

Executive Summary – Enforcement Matter – Case No. 59796
BlueLinx Corporation
RN102827417
Docket No. 2020-1185-PST-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

No

Location(s) Where Violation(s) Occurred:

BlueLinx San Antonio, 535 North WW White Road, San Antonio, Bexar County

Type of Operation:

Underground storage tank ("UST") system and a fleet refueling facility

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: August 13, 2021

Comments Received: No

Penalty Information

Total Penalty Assessed: \$20,403

Amount Deferred for Expedited Settlement: \$4,080

Total Paid to General Revenue: \$4,108

Total Due to General Revenue: \$12,215

Payment Plan: 35 payments of \$349 each

Compliance History Classifications:

Person/CN - High

Site/RN - High

Major Source: No

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: July 23 through August 6, 2020

Date(s) of NOE(s): August 25, 2020

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BlueLinx Corporation
RN102827417
Docket No. 2020-1185-PST-E

Violation Information

1. Failed to report a suspected release to the TCEQ within 24 hours of discovery. Specifically, automatic tank gauge records for the UST showed failing results on July 24, 2020, inventory control records for the UST exceeded the allowable leak variance for multiple consecutive months between July 2019 and June 2020, and the suction piping leak detection monitoring system failed on February 21, 2020, indicating suspected releases that were not reported [30 TEX. ADMIN. CODE § 334.72].
2. Failed to investigate and confirm all suspected releases of regulated substances within 30 days. Specifically, automatic tank gauge, inventory control, and suction piping leak detection monitoring records for the UST indicated suspected releases that were not investigated [30 TEX. ADMIN. CODE § 334.74].
3. Failed to inspect all sumps, manways, overspill containers, and catchment basins of an UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid-tight and free of any liquid or debris. Specifically, the sumps and spill buckets for the UST contained liquid and debris [30 TEX. ADMIN. CODE § 334.42(i) and TEX. WATER CODE § 26.3475(c)(2)].
4. Failed to conduct reconciliation of detailed inventory control records at least once every 30 days in a manner sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the 30-day period plus 130 gallons [30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require the Respondent to:

- a. Immediately, begin conducting inspections of the sumps, manways, and overflow containers or catchment basins at least once every 60 days.
- b. Within 30 days:
 - i. Develop and implement a process for timely reporting suspected releases;
 - ii. Conduct an investigation of the suspected releases and implement appropriate corrective measures;

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- iii. Remove and properly dispose of all liquid and debris from all sumps and spill buckets and dispose of them at an authorized facility; and
- iv. Implement a method to effectively conduct inventory control and reconciliation on a monthly basis for the UST.
- c. Within 45 days, submit written certification to demonstrate compliance with a. and b.

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Karolyn Kent, Enforcement Division, Enforcement Team 6, MC 219, (512) 239-2536; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

Respondent: Mitchell Lewis, President, BlueLinx Corporation, 4300 Wildwood Parkway, Atlanta, Georgia 30339-8440

Gary Cummings, Vice President, BlueLinx Corporation, 4300 Wildwood Parkway, Atlanta, Georgia 30339-8440

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

DATES	Assigned	31-Aug-2020	Screening	8-Sep-2020	EPA Due	
	PCW	16-Sep-2020				

RESPONDENT/FACILITY INFORMATION	
Respondent	BlueLinx Corporation
Reg. Ent. Ref. No.	RN102827417
Facility/Site Region	13-San Antonio
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	59796	No. of Violations	4
Docket No.	2020-1185-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Karolyn Kent
		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	\$22,500
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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	-\$2,250
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Notes	Reduction for High Performer Classification.
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Culpability	No	0.0%	Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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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	\$279	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$2,050	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$20,250
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.8%	Adjustment	\$153
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Enhancement to capture the avoided cost of compliance associated with Violation Nos. 1 and 3.
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Final Penalty Amount	\$20,403
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$20,403
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DEFERRAL	20.0%	Reduction	Adjustment	-\$4,080
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes	Deferral offered for expedited settlement.
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PAYABLE PENALTY	\$16,323
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Screening Date 8-Sep-2020

Docket No. 2020-1185-PST-E

PCW

Respondent BlueLinx Corporation

Policy Revision 4 (April 2014)

Case ID No. 59796

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102827417

Media Petroleum Storage Tank

Enf. Coordinator Karolyn Kent

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 8-Sep-2020

Docket No. 2020-1185-PST-E

PCW

Respondent BlueLinx Corporation

Policy Revision 4 (April 2014)

Case ID No. 59796

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102827417

Media Petroleum Storage Tank

Enf. Coordinator Karolyn Kent

Violation Number 1

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, automatic tank gauge ("ATG") records for the underground storage tank ("UST") showed failing results on July 24, 2020, inventory control ("IC") records for the UST exceeded the allowable leak variance for multiple consecutive months between July 2019 and June 2020, and the suction piping leak detection monitoring system failed on February 21, 2020, indicating suspected releases that were not reported.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (0.0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (5.0%).

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 2 Number of violation days 373

Table with frequency options: daily, weekly, monthly, quarterly, semiannual, annual, single event. 'single event' is marked with an X.

Violation Base Penalty \$2,500

Two single events are recommended (one each for the tank and piping suspected releases).

Good Faith Efforts to Comply

0.0% Reduction \$0

Table for Good Faith Efforts with rows: Extraordinary, Ordinary, N/A. 'N/A' is marked with an X.

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

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$56

Violation Final Penalty Total \$2,267

This violation Final Assessed Penalty (adjusted for limits) \$2,267

Economic Benefit Worksheet

Respondent BlueLinx Corporation
Case ID No. 59796
Reg. Ent. Reference No. RN102827417
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)	\$100	6-Aug-2020	27-Jun-2021	0.89	\$4	n/a	\$4

Notes for DELAYED costs

Estimated delayed cost to establish and implement a process for timely reporting of suspected releases. The Date Required is the investigation end 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	\$25	22-Feb-2020	8-Sep-2020	0.55	\$1	\$25	\$26
Other (as needed)	\$25	1-Sep-2019	8-Sep-2020	1.02	\$1	\$25	\$26

Notes for AVOIDED costs

Estimated avoided cost to report a suspected release. The Dates Required are the date the piping suspected release and the earliest tank suspected release should have been reported, respectively, and the Final Dates are the screening date.

Approx. Cost of Compliance

\$150

TOTAL

\$56

Screening Date 8-Sep-2020
Respondent BlueLinx Corporation
Case ID No. 59796
Reg. Ent. Reference No. RN102827417
Media Petroleum Storage Tank
Enf. Coordinator Karolyn Kent

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PCW

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

Violation Number 2

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

Violation Description Failed to investigate and confirm all suspected releases of regulated substances requiring reporting under 30 Tex. Admin. Code § 334.72 (relating to Reporting of Suspected Releases) within 30 days. Specifically, ATG, IC, and suction piping leak detection monitoring records for the UST indicated suspected releases that were not investigated.

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 pollutants that would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 4 344 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty \$15,000

Four quarterly events are recommended from the earliest suspected release investigation due date of September 30, 2019 to the September 8, 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 \$15,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$87

Violation Final Penalty Total \$13,602

This violation Final Assessed Penalty (adjusted for limits) \$13,602

Economic Benefit Worksheet

Respondent BlueLinx Corporation
Case ID No. 59796
Reg. Ent. Reference No. RN102827417
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)	\$1,000	30-Sep-2019	27-Jun-2021	1.74	\$87	n/a	\$87

Notes for DELAYED costs

Estimated delayed cost to conduct an investigation of the suspected releases and implement appropriate corrective measures. This is determined by \$400 for testing per (tank + line), and \$600 for the suspected Release Determination Report. The Date Required is the date the earliest 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

\$1,000

TOTAL

\$87

Screening Date 8-Sep-2020
Respondent BlueLinx Corporation
Case ID No. 59796
Reg. Ent. Reference No. RN102827417
Media Petroleum Storage Tank
Enf. Coordinator Karolyn Kent

Docket No. 2020-1185-PST-E

PCW

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

Violation Number

Rule Cite(s)

Violation Description

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"/>	<input type="text" value="5.0%"/>
Potential	<input type="text"/>	<input type="text"/>	<input checked="" type="text" value="X"/>	<input type="text"/>	

>> Programmatic Matrix

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

Matrix Notes

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 checked="" type="text" value="X"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Good Faith Efforts to Comply

Reduction

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

Extraordinary	<input type="text"/>
Ordinary	<input type="text"/>
N/A	<input checked="" type="text" value="X"/>

Notes

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent BlueLinx Corporation
Case ID No. 59796
Reg. Ent. Reference No. RN102827417
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				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	\$200	6-Aug-2020	27-Jun-2021	0.89	\$9	n/a	\$9
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	6-Aug-2020	27-Jun-2021	0.89	\$4	n/a	\$4

Notes for DELAYED costs

Estimated delayed cost to conduct inspections of the sumps, manways, and overspill containers or catchment basins at least once every 60 days (\$100), and to remove all liquid and dispose of it properly (\$200). The Dates Required are the investigation end date, and the Final Dates are 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	\$100	24-May-2020	8-Sep-2020	0.29	\$1	\$100	\$101
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct inspections of the sumps, manways, overspill containers or catchment basins at least once every 60 days. The Date Required is 60 days prior to the investigation start date, and the Final Date is the screening date.

Approx. Cost of Compliance

\$400

TOTAL

\$114

Screening Date 8-Sep-2020
Respondent BlueLinx Corporation
Case ID No. 59796
Reg. Ent. Reference No. RN102827417
Media Petroleum Storage Tank
Enf. Coordinator Karolyn Kent

Docket No. 2020-1185-PST-E

PCW

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

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 334.50(d)(1)(B)(ii) and Tex. Water Code § 26.3475(c)(1)

Violation Description Failed to conduct reconciliation of detailed inventory control records at least once every 30 days in a manner sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the 30-day period plus 130 gallons.

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 pollutants that would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1 33 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty \$3,750

One quarterly event is recommended from the August 6, 2020 investigation end date to the September 8, 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 \$22

Violation Final Penalty Total \$3,401

This violation Final Assessed Penalty (adjusted for limits) \$3,401

Economic Benefit Worksheet

Respondent BlueLinx Corporation
Case ID No. 59796
Reg. Ent. Reference No. RN102827417
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
------------------	-----------	---------------	------------	-----	----------------	-------------	-----------

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	6-Aug-2020	27-Jun-2021	0.89	\$22	n/a	\$22

Notes for DELAYED costs

Estimated delayed cost to effectively conduct inventory control and reconciliation on a monthly basis for the UST at the Facility. The Date Required is the investigation end 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
Testing				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 \$500

TOTAL \$22

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 CN602725871, RN102827417, Rating Year 2020 which includes Compliance History (CH) components from September 1, 2015, through August 31, 2020.

Customer, Respondent, or Owner/Operator: CN602725871, BlueLinx Corporation **Classification:** HIGH **Rating:** 0.00

Regulated Entity: RN102827417, BlueLinx San Antonio **Classification:** HIGH **Rating:** 0.00

Complexity Points: 2 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 535 North WW White Road, San Antonio, Bexar County, Texas 78219-2815

TCEQ Region: REGION 13 - SAN ANTONIO

ID Number(s):

PETROLEUM STORAGE TANK REGISTRATION
REGISTRATION 1548

Compliance History Period: September 01, 2015 to August 31, 2020 **Rating Year:** 2020 **Rating Date:** 09/01/2020

Date Compliance History Report Prepared: December 08, 2020

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: December 08, 2015 to December 08, 2020

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

Name: Karolyn Kent

Phone: (512) 239-2536

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

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	July 27, 2017	(1429183)
Item 2	January 11, 2019	(1512679)

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
BLUELINX CORPORATION
RN102827417**

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§**

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2020-1185-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 BlueLinx Corporation (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(78) and (75), an underground storage tank ("UST") system and a fleet refueling facility located at 535 North WW White Road in San Antonio, Bexar 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 \$20,403 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid \$4,108 of the penalty and \$4,080 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 \$12,215 of the undeferred penalty shall be paid in 35 monthly payments of \$349 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.

II. ALLEGATIONS

During an investigation conducted on July 23 through August 6, 2020, an investigator documented that the Respondent:

1. Failed to report a suspected release to the TCEQ within 24 hours of discovery, in violation of 30 TEX. ADMIN. CODE § 334.72. Specifically, automatic tank gauge ("ATG") records for the UST showed failing results on July 24, 2020, inventory control ("IC") records for the UST exceeded the allowable leak variance for multiple consecutive months between July 2019 and June 2020, and the suction piping leak detection monitoring system failed on February 21, 2020, indicating suspected releases that were not reported.
2. Failed to investigate and confirm all suspected releases of regulated substances requiring reporting under 30 TEX. ADMIN. CODE § 334.72 (relating to Reporting of Suspected Releases) within 30 days, in violation of 30 TEX. ADMIN. CODE § 334.74. Specifically, ATG, IC, and suction piping leak detection monitoring records for the UST indicated suspected releases that were not investigated.
3. Failed to inspect all sumps, manways, overspill containers, and catchment basins of an UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid-tight and free of any liquid or debris, in

violation of 30 TEX. ADMIN. CODE § 334.42(i) and TEX. WATER CODE § 26.3475(c)(2). Specifically, the sumps and spill buckets for the UST at the Facility contained liquid and debris.

4. Failed to conduct reconciliation of detailed inventory control records at least once every 30 days in a manner sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the 30-day period plus 130 gallons, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1).

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 No. 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: BlueLinx Corporation, Docket No. 2020-1185-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. Immediately upon the effective date of this Order, begin conducting inspections of the sumps, manways, and overflow containers or catchment basins at least once every 60 days, in accordance with 30 TEX. ADMIN. CODE § 334.42.
 - b. Within 30 days after the effective date of this Order:
 - i. Develop and implement a process for timely reporting suspected releases, in accordance with 30 TEX. ADMIN. CODE § 334.72;
 - ii. Conduct an investigation of the suspected releases and implement appropriate corrective measures, in accordance with 30 TEX. ADMIN. CODE § 334.74;
 - iii. Remove and properly dispose of all liquid and debris from all sumps and spill buckets and dispose of them at an authorized facility, in accordance with 30 TEX. ADMIN. CODE § 334.42; and

- iv. Implement a method to effectively conduct inventory control and reconciliation on a monthly basis for the UST at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.50.
- c. 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 and 2.b. 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
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 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.

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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date



12/01/2021

For the Executive Director

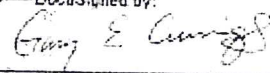
Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, 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.

DocuSigned by:


6/22/2021

Signature

Date

Gary E. Cummings

Vice President

Name (Printed or typed)
Authorized Representative of
BlueLinx Corporation

Title

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