

**Benton Rainey**  
RN102839560  
Docket No. 2021-0212-PST-E

**Order Type:**  
Default Order

**Media:**  
PST

**Small Business:**  
Yes

**Location(s) Where Violation(s) Occurred:**  
301 West Dallas Avenue, Cooper, Delta County

**Type of Operation:**  
out-of-service underground storage tank ("UST") system

**Other Significant Matters:**

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	\$3,330.22
Past-Due Fees:	None
Other:	None
Interested Third Parties:	None
Texas Register Publication Date:	June 21, 2024
Comments Received:	None

**Penalty Information**

<b>Total Penalty Assessed:</b>	\$74,194
<b>Total Paid to General Revenue:</b>	\$0
<b>Total Due to General Revenue:</b>	\$74,194

**Compliance History Classifications:**

Person/CN - Satisfactory  
Site/RN - Satisfactory

<b>Major Source:</b>	No
<b>Statutory Limit Adjustment:</b>	None
<b>Applicable Penalty Policy:</b>	April 2014

**Investigation Information**

<b>Complaint Date(s):</b>	N/A
<b>Date(s) of Investigation:</b>	January 28, 2020
<b>Date(s) of NOV(s):</b>	N/A
<b>Date(s) of NOE(s):</b>	June 29, 2020

**Benton Rainey**  
RN102839560  
Docket No. 2021-0212-PST-E

**Violation Information**

1. Failed to adequately protect a temporarily out-of-service UST system from corrosion and failed to empty the UST system and perform a site check and any necessary corrective actions for temporarily out-of-service UST system [TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE §§ 334.49(c)(2)(C) and (c)(4)(C), 334.54(b)(3) and (e)(5)].
2. Failed to identify and designate for the UST facility at least one named individual for each class operator – Class A, Class B, and Class C [30 TEX. ADMIN. CODE § 334.602(a)].
3. Failed to monitor a temporarily out-of-service UST system for releases at least once every 30 days, in violation of [TEX. WATER CODE § 26.3475(c)(1), 30 TEX. ADMIN. CODE §§ 334.50(b)(1)(A) and 334.54(c)(1), and TCEQ Docket No. 2016-0964-PST-E, Ordering Provision No. 2.b.].
4. Failed to notify the agency of any change or additional information regarding the UST system within 30 days of the occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(1)(B) and (d)(3)].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**

None

**Technical Requirements:**

1. Within 30 days after the effective date of this Order:
  - a. Obtain the required Class A and Class B operator training and certification;
  - b. Properly temporarily remove the UST system from service, including providing release detection and corrosion protection for the UST system, and either providing financial assurance or emptying the USTs of all regulated substances and conducting a site check; or
  - c. Permanently remove the UST system from service.
2. Within 60 days submit an amended registration to reflect the UST system's current operational status.
3. Within 75 days submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Technical Requirement Nos. 1.a., 1.b., and 2 or 1.c. and 2.

**Litigation Information**

**Date Petition(s) Filed:** July 28, 2022

**Date(s) of Service:** July 30, 2022

**Date Answer(s) Filed:** N/A

**Contact Information**

**TCEQ Attorneys:** David Keagle, 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:** Karolyn Kent, Enforcement Division, (512) 239-2536

**TCEQ Regional Contact:** Michelle Baetz, Tyler Regional Office, (903) 535-5100

**Respondent Contact:** Benton Rainey, 1425 South Church Street, Paris, Texas 75460

**Respondent's Attorney:**N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

<b>DATES</b>	<b>Assigned</b>	29-Jun-2020			
	<b>PCW</b>	17-Jul-2020	<b>Screening</b>	6-Jul-2020	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Benton Rainey
<b>Reg. Ent. Ref. No.</b>	RN102839560
<b>Facility/Site Region</b>	5-Tyler
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	52591	<b>No. of Violations</b>	4
<b>Docket No.</b>	2021-0212-PST-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Tyler Richardson
		<b>EC's Team</b>	Enforcement Team 7
<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>\$61,250</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>20.0%</b>	Adjustment	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$12,250</b>
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<b>Notes</b>	Enhancement for one order with a denial of liability.
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<b>Culpability</b>	No	<b>0.0%</b>	Enhancement	<b>Subtotal 4</b>	<b>\$0</b>
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>\$0</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	\$1,550	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$7,830	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$73,500</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	<b>0.9%</b>	Adjustment	<b>\$694</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	Enhancement to capture the avoided cost of compliance associated with Violation No. 1.
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<b>Final Penalty Amount</b>	<b>\$74,194</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$74,194</b>
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<b>DEFERRAL</b>	<b>0.0%</b>	Reduction	<b>Adjustment</b>	<b>\$0</b>
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Reduces the Final Assessed Penalty by the indicated percentage.

<b>Notes</b>	No deferral is recommended for Findings Orders.
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<b>PAYABLE PENALTY</b>	<b>\$74,194</b>
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**Screening Date** 6-Jul-2020

**Docket No.** 2021-0212-PST-E

**PCW**

**Respondent** Benton Rainey

*Policy Revision 4 (April 2014)*

**Case ID No.** 52591

*PCW Revision March 26, 2014*

**Reg. Ent. Reference No.** RN102839560

**Media** Petroleum Storage Tank

**Enf. Coordinator** Tyler Richardson

### 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 with 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 6-Jul-2020

Docket No. 2021-0212-PST-E

PCW

Respondent Benton Rainey

Policy Revision 4 (April 2014)

Case ID No. 52591

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102839560

Media Petroleum Storage Tank

Enf. Coordinator Tyler Richardson

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 334.49(c)(2)(C) and (c)(4)(C), 334.54(b)(3) and (e)(5) and Tex. Water Code § 26.3475(d)

Violation Description Failed to adequately protect a temporarily out-of-service underground storage tank ("UST") system from corrosion. Specifically, the Respondent did not conduct the triennial corrosion protection test or bimonthly rectifier inspections and the rectifier read zero voltage. Also, failed to empty the UST system and perform a site check and any necessary corrective actions for a temporarily out-of-service UST system to meet financial assurance exemption requirements.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent

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 2 160 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$7,500

Two quarterly events are recommended from the January 28, 2020 investigation date to the July 6, 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 \$7,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,210

Violation Final Penalty Total \$9,085

This violation Final Assessed Penalty (adjusted for limits) \$9,085

## Economic Benefit Worksheet

**Respondent** Benton Rainey  
**Case ID No.** 52591  
**Reg. Ent. Reference No.** RN102839560  
**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)	\$5,600	28-Jan-2020	1-Dec-2021	1.84	\$516	n/a	\$516

#### Notes for DELAYED costs

Estimated delayed cost to properly temporarily remove the USTs from service including performing a site check (and excluding release detection which is addressed in EB3). 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	\$500	28-Jan-2017	6-Jul-2020	3.44	\$91	\$500	\$591
Other (as needed)	\$100	29-Nov-2019	6-Jul-2020	0.60	\$3	\$100	\$103

#### Notes for AVOIDED costs

Estimated avoided cost to conduct triennial testing for the corrosion protection system (\$500) and to conduct bimonthly inspections of the rectifier and other components of the corrosion protection system (\$100). The Dates Required are three years prior to the investigation date and 60 days prior to the investigation date respectively, and the Final Dates are the screening date.

Approx. Cost of Compliance

\$6,200

**TOTAL**

\$1,210

**Screening Date** 6-Jul-2020  
**Respondent** Benton Rainey  
**Case ID No.** 52591

**Docket No.** 2021-0212-PST-E

**PCW**

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

**Reg. Ent. Reference No.** RN102839560  
**Media** Petroleum Storage Tank  
**Enf. Coordinator** Tyler Richardson

**Violation Number** 2

**Rule Cite(s)** 30 Tex. Admin. Code § 334.602(a)

**Violation Description** Failed to identify and designate for the UST facility at least one named individual for each class of operator - Class A, Class B, and Class C. Specifically, the Respondent did not have a Class A and Class B operator for the Facility.

**Base Penalty** \$25,000

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				5.0%
	Potential		x		

**>> Programmatic Matrix**

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0.0%

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** \$23,750

\$1,250

**Violation Events**

Number of Violation Events 6 499 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

**Violation Base Penalty** \$7,500

Six quarterly events are recommended from the February 23, 2019 training expiration date to the July 6, 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** \$7,500

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount** \$8

**Violation Final Penalty Total** \$9,085

**This violation Final Assessed Penalty (adjusted for limits)** \$9,085

## Economic Benefit Worksheet

**Respondent** Benton Rainey  
**Case ID No.** 52591  
**Reg. Ent. Reference No.** RN102839560  
**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	\$90	28-Jan-2020	1-Dec-2021	1.84	\$8	n/a	\$8
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 obtain the required Class A and Class B operator training. 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

\$90
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**TOTAL**

\$8
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Screening Date 6-Jul-2020

Docket No. 2021-0212-PST-E

PCW

Respondent Benton Rainey

Policy Revision 4 (April 2014)

Case ID No. 52591

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102839560

Media Petroleum Storage Tank

Enf. Coordinator Tyler Richardson

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 334.50(b)(1)(A) and 334.54(c)(1), Tex. Water Code § 26.3475(c)(1), and TCEQ Docket No. 2016-0964-PST-E Ordering Provision No. 2.b.

Violation Description Failed to monitor a temporarily out-of-service UST system for releases at least once every 30 days.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent

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 12 Number of violation days 1,084

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$45,000

Twelve quarterly events are recommended from the July 18, 2017 effective date of TCEQ Docket No. 2016-0964-PST-E to the July 6, 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 \$45,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$328

Violation Final Penalty Total \$54,510

This violation Final Assessed Penalty (adjusted for limits) \$54,510

## Economic Benefit Worksheet

**Respondent** Benton Rainey  
**Case ID No.** 52591  
**Reg. Ent. Reference No.** RN102839560  
**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
Testing				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	18-Jul-2017	1-Dec-2021	4.38	\$328	n/a	\$328

**Notes for DELAYED costs**

Estimated cost to provide release detection for the UST system. The Date Required is the effective date of Agreed Order 2016-0964-PST-E 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

**TOTAL**

\$328

Screening Date 6-Jul-2020

Docket No. 2021-0212-PST-E

PCW

Respondent Benton Rainey

Policy Revision 4 (April 2014)

Case ID No. 52591

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102839560

Media Petroleum Storage Tank

Enf. Coordinator Tyler Richardson

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 334.7(d)(1)(B) and (d)(3)

Violation Description Failed to notify the agency of any change or additional information regarding the UST system within 30 days of the occurrence of the change or addition. Specifically, the UST registration indicated Tank Nos. 1 through 3 were in-use while the tanks were temporarily out-of-service.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0.0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	x			5.0%

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

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 160 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,250

One single event is recommended.

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 \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4

Violation Final Penalty Total \$1,514

This violation Final Assessed Penalty (adjusted for limits) \$1,514

## Economic Benefit Worksheet

**Respondent** Benton Rainey  
**Case ID No.** 52591  
**Reg. Ent. Reference No.** RN102839560  
**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)	\$40	28-Jan-2020	1-Dec-2021	1.84	\$4	n/a	\$4

**Notes for DELAYED costs**

Estimated delayed cost to accurately prepare and submit an updated UST registration form. 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

\$40

**TOTAL**

\$4



# Compliance History Report

Compliance History Report for CN603631771, RN102839560, Rating Year 2020 which includes Compliance History (CH) components from September 1, 2015, through August 31, 2020.

**Customer, Respondent, or Owner/Operator:** CN603631771, Benton Rainey **Classification:** SATISFACTORY **Rating:** 30.00

**Regulated Entity:** RN102839560, Delta Family Mart **Classification:** SATISFACTORY **Rating:** 30.00

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

**CH Group:** 01 - Gas Stations with convenience Stores and other Gas Stations

**Location:** 301 West Dallas Avenue in Cooper, Delta County, Texas

**TCEQ Region:** REGION 05 - TYLER

**ID Number(s):**  
PETROLEUM STORAGE TANK REGISTRATION REGISTRATION  
29086

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

**Date Compliance History Report Prepared:** February 04, 2021

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** February 04, 2016 to February 04, 2021

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

**Name:** Tyler Richardson **Phone:** (512) 756-3994

## 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:

- 1 Effective Date: 07/18/2017 ADMINORDER 2016-0964-PST-E (1660 Order-Agreed Order With Denial)  
Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)  
30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)  
Description: Failure to monitor the USTs for releases at a frequency of at least once per month.  
Classification: Moderate  
Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)(1)(B)  
Description: Failure to maintain legible copies of all required records pertaining to an UST system and make available for inspection by the TCEQ or their UST Contractor.

### 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  
BENTON RAINEY;  
RN102839560**

**§  
§  
§  
§  
§**

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2021-0212-PST-E**

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition, filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Benton Rainey ("Respondent").

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

### **FINDINGS OF FACT**

1. Respondent owns, as defined in 30 TEX. ADMIN. CODE § 334.2(78), an underground storage tank ("UST") system located at 301 West Dallas Avenue in Cooper, Delta County, Texas (Facility ID No. 29086) (the "Facility"). The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contain or contained a regulated petroleum substance as defined in the rules of the TCEQ.
2. During an investigation conducted on January 28, 2020, an investigator documented that Respondent:
  - a. Failed to adequately protect a temporarily out-of-service UST system from corrosion. Specifically, Respondent did not conduct the triennial corrosion protection test or bimonthly rectifier inspections and the rectifier read zero voltage. Also, Respondent failed to empty the UST system and perform a site check as well as necessary corrective actions for a temporarily out of service UST system that would meet financial assurance exemption requirements;
  - b. Failed to identify and designate for the UST facility at least one named individual for each class of operator (Class A, B, and C) for the UST facility. Specifically, Respondent did not have a Class A and Class B operator for the Facility;
  - c. Failed to monitor a temporarily out-of-service UST system for releases at least once every 30 days; and
  - d. Failed to notify the agency of any change or additional information regarding the UST system within 30 days of the occurrence of the change or addition. Specifically, the UST registration indicated that Tank Nos. 1 through 3 were in use while the tanks were temporarily out-of-service.
3. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Benton Rainey" (the "EDPRP") in the TCEQ Chief Clerk's office on July 28, 2022.

4. By letter dated July 28, 2022, sent to Respondent's last known address via certified mail, return receipt requested, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on July 30, 2022, as evidenced by the signature on the card.
5. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

#### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to adequately protect a temporarily out-of-service UST system from corrosion and failed to empty the UST system and perform a site check as well as necessary corrective actions for a temporarily out of service UST system that would meet financial assurance exemption requirements, in violation of TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE §§ 334.49(c)(2)(C) and (c)(4)(C) and 334.54(b)(3) and (e)(5).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to identify and designate for the UST facility at least one named individual for each class of operator Class A, Class B, and Class C for the UST facility, in violation of 30 TEX. ADMIN. CODE § 334.602(a).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to monitor a temporarily out-of-service UST system for releases at least once every 30 days, in violation of TEX. WATER CODE § 26.3475(c)(1), 30 TEX. ADMIN. CODE §§ 334.50(b)(1)(A) and 334.54(c)(1), and TCEQ Docket No. 2016-0964-PST-E, Ordering Provision No. 2.b.
5. As evidenced by Finding of Fact No. 2.d., Respondent failed to notify the agency of any change or additional information regarding the UST system within 30 days of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(1)(B) and (d)(3).
6. As evidenced by Findings of Fact Nos. 3 and 4, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(b)(1).
7. As evidenced by Finding of Fact No. 5, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
8. Pursuant to TEX. WATER CODE § 7.051 the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
9. An administrative penalty in the amount of \$74,194 is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
10. TEX. WATER CODE § 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.



### ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of \$74,194 for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondent's compliance with all the requirements set forth in this Order resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations which are not raised here.
2. The penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to TCEQ and shall be sent with the notation "Re: Benton Rainey; Docket No. 2021-0212-PST-E" to:

Financial Administration Division  
Revenue Operations Section  
Texas Commission on Environmental Quality  
Attention: Cashier's Office, MC 214  
P.O. Box 13088  
Austin, Texas 78711-3088

3. Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Order:
    - i. Obtain the required Class A and Class B operator training and certification, in accordance with 30 TEX. ADMIN. CODE § 334.602;
    - ii. Properly temporarily remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.54, including providing release detection and corrosion protection for the UST system, and either providing financial assurance or emptying the USTs of all regulated substances and conducting a site check, in accordance with 30 TEX. ADMIN. CODE §§ 334.49, 334.50, and 334.54; or
    - iii. Permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55.
  - b. Within 60 days after the effective date of this Order, submit an amended registration to reflect the UST system's current operational status, in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

Registration and Reporting Section  
Permitting & Registration Support Division, MC 138  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087
  - c. Within 75 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. 3.a.i., 3.a.ii., and 3.b. or 3.a.iii. and 3.b. This 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 fine and imprisonment for knowing violations.”

4. Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and:

Waste Section Manager  
Tyler Regional Office  
Texas Commission on Environmental Quality  
2916 Teague Drive  
Tyler, Texas 75701-3734

5. All relief not expressly granted in this Order is denied.
6. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
7. 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.
8. 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.
9. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
10. 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.

11. 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.
12. The Chief Clerk shall provide a copy of this fully executed Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

**SIGNATURE PAGE**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

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For the Commission

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Date

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



## UNSWORN DECLARATION OF DAVID KEAGLE

"On behalf of the Executive Director of the Texas Commission on Environmental Quality, the Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Benton Rainey' (the "EDPRP") was filed in the TCEQ Chief Clerk's office on July 28, 2022.

The EDPRP was mailed to Respondent's last known address on July 28, 2022, via certified mail, return receipt requested, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on July 30, 2022, as evidenced by the signature on the card.

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

"My name is David Keagle, and I am an employee of the following governmental agency: Texas Commission on Environmental Quality. I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the foregoing is true and correct."

Executed in Travis County,  
State of Texas,  
on this 17th day of May, 2024

A handwritten signature in blue ink that reads "David C. Keagle".

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Declarant