

Failed to comply with annual Stage I vapor recovery testing requirements. Specifically, the annual testing of the Stage I equipment was not conducted.

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 checked="" type="text" value="x"/>	<input type="text"/>

Percent

>> Programmatic Matrix

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

Percent

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

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 checked="" type="text" value="x"/>
single event	<input type="text"/>

Violation Base Penalty

One annual event is recommended for the period proceeding the investigation date of November 13, 2015.

Good Faith Efforts to Comply

Reduction

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" 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 Dry Creek Shell LLC
Case ID No. 51769
Reg. Ent. Reference No. RN102399383
Media Violation No. Petroleum Storage Tank
 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				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]	\$500	13-Nov-2014	11-Jan-2016	2.08	\$52	\$500	\$552
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct the annual testing of the Stage I equipment. The Date Required is one year prior to the investigation date. The Final Date is the date of compliance.

Approx. Cost of Compliance \$500

TOTAL \$552

Screening Date 21-Jan-2016
Respondent Dry Creek Shell LLC
Case ID No. 51769
Reg. Ent. Reference No. RN102399383
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Jonathan Nguyen

Docket No. 2016-0094-PST-E

PCW

Policy Revision 4 (April 2014)
PCW Revision March 26, 2014

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.51(b)(2)(C) and Tex. Water Code § 26.3475(c)(2)

Violation Description Failed to equip each tank with overfill prevention equipment. Specifically, overfill prevention equipment was not installed on the super unleaded UST.

Base Penalty \$25,000

>> **Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				15.0%
	Potential		x		

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
					0.0%

Matrix Notes

Human health or the environment will or could be exposed to 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 \$21,250

\$3,750

Violation Events

Number of Violation Events 1 69 Number of violation days

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

Violation Base Penalty \$3,750

One quarterly event is recommended based on documentation of the violation during the November 13, 2015 investigation to the January 21, 2016 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 \$14

Violation Final Penalty Total \$3,909

This violation Final Assessed Penalty (adjusted for limits) \$3,909

Economic Benefit Worksheet

Respondent Dry Creek Shell LLC
Case ID No. 51769
Reg. Ent. Reference No. RN102399383
Media Violation No. 3
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	\$1,200	13-Nov-2015	12-Jan-2016	0.16	\$1	\$13	\$14
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 overfill prevention equipment. The Date Required is the investigation date. 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

\$1,200

TOTAL

\$14

Screening Date 21-Jan-2016
Respondent Dry Creek Shell LLC
Case ID No. 51769
Reg. Ent. Reference No. RN102399383
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Jonathan Nguyen

Docket No. 2016-0094-PST-E

PCW

Policy Revision 4 (April 2014)
PCW Revision March 26, 2014

Violation Number

Rule Cite(s)

30 Tex. Admin. Code § 334.602(a)

Violation Description

Failed to designate, train, and certify at least one individual for each class of operator - Class A, Class B, and Class C for the Station.

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 checked="" type="text" value="x"/>	<input type="text"/>

Percent

>> Programmatic Matrix

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

Percent

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

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 checked="" 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 based on documentation of the violation during the November 13, 2015 investigation to the January 21, 2016 screening date.

Good Faith Efforts to Comply

Reduction

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" 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 Dry Creek Shell LLC
Case ID No. 51769
Reg. Ent. Reference No. RN102399383
Media Violation No. 4
Media Petroleum Storage Tank

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$150	13-Nov-2015	10-Jan-2016	0.16	\$1	n/a	\$1
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 at least one individual for each class of operator. The Date Required is the investigation date. 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 \$150

TOTAL \$1

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 CN604672584, RN102399383, Rating Year 2015 which includes Compliance History (CH) components from September 1, 2010, through August 31, 2015.

Customer, Respondent, or Owner/Operator: CN604672584, Dry Creek Shell LLC **Classification:** HIGH **Rating:** 0.00

Regulated Entity: RN102399383, DRY CREEK SHELL **Classification:** HIGH **Rating:** 0.00

Complexity Points: 6 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 3800 DRY CREEK DR AUSTIN, TX 78731-4825, TRAVIS COUNTY

TCEQ Region: REGION 11 - AUSTIN

ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 18814

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

Date Compliance History Report Prepared: January 20, 2016

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: January 20, 2011 to January 20, 2016

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

Name: Jonathan Nguyen **Phone:** (512) 239-1661

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? DRY CREEK SHELL LLC OWNER OPERATOR since 9/3/2014
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? 7-Eleven, Inc., OWNER OPERATOR, 6/4/2012 to 9/2/2014

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 August 27, 2013 (1114751)

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

Component Appendices

Appendix A

All NOV's Issued During Component Period 1/20/2011 and 1/20/2016

N/A

For Informational Purposes Only

Appendix B

All Investigations Conducted During Component Period January 20, 2011 and January 20, 2016

(1114751)

Item 1*

August 27, 2013**

For Informational Purposes Only

(1293703)

Item 2

January 13, 2016

For Informational Purposes Only

* No violations documented during this investigation

**Investigation applicable for the Compliance History Rating period between 09/01/2010 and 08/31/2015.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
DRY CREEK SHELL LLC;
RN102399383**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2016-0094-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, TEX. HEALTH & SAFETY CODE ch. 382, 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 station's fuel delivery certificate. The respondent made the subject of this Order is Dry Creek Shell LLC ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns and operates, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), an underground storage tank ("UST") system and a convenience store with retail sales of gasoline located at 3800 Dry Creek Drive in Austin, Travis County, Texas (Facility ID No. 18814) (the "Station"). The USTs at the Station 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. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
2. During an investigation conducted on November 13, 2015, an investigator documented that Respondent:
 - a. Failed to control displaced vapors by a vapor control or a vapor balance system during the transfer of gasoline from a tank-truck into the USTs at the Station. Specifically, the regular unleaded and super unleaded USTs were not equipped with vapor recovery adaptors;
 - b. Failed to comply with annual Stage I vapor recovery testing requirements. Specifically, the annual testing of the Stage I equipment was not conducted;
 - c. Failed to equip each tank with overfill prevention equipment. Specifically, overfill prevention equipment was not installed on the super unleaded UST; and
 - d. Failed to designate, train, and certify at least one individual for each class of operator—Class A, Class B, and Class C—for the Station.

3. The Executive Director recognizes that Respondent implemented the following corrective measures at the Station:
 - a. Successfully conducted the annual testing of the Stage I equipment on January 11, 2016;
 - b. Installed overfill prevention equipment on the super unleaded UST on January 21, 2016; and
 - c. Completed the required Class A, Class B, and Class C operator training on January 10, 2016.
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 Dry Creek Shell LLC" (the "EDPRP") in the TCEQ Chief Clerk's office on June 21, 2016.
5. By letter dated June 21, 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 card," Respondent received notice of the EDPRP on June 24, 2016, as evidenced by the signature on the card.
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, TEX. HEALTH AND SAFETY CODE ch. 382, and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to control displaced vapors by a vapor control or a vapor balance system during the transfer of gasoline from a tank-truck into the USTs at the Station, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.221.
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to comply with annual Stage I vapor recovery testing requirements, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.225.
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to equip each tank with overfill prevention equipment, in violation of TEX. WATER CODE § 26.3475(c)(2) and 30 TEX. ADMIN. CODE § 334.51(b)(2)(C).
5. As evidenced by Finding of Fact No. 2.d., Respondent failed to designate, train, and certify at least one individual for each class of operator—Class A, Class B, and Class C—for the Station, in violation of 30 TEX. ADMIN. CODE § 334.602(a).
6. 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).

7. 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.
8. 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.
9. An administrative penalty in the amount of thirteen thousand five hundred fifty-two dollars (\$13,552.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
10. 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.
11. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke the Station's UST fuel delivery certificate if the Commission finds that good cause exists.
12. Good cause for revocation of the Station's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2 and 4 through 6, and Conclusions of Law Nos. 2 through 7.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of thirteen thousand five hundred fifty-two dollars (\$13,552.00) 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: Dry Creek Shell LLC; Docket No. 2016-0094-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 Station'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 Station 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 Station'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.e, 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, install a vapor recovery adaptor on the regular and super unleaded USTs in accordance with 30 TEX. ADMIN. CODE § 115.221;
 - b. Within 45 days after the effective date of this Order, submit written certification, in accordance with Ordering Provision No. 7.e., to demonstrate compliance with Ordering Provision No. 7.a.;
 - c. Upon obtaining a new fuel delivery certificate, post the fuel delivery certificate in a location at the Station where the delivery certificate is clearly visible at all times, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii); and
 - d. Within 15 days after obtaining a new fuel delivery certificate pursuant to Ordering Provision No. 7.c., submit written certification in accordance with Ordering Provision No. 7.e., to demonstrate compliance with Ordering Provision No. 7.c.
 - e. 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 certifications 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
Austin Regional Office
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

8. All relief not expressly granted in this Order is denied.
9. 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 Station operations referenced in this Order.
10. 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.
11. 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.
12. 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.

13. 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.
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 ISAAC TA

STATE OF TEXAS

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COUNTY OF TRAVIS

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"My name is Isaac Ta. 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 Dry Creek Shell LLC" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on June 21, 2016.

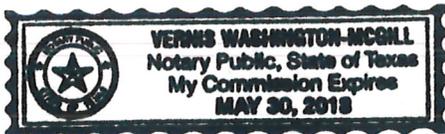
The EDPRP was mailed to Respondent's last known address on June 21, 2016, via certified mail, return receipt requested, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on June 24, 2016, as evidenced by the signature on the card.

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

Isaac Ta, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Subscribed and sworn to before me on this 10th day of August, A.D. 2016.



Notary without Bond

Notary Public, State of Texas