

**Executive Summary – Enforcement Matter – Case No. 52176**  
**DENNIS PORTER, INC. dba Porters Shell**  
**RN101879534**  
**Docket No. 2016-0526-PST-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

PST

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

Porters Shell, 312 West Broadway Street, Andrews, Andrews County

**Type of Operation:**

Convenience store with retail sale of gasoline

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** August 5, 2016

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$76,730

**Amount Deferred for Expedited Settlement:** \$15,346

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$1,709

**Total Due to General Revenue:** \$59,675

Payment Plan: 35 payments of \$1,705 each

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

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Satisfactory

Site/RN - Satisfactory

**Major Source:** Yes

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** April 2014

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** September 29, 2015

**Date(s) of NOE(s):** April 7, 2016

**Executive Summary – Enforcement Matter – Case No. 52176**  
**DENNIS PORTER, INC. dba Porters Shell**  
**RN101879534**  
**Docket No. 2016-0526-PST-E**

***Violation Information***

1. Failed to monitor the underground storage tanks (“USTs”) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].
2. Failed to provide release detection for the pressurized piping associated with the UST system. Specifically, the Respondent did not conduct the annual piping tightness and line leak detector tests [30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a)].
3. Failed to report a suspected release to the TCEQ within 24 hours of discovery. Specifically, inventory control records for July and August 2015 indicated a suspected release that was not reported [30 TEX. ADMIN. CODE § 334.72].
4. Failed to investigate a suspected release of regulated substance within 30 days of discovery. Specifically, inventory control records for July and August 2015 indicated a suspected release that was not investigated [30 TEX. ADMIN. CODE § 334.74].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

The Respondent implemented the following corrective measures:

- a. Submitted a passing line leak detector and piping tightness test on November 3, 2015; and
- b. Developed and implemented a release detection method for all USTs at the Facility on June 16, 2016.

**Technical Requirements:**

The Order will require the Respondent to:

- a. Within 30 days:
  - i. Develop and implement a process for reporting suspected releases; and
  - ii. Conduct an investigation of the suspected release and implement appropriate corrective measures.
- b. Within 45 days, submit written certification to demonstrate compliance with a.

**Executive Summary – Enforcement Matter – Case No. 52176**  
**DENNIS PORTER, INC. dba Porters Shell**  
**RN101879534**  
**Docket No. 2016-0526-PST-E**

***Litigation Information***

**Date Petition(s) Filed:** N/A  
**Date Answer(s) Filed:** N/A  
**SOAH Referral Date:** N/A  
**Hearing Date(s):** N/A  
**Settlement Date:** N/A

***Contact Information***

**TCEQ Attorney:** N/A  
**TCEQ Enforcement Coordinator:** Jonathan Nguyen, Enforcement Division,  
Enforcement Team 6, MC 128, (512) 239-1661; Michael Parrish, Enforcement Division,  
MC 219, (512) 239-2548  
**TCEQ SEP Coordinator:** N/A  
**Respondent:** Dennis R. Porter, Jr., President, DENNIS PORTER, INC., 200  
Northwest Avenue K, Andrews, Texas 79714  
**Respondent's Attorney:** N/A





# Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	11-Apr-2016	<b>Screening</b>	12-Apr-2016	<b>EPA Due</b>	
	<b>PCW</b>	14-Apr-2016				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	DENNIS PORTER, INC. dba Porters Shell		
<b>Reg. Ent. Ref. No.</b>	RN101879534		
<b>Facility/Site Region</b>	7-Midland	<b>Major/Minor Source</b>	Major

## CASE INFORMATION

<b>Enf./Case ID No.</b>	52176	<b>No. of Violations</b>	3
<b>Docket No.</b>	2016-0526-PST-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Jonathan Nguyen
		<b>EC's Team</b>	Enforcement Team 6
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$63,750**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History** **20.0%** Adjustment **Subtotals 2, 3, & 7** **\$12,750**

Notes: Enhancement for one order containing a denial of liability.

**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	\$411	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$3,718	

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$76,500**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **0.3%** Adjustment **\$230**

Reduces or enhances the Final Subtotal by the indicated percentage.

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

**Final Penalty Amount** **\$76,730**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$76,730**

**DEFERRAL** **20.0%** Reduction **Adjustment** **-\$15,346**

Reduces the Final Assessed Penalty by the indicated percentage.

Notes: Deferral offered for expedited settlement.

**PAYABLE PENALTY** **\$61,384**

Screening Date 12-Apr-2016

Docket No. 2016-0526-PST-E

PCW

Respondent DENNIS PORTER, INC. dba Porters Shell

Policy Revision 4 (April 2014)

Case ID No. 52176

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101879534

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jonathan Nguyen

### Compliance History Worksheet

#### >> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of 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%
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 20%

#### >> Repeat Violator (Subtotal 3)

No

**Adjustment Percentage (Subtotal 3)** 0%

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

Satisfactory Performer

**Adjustment Percentage (Subtotal 7)** 0%

#### >> Compliance History Summary

Compliance History Notes

Enhancement for one order containing a denial of liability.

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

#### >> Final Compliance History Adjustment

**Final Adjustment Percentage \*capped at 100%** 20%

Screening Date 12-Apr-2016

Docket No. 2016-0526-PST-E

PCW

Respondent DENNIS PORTER, INC. dba Porters Shell

Policy Revision 4 (April 2014)

Case ID No. 52176

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101879534

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jonathan Nguyen

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A) and (b)(2) and Tex. Water Code § 26.3475(a) and (c)(1)

Violation Description Failed to monitor the underground storage tanks ("USTs") for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Also, failed to provide release detection for the pressurized piping associated with the UST system. Specifically, the Respondent did not conduct the annual piping tightness and line leak detector tests.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				30.0%
Potential	x			

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0.0%

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

Adjustment \$17,500

\$7,500

Violation Events

Number of Violation Events 1 Number of violation days 5

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$7,500

One monthly event is recommended based on April 7, 2016 record review to the April 12, 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	

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

Violation Subtotal \$7,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$184

Violation Final Penalty Total \$9,027

This violation Final Assessed Penalty (adjusted for limits) \$9,027

# Economic Benefit Worksheet

**Respondent** DENNIS PORTER, INC. dba Porters Shell  
**Case ID No.** 52176  
**Reg. Ent. Reference No.** RN101879534  
**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
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	29-Sep-2015	16-Jun-2016	0.72	\$54	n/a	\$54

**Notes for DELAYED costs**

Estimated cost to monitor the USTs for releases. 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
<b>ONE-TIME avoided costs [3]</b>	<b>\$118</b>	<b>29-Sep-2014</b>	<b>3-Nov-2015</b>	<b>2.01</b>	<b>\$12</b>	<b>\$118</b>	<b>\$130</b>
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

Estimated avoided cost for conducting the annual piping tightness and line leak detector tests. The Date Required is one year prior to the investigation date. The Final Date is the date of compliance.

**Approx. Cost of Compliance**

\$1,618

**TOTAL**

\$184

Screening Date 12-Apr-2016

Docket No. 2016-0526-PST-E

PCW

Respondent DENNIS PORTER, INC. dba Porters Shell

Policy Revision 4 (April 2014)

Case ID No. 52176

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101879534

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jonathan Nguyen

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.72

Violation Description

Failed to report a suspected release to the TCEQ within 24 hours of discovery. Specifically, inventory control records for July and August 2015 indicated a suspected release that was not reported.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
	x		

Percent 15.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1

224 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$3,750

One single event is recommended.

Good Faith Efforts to Comply

0.0%

Reduction \$0

Before NOE/NOV NOE/NOV to EDRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	

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 \$132

Violation Final Penalty Total \$4,514

This violation Final Assessed Penalty (adjusted for limits) \$4,514

## Economic Benefit Worksheet

**Respondent** DENNIS PORTER, INC. dba Porters Shell  
**Case ID No.** 52176  
**Reg. Ent. Reference No.** RN101879534  
**Media** Petroleum Storage Tank  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

### 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)	\$500	29-Sep-2015	6-Jan-2017	1.27	\$32	n/a	\$32

**Notes for DELAYED costs**

Estimated cost to develop and implement a process for reporting suspected releases. 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]	\$100	1-Sep-2015	29-Sep-2015	0.00	\$0	\$100	\$100
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

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

**Approx. Cost of Compliance**

\$600

**TOTAL**

\$132

Screening Date 12-Apr-2016

Docket No. 2016-0526-PST-E

PCW

Respondent DENNIS PORTER, INC. dba Porters Shell

Policy Revision 4 (April 2014)

Case ID No. 52176

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101879534

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jonathan Nguyen

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.74

Violation Description Failed to investigate a suspected release of regulated substance within 30 days of discovery. Specifically, inventory control records for July and August 2015 indicated a suspected release that was not investigated.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 30.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

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

Adjustment \$17,500

\$7,500

Violation Events

Number of Violation Events 7

195 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$52,500

Seven monthly events are recommended from the release investigation due date of September 30, 2015 to the April 12, 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	

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

Violation Subtotal \$52,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$95

Violation Final Penalty Total \$63,189

This violation Final Assessed Penalty (adjusted for limits) \$63,189

## Economic Benefit Worksheet

**Respondent** DENNIS PORTER, INC. dba Porters Shell  
**Case ID No.** 52176  
**Reg. Ent. Reference No.** RN101879534  
**Media** Petroleum Storage Tank  
**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	30-Sep-2015	6-Jan-2017	1.27	\$95	n/a	\$95

**Notes for DELAYED costs**

Estimated cost to conduct an investigation of the suspected release and implement appropriate corrective measures. The Date Required is the date the release investigation was due. The Final Date is the estimated date of compliance.

### Avoided Costs

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

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

**Notes for AVOIDED costs**

Approx. Cost of Compliance

\$1,500

**TOTAL**

\$95

The TCEQ is committed to accessibility.

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



# TCEQ Compliance History Report

**PUBLISHED** Compliance History Report for CN601024540, RN101879534, Rating Year 2015 which includes Compliance History (CH) components from September 1, 2010, through August 31, 2015.

**Customer, Respondent, or Owner/Operator:** CN601024540, DENNIS PORTER, INC. **Classification:** SATISFACTORY **Rating:** 22.50

**Regulated Entity:** RN101879534, PORTERS SHELL **Classification:** SATISFACTORY **Rating:** 22.50

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

**CH Group:** 14 - Other

**Location:** 312 W BROADWAY ST ANDREWS, TX 79714-6214, ANDREWS COUNTY

**TCEQ Region:** REGION 07 - MIDLAND

## ID Number(s):

**PETROLEUM STORAGE TANK REGISTRATION**  
REGISTRATION 73500

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

**Date Compliance History Report Prepared:** April 12, 2016

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** April 12, 2011 to April 12, 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? NO
- 3) If **YES** for #2, who is the current owner/operator? N/A
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If **YES**, when did the change(s) in owner or operator occur? N/A

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

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

- 1 Effective Date: 06/08/2013 ADMINORDER 2012-2602-PST-E (1660 Order-Agreed Order With Denial)  
Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(d)  
30 TAC Chapter 334, SubChapter C 334.49(a)(1)  
Description: Failure to provide corrosion protection for the UST system.  
Classification: Moderate  
Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)  
Description: Failure to maintain UST records and make them available for inspection by agency personnel.

### 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  
DENNIS PORTER, INC. DBA  
PORTERS SHELL  
RN101879534

§  
§  
§  
§  
§  
§

BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2016-0526-PST-E

I. JURISDICTION AND STIPULATIONS

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding DENNIS PORTER, INC. dba Porters Shell (the "Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent 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 312 West Broadway Street in Andrews, Andrews County, Texas (the "Facility"). The UST system at the Facility is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contains or contained a regulated petroleum substance as defined in the rules of the TCEQ.
2. The Executive Director and the Respondent agree that the TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, and 7.073, and that the 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 the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of \$76,730 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid \$1,709 of the penalty and \$15,346 is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Order and shall be waived only upon full compliance with all the terms and conditions of this Order.

The remaining amount of \$59,675 of the undeferred penalty shall be paid in 35 monthly payments of \$1,705 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 the Respondent fails to 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. The Respondent's failure to meet the payment schedule of this Order and/or the acceleration of any remaining balance constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms and conditions of this Order and the Executive Director may demand payment of all or part of the deferred penalty amount.

5. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a). 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 the Respondent has not complied with one or more of the terms or conditions 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 compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Executive Director recognizes that the Respondent implemented the following corrective measures at the Station:
  - a. Submitted a passing line leak detector and piping tightness test on November 3, 2015.
  - b. Developed and implemented a release detection method for all USTs at the Facility on June 16, 2016.

## II. ALLEGATIONS

During an investigation conducted on September 29, 2015, an investigator documented that the Respondent:

1. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1).
2. Failed to provide release detection for the pressurized piping associated with the UST system, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE

§ 26.3475(a). Specifically, the Respondent did not conduct the annual piping tightness and line leak detector tests.

3. Failed to report a suspected release to the TCEQ within 24 hours of discovery, in violation of 30 TEX. ADMIN. CODE § 334.72. Specifically, inventory control records for July and August 2015 indicated a suspected release that was not reported.
4. Failed to investigate a suspected release of regulated substance within 30 days of discovery, in violation of 30 TEX. ADMIN. CODE § 334.74. Specifically, inventory control records for July and August 2015 indicated a suspected release that was not investigated.

### III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

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

1. The Respondent is assessed a penalty as set forth in Section I, Paragraph 4. The payment of this penalty and the 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 action 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: DENNIS PORTER, INC. dba Porters Shell, Docket No. 2016-0526-PST-E" to:

Financial Administration Division, Revenue Operations Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088
2. The Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Order:
    - i. Develop and implement a process for reporting suspected releases, in accordance with 30 TEX. ADMIN. CODE § 334.72; and
    - ii. Conduct an investigation of the suspected release and implement appropriate corrective measures, in accordance with 30 TEX. ADMIN. CODE § 334.74.
  - b. Within 45 days after the effective date of this Order, submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a, 2.a.i and 2.a.ii. The certification shall be signed by the 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 fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Waste Section Manager  
Midland Regional Office  
Texas Commission on Environmental Quality  
9900 W. IH-20, Ste. 100  
Midland, Texas 79706

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 the Respondent. The 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. If the 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, the Respondent's failure to comply is not a violation of this Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Order Compliance Team at the address listed above.
7. This Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Order; or (2) pursue violations of a statute within the Commission's jurisdiction,

or of a rule adopted or an order or permit issued by the Commission under such a statute.

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

Pam Mannie J  
For the Executive Director

9/20/16  
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, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Dennis R. Porter, Jr.  
Signature

07.08.16  
Date

Dennis R. Porter, Jr.  
Name (Printed or typed)  
Authorized Representative of  
DENNIS PORTER, INC. dba Porters Shell

Pres  
Title

**Instructions:** Send the original, signed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Order.

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