

# TCEQ Interoffice Memorandum

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**To:** Mary Smith, General Counsel  
Dinniah Tadema, Assistant General Counsel

**Thru:** JSR Jess Robinson, Senior Attorney  
Litigation Division

**From:** CS Cynthia Sirois, Staff Attorney  
Litigation Division

**Date:** June 20, 2024

**Subject:** **Backup Revision**  
**June 26, 2024 Commission Agenda**  
Item No. 28 - Big Diamond, LLC dba Corner Store 3948  
Docket No. 2020-0932-PST-E

Enclosed please find the following:

**Executive Summary:**

*Information about Additional Pending Matters was revised to remove reference to another case involving a third party unrelated to the respondent in this action.*

Counsel for Respondent

John M. Pearce, Director  
Fennemore Law  
2394 East Camelback Rd, Suite 600  
Phoenix, Arizona 85016-3429

Respondent Contact:

Circle K Stores, Inc.  
P.O. Box 52085  
Phoenix, Arizona 85072-2085

Please do not hesitate to call me at (512) 239-3392 if you have any questions regarding this matter.

Enclosure

cc: Amy Lane, Enforcement Division  
Jack Higginbotham, San Antonio Regional Office  
Michael Parrish, Enforcement Division  
Leslie Gann, Enforcement Division  
Stuart Beckley, Enforcement Division  
Gill Valls, Office of the General Counsel  
John Pearce, Counsel for Respondent

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 59513  
Big Diamond, LLC dba Corner Store 3948  
RN102262193  
Docket No. 2020-0932-PST-E

**Order Type:**  
Agreed Order

**Media:**  
PST

**Small Business:**  
No

**Location(s) Where Violation(s) Occurred:**  
8501 Broadway Street, San Antonio, Bexar County

**Type of Operation:**  
underground storage tank ("UST") system and a convenience store with retail sales of gasoline

**Other Significant Matters:**

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third Parties:	None

**Texas Register Publication Date:** May 3, 2024

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$34,313

**Total Paid to General Revenue:** \$34,313

**Total Due to General Revenue:** \$0

**Compliance History Classifications:**

Person/CN - High  
Site/RN - High

**Major Source:** Yes

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** April 2014

**Investigation Information**

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

**Date(s) of Investigation:** February 25, 2020

**Date(s) of NOV(s):** N/A

**Date(s) of NOE(s):** June 22, 2020

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 59513  
Big Diamond, LLC dba Corner Store 3948  
RN102262193  
Docket No. 2020-0932-PST-E

**Order Type:**  
Agreed Order

**Media:**  
PST

**Small Business:**  
No

**Location(s) Where Violation(s) Occurred:**  
8501 Broadway Street, San Antonio, Bexar County

**Type of Operation:**  
underground storage tank ("UST") system and a convenience store with retail sales of gasoline

**Other Significant Matters:**

Additional Pending Enforcement Actions:	Yes, 2023-1197-PST-E
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third Parties:	None

**Texas Register Publication Date:** May 3, 2024

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$34,313

**Total Paid to General Revenue:** \$34,313

**Total Due to General Revenue:** \$0

**Compliance History Classifications:**

Person/CN - High  
Site/RN - High

**Major Source:** Yes

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** April 2014

**Investigation Information**

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

**Date(s) of Investigation:** February 25, 2020

**Date(s) of NOV(s):** N/A

**Date(s) of NOE(s):** June 22, 2020

**Violation Information**

1. Failed to investigate and confirm within 30 days after monitoring results from a release detection method indicated a release may have occurred [30 TEX. ADMIN. CODE § 334.74].
2. Failed to report to TCEQ within 24 hours after monitoring results from a release detection method indicated a release may have occurred [30 TEX. ADMIN. CODE § 334.72].
3. Failed to design, install, and operate all components of a UST system in a manner that will prevent releases of regulated substances due to structural failure or corrosion [TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE §§ 334.5(a)(2), 334.42(a), and 334.49(a)(2)].
4. Failed to monitor the USTs for releases in a manner which will detect a release at a frequency of at least once every 30 days [TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A)].
5. Failed to equip all USTs with a valve or other device which is designed to automatically shut off or automatically restrict the flow of regulated substances into the tank when the liquid level reaches a volume which shall be no higher than the 98% capacity level for the tank [TEX. WATER CODE § 26.3475(c)(2) and 30 TEX. ADMIN. CODE § 334.51(b)(2)(C)(iii)].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**

1. Submitted an incident report concerning the suspected releases on October 22, 2019.
2. Installed and tested a corrosion protection system on the metal components of the regular unleaded UST's sump pump on March 29, 2021.
3. Installed automatic shut-off devices for UST Nos. 1, 2, and 3 to shut off when the liquid level reaches a volume which will be no higher than the 98% capacity level for the tanks on June 24, 2021.
4. Respondent is a subsidiary of Circle K Stores, Inc. and that Circle K Stores, Inc. has the authority to execute documents that bind both Circle K Stores, Inc. and Circle K Stores, Inc.'s subsidiaries on regulatory and environmental matters in Texas, including compliance with statutes and rules within TCEQ's jurisdiction.
5. Circle K Stores, Inc. owns and operates the Facility as of August 16, 2021.

**Technical Requirements:**

1. Within 30 days:
  - a. Conduct investigations, submit a report, and implement appropriate corrective measures for the suspected releases; and
  - b. Implement a release detection method for the USTs at the Facility.
2. Within 45 days submit written certification to demonstrate compliance with Technical Requirements 1.a. and 1.b.

**Litigation Information**

**Date Petition(s) Filed:** December 21, 2023  
**Date(s) of Service:** December 26, 2023  
**Settlement Date:** March 27, 2024

**Big Diamond, LLC dba Corner Store 3948**

RN102262193

Docket No. 2020-0932-PST-E

**Contact Information**

**TCEQ Attorneys:** Cynthia Sirois, Litigation Division, (512) 239-3400  
Sheldon Wayne, Public Interest Counsel, (512) 239-6363

**TCEQ Litigation Agenda Coordinator:** Katherine McKenzie, Litigation Division, (512) 239-2575

**TCEQ Enforcement Coordinator:** Amy Lane, Enforcement Division, (512) 239-2614

**TCEQ Regional Contact:** Jack Higginbotham, San Antonio Regional Office, (210) 403 4044

**Respondent Contact:** Circle K Stores, Inc., P.O. 52085, Phoenix, Arizona, 85072-2085

**Respondent's Attorney:** John M Pearce, Fennemore Law, 2394 East Camelback Rd, Suite 600, Phoenix, Arizona, 58016-3429

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# Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

<b>DATES</b>	<b>Assigned</b>	29-Jun-2020	<b>Screening</b>	1-Jul-2020	<b>EPA Due</b>	
	<b>PCW</b>	31-May-2023				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Big Diamond, LLC dba Corner Store 3948
<b>Reg. Ent. Ref. No.</b>	RN102262193
<b>Facility/Site Region</b>	13-San Antonio
<b>Major/Minor Source</b>	Major

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	59513	<b>No. of Violations</b>	5
<b>Docket No.</b>	2020-0932-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>	Ken Moller
		<b>EC's Team</b>	Enforcement Team 6
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$41,250</b>
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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.

<b>Compliance History</b>	<b>-10.0%</b> Adjustment	<b>Subtotals 2, 3, &amp; 7</b>	<b>-\$4,125</b>
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Notes: Reduction for High Performer classification.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>-\$2,812</b>
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<b>Economic Benefit</b>	<b>0.0%</b> Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts: \$377  
 Estimated Cost of Compliance: \$5,200  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$34,313</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	<b>0.0%</b> Adjustment	<b>\$0</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	<b>\$34,313</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$34,313</b>
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<b>DEFERRAL</b>	<b>0.0%</b> Reduction Adjustment	<b>\$0</b>
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes: Deferral not offered for non-expedited settlement.

<b>PAYABLE PENALTY</b>	<b>\$34,313</b>
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Screening Date 1-Jul-2020

Docket No. 2020-0932-PST-E

PCW

Respondent Big Diamond, LLC dba Corner Store 3948

Policy Revision 4 (April 2014)

Case ID No. 59513

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102262193

Media Petroleum Storage Tank

Enf. Coordinator Ken Moller

### 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> )	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%
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 1-Jul-2020

Docket No. 2020-0932-PST-E

PCW

Respondent Big Diamond, LLC dba Corner Store 3948

Policy Revision 4 (April 2014)

Case ID No. 59513

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102262193

Media Petroleum Storage Tank

Enf. Coordinator Ken Moller

Violation Number 1

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

Violation Description Failed to investigate and confirm within 30 days after monitoring results from a release detection method indicated a release may have occurred. Specifically, failing inventory control ("IC") records for underground storage tank ("UST") Nos. 1 and 2 from July and August 2019 and for UST No. 4 from May, July, and August 2019 indicated suspected releases that were not investigated.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (30.0%). Includes an 'OR' label.

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and 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 2 275 Number of violation days

Table with columns: Frequency (daily, weekly, monthly, quarterly, semiannual, annual, single event) and a selection column (x).

Violation Base Penalty \$15,000

Two semiannual events are recommended from the September 30, 2019 first suspected release investigation due date to the July 1, 2020 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

Table with columns: Effort Level (Extraordinary, Ordinary, N/A) and Frequency (Before NOE/NOV, NOE/NOV to EDPRP/Settlement Offer).

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

Violation Subtotal \$15,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$149

Violation Final Penalty Total \$13,500

This violation Final Assessed Penalty (adjusted for limits) \$13,500

## Economic Benefit Worksheet

**Respondent** Big Diamond, LLC dba Corner Store 3948  
**Case ID No.** 59513  
**Reg. Ent. Reference No.** RN102262193  
**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	Costs Saved	EB Amount
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### 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)	\$1,800	30-Sep-2019	25-May-2021	1.65	\$149	n/a	\$149

#### Notes for DELAYED costs

Estimated delayed cost to conduct an investigation of the suspected releases and implement appropriate corrective measures (\$1,800 total, comprised of \$400 in testing per (tank + line) for 3 tanks (\$1,200), plus \$600 for the suspected Release Determination Report). The Date Required is the date the suspected release investigation was due, and the Final Date is the estimated date of compliance.

### Avoided Costs

#### ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

#### Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,800

**TOTAL**

\$149

**Screening Date** 1-Jul-2020 **Docket No.** 2020-0932-PST-E  
**Respondent** Big Diamond, LLC dba Corner Store 3948  
**Case ID No.** 59513  
**Reg. Ent. Reference No.** RN102262193  
**Media** Petroleum Storage Tank  
**Enf. Coordinator** Ken Moller

**PCW**

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

**Violation Number**

**Rule Cite(s)**

**Violation Description**  
 Failed to report to TCEQ within 24 hours after monitoring results from a release detection method indicated a release may have occurred. Specifically, failing IC records for UST Nos. 1 and 2 from July and August 2019 and for UST No. 4 from May, July, and August 2019 indicated suspected releases that were not reported.

**Base Penalty**

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0.0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="15.0%"/>

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

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**

**Good Faith Efforts to Comply**

**Reduction**

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input checked="" type="text" value="x"/>	<input type="text"/>
N/A	<input type="text"/>	<input type="text"/>

**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** Big Diamond, LLC dba Corner Store 3948  
**Case ID No.** 59513  
**Reg. Ent. Reference No.** RN102262193  
**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	Costs Saved	EB Amount
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### 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	1-Sep-2019	22-Oct-2019	0.14	\$1	n/a	\$1

Notes for DELAYED costs

Estimated delayed cost to submit an incident report. The Date Required is the date the first suspected release should have been reported, and the Final Date is the date of compliance.

### Avoided Costs

**ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

**TOTAL**

\$1

Screening Date 1-Jul-2020

Docket No. 2020-0932-PST-E

PCW

Respondent Big Diamond, LLC dba Corner Store 3948

Policy Revision 4 (April 2014)

Case ID No. 59513

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102262193

Media Petroleum Storage Tank

Enf. Coordinator Ken Moller

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 334.42(a) and 334.5(a)(2) and 334.49(a)(2) and Tex. Water Code § 26.3475(d)

Violation Description

Failed to design, install, and operate all components of a UST system in a manner that will prevent releases of regulated substances due to structural failure or corrosion. Specifically, visible corrosion on the metal components of the regular unleaded UST's sump pump indicated that they were not protected from corrosion.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants 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 1 127 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	x
annual	
single event	

Violation Base Penalty \$3,750

One semiannual event is recommended from the February 25, 2020 investigation date to the July 1, 2020 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 \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$114

Violation Final Penalty Total \$3,375

This violation Final Assessed Penalty (adjusted for limits) \$3,375

## Economic Benefit Worksheet

**Respondent** Big Diamond, LLC dba Corner Store 3948  
**Case ID No.** 59513  
**Reg. Ent. Reference No.** RN102262193  
**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	Costs Saved	EB Amount
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### Delayed Costs

Equipment	\$1,500	25-Feb-2020	29-Mar-2021	1.09	\$5	\$109	\$114
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 delayed cost to install and test a corrosion protection system for the metal components of the regular unleaded UST's sump pump. The Date Required is the investigation date, and the Final Date is the date of compliance.

### Avoided Costs

**ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

Approx. Cost of Compliance

\$1,500

**TOTAL**

\$114

Screening Date 1-Jul-2020

Docket No. 2020-0932-PST-E

PCW

Respondent Big Diamond, LLC dba Corner Store 3948

Policy Revision 4 (April 2014)

Case ID No. 59513

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102262193

Media Petroleum Storage Tank

Enf. Coordinator Ken Moller

Violation Number 4

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

Violation Description Failed to monitor the USTs for releases in a manner which will detect a release at a frequency of at least once every 30 days.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (30.0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and 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 1 127 Number of violation days

Table with columns: Frequency (daily, weekly, monthly, quarterly, semiannual, annual, single event) and a selection box (x).

Violation Base Penalty \$7,500

One semiannual event is recommended from the February 25, 2020 investigation date to the July 1, 2020 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

Table with columns: Effort Level (Extraordinary, Ordinary, N/A) and a selection box (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 \$93

Violation Final Penalty Total \$6,750

This violation Final Assessed Penalty (adjusted for limits) \$6,750

## Economic Benefit Worksheet

**Respondent** Big Diamond, LLC dba Corner Store 3948  
**Case ID No.** 59513  
**Reg. Ent. Reference No.** RN102262193  
**Media** Petroleum Storage Tank  
**Violation No.** 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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### 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	25-Feb-2020	25-May-2021	1.25	\$93	n/a	\$93

Notes for DELAYED costs

Estimated delayed cost to implement a release detection method for the USTs at the Facility. The Date Required is the investigation date, and the Final Date is the estimated date of compliance.

### Avoided Costs

**ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500
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**TOTAL**

\$93
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Screening Date 1-Jul-2020

Docket No. 2020-0932-PST-E

PCW

Respondent Big Diamond, LLC dba Corner Store 3948

Policy Revision 4 (April 2014)

Case ID No. 59513

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102262193

Media Petroleum Storage Tank

Enf. Coordinator Ken Moller

Violation Number 5

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

Violation Description

Failed to equip all USTs with a valve or other device which is designed to automatically shut-off or automatically restrict the flow of regulated substances into the tank when the liquid level reaches a volume which shall be no higher than the 98% capacity level for the tank. Specifically, the automatic shut-off devices for UST Nos. 1, 2, and 3 were installed at 98.5%, 99.7%, and 98.5% of their relative capacity levels, respectively.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants 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 1 127 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	x
annual	
single event	

Violation Base Penalty \$3,750

One semiannual event is recommended from the February 25, 2020 investigation date to the July 1, 2020 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 \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$20

Violation Final Penalty Total \$3,375

This violation Final Assessed Penalty (adjusted for limits) \$3,375

## Economic Benefit Worksheet

**Respondent** Big Diamond, LLC dba Corner Store 3948  
**Case ID No.** 59513  
**Reg. Ent. Reference No.** RN102262193  
**Media** Petroleum Storage Tank  
**Violation No.** 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	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)	\$300	25-Feb-2020	24-Jun-2021	1.33	\$20	n/a	\$20

**Notes for DELAYED costs**

Estimated delayed cost (\$300 total, \$100 per UST) to install the automatic shut-off devices in UST Nos. 1, 2, and 3 no higher than the 98% capacity level for each UST. The Date Required is the investigation date, and the Final Date is the date of compliance.

### Avoided Costs

**ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

Approx. Cost of Compliance \$300

**TOTAL** \$20

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

Compliance History Report for CN604312421, RN102262193, Rating Year 2019 which includes Compliance History (CH) components from September 1, 2014, through August 31, 2019.

**Customer, Respondent, or Owner/Operator:** CN604312421, Big Diamond, LLC      **Classification:** HIGH      **Rating:** 0.00  
**Regulated Entity:** RN102262193, Corner Store 3948      **Classification:** HIGH      **Rating:** 0.00  
**Complexity Points:** 3      **Repeat Violator:** NO  
**CH Group:** 14 - Other  
**Location:** 8501 Broadway Street, San Antonio, Bexar County, Texas 78217-6313  
**TCEQ Region:** REGION 13 - SAN ANTONIO

**ID Number(s):**

**PETROLEUM STORAGE TANK REGISTRATION**  
REGISTRATION 23029

**Compliance History Period:** September 01, 2014 to August 31, 2019      **Rating Year:** 2019      **Rating Date:** 09/01/2019

**Date Compliance History Report Prepared:** July 01, 2020

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** July 01, 2015 to July 01, 2020

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

**Name:** Ken Moller

**Phone:** (512) 534-7550

**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) Who is the current owner/operator? Big Diamond, LLC OWNER OPERATOR since 1/8/2015
- 4) Who was/were the prior owner(s)/operator(s)? Landmark Industries, Inc., OWNER OPERATOR, 9/27/2004 to 1/7/2015

**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      June 01, 2017      (1403485)

**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  
BIG DIAMOND, LLC  
DBA CORNER STORE 3948;  
RN102262193**

**§  
§  
§  
§  
§  
§**

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER**

**DOCKET NO. 2020-0932-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 Big Diamond, LLC dba Corner Store 3948 ("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, represented by John M. Pearce of the law firm Fennemore Law, together stipulate that:

1. Respondent owned and operated, as defined in 30 TEX. ADMIN. CODE § 334.2(78) and (75), an underground storage tank ("UST") system and a convenience store with retail sales of gasoline located at 8501 Broadway Street in San Antonio, Bexar County, Texas (Facility ID No. 23029) (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 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 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 \$34,313 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Respondent paid \$34,313 of the penalty.
5. The Executive Director and 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 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 Respondent implemented the following corrective measures:
  - a. Submitted an incident report concerning the suspected releases, on October 22, 2019 (Allegation No. 1.b.);
  - b. Installed and tested a corrosion protection system on the metal components of the regular unleaded UST's sump pump, on March 29, 2021 (Allegation No. 1.c.); and
  - c. Installed automatic shut-off devices for UST Nos. 1, 2, and 3 to shut off when the liquid level reaches a volume which will be no higher than the 98% capacity level for the tanks, on June 24, 2021 (Allegation No. 1.e.).
10. The Executive Director further recognizes that:
  - a. Respondent is a subsidiary of Circle K Stores, Inc. and that Circle K Stores, Inc. has the authority to execute documents that bind both Circle K Stores, Inc. and Circle K Stores, Inc.'s subsidiaries on regulatory and environmental matters in Texas, including compliance with statutes and rules within TCEQ's jurisdiction; and
  - b. Circle K Stores, Inc. owns and operates the Facility as of August 16, 2021.

## II. ALLEGATIONS

1. During an investigation conducted at the Facility on February 25, 2020, an investigator documented that Respondent:
  - a. Failed to investigate and confirm within 30 days after monitoring results from a release detection method indicated a release may have occurred, in violation of 30 TEX. ADMIN. CODE § 334.74. Specifically, failing inventory control records for UST Nos. 1 and 2 from July and August 2019 and for UST No. 4 from May, July, and August 2019 indicated suspected releases that were not investigated;
  - b. Failed to report to TCEQ within 24 hours after monitoring results from a release detection method indicated a release may have occurred, in violation of 30 TEX. ADMIN. CODE § 334.72. Specifically, failing inventory control records for UST Nos. 1, and 2 from July and August 2019 and for UST No. 4 from May, July, and August 2019 indicated suspected releases that were not reported;
  - c. Failed to design, install, and operate all components of a UST system in a manner that will prevent releases of regulated substances due to structural failure or corrosion, in violation of TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE §§ 334.5(a)(2), 334.42(a), and 334.49(a)(2). Specifically, visible corrosion on the metal components of the regular unleaded UST's sump pump indicated that they were not protected from corrosion;
  - d. Failed to monitor the USTs for releases in a manner which will detect a release at a frequency of at least once every 30 days, in violation of TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A); and

- e. Failed to equip all USTs with a valve or other device which is designed to automatically shut-off or automatically restrict the flow of regulated substances into the tank when the liquid level reaches a volume which shall be no higher than the 98% capacity level for the tank, in violation of TEX. WATER CODE § 26.3475(c)(2) and 30 TEX. ADMIN. CODE § 334.51(b)(2)(C)(iii). Specifically, the automatic shut-off devices for UST Nos. 1, 2, and 3 were installed at 98.5%, 99.7%, and 98.5% of their relative capacity levels, respectively.

### III. DENIALS

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

### IV. ORDERING PROVISIONS

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

1. Respondent is assessed a penalty as set forth in Section I, Paragraph No. 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 action or penalties for violations which are not raised here.
2. Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Order:
    - i. Conduct investigations, submit a report, and implement appropriate corrective measures for the suspected releases, in accordance with 30 TEX. ADMIN. CODE § 334.74 (Allegation No. 1.a.); and
    - ii. Implement a release detection method for the USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.50 (Allegation No. 1.d.).
  - 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 Provisions Nos. 2.a.i. and 2.a.ii. The certification 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 based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

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.
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 Enforcement Division 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 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

Erin E. Chamallop  
\_\_\_\_\_  
For the Executive Director

5/24/24  
\_\_\_\_\_  
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, I understand that any falsification of any compliance documents may result in criminal prosecution.

Michael McKay  
\_\_\_\_\_  
Signature - Authorized Representative  
Circle K Stores Inc.  
P.O. Box 52085  
Phoenix, Arizona 85072-2085

3/27/2024  
\_\_\_\_\_  
Date

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

\_\_\_\_\_