

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 61107
US C-Store Operations, LLC dba Midtown Pentry
RN102255536
Docket No. 2021-0976-PST-E

Order Type:
Agreed Order

Media:
PST

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
720 South Fleishel Avenue, Tyler, Smith 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: February 24, 2023

Comments Received: None

Penalty Information

Total Penalty Assessed: \$15,000

Total Paid to General Revenue: \$440

Total Due to General Revenue: \$14,560

Payment Plan: 35 payments of \$416 each

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - Satisfactory

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: January 28, 2021

Investigation Information

Complaint Date(s): N/A

Date(s) of Investigation: May 26, 2021

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

Date(s) of NOE(s): July 23, 2021

Violation Information

1. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].
2. Failed to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years [TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(c)(4)(C)].
3. Failed to monitor the USTs in a manner which would 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)].
4. Failed to provide release detection for the pressurized piping associated with the UST system [TEX. WATER CODE § 26.3475(a) and 30 TEX. ADMIN. CODE § 334.50(b)(2)].
5. Failed to maintain operator training certification records on-site and make them available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.606].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Within 30 days:
 - a. Demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs;
 - b. Conduct the triennial testing of the corrosion protection system for the UST system;
 - c. Implement a release detection method for the USTs;
 - d. Conduct the annual line leak detector and piping tightness tests; and
 - e. Begin maintaining operator training certification records on-site and make them available for inspection upon request by agency personnel.
2. Within 45 days submit written certification to demonstrate compliance with Technical Requirement Nos. 1.a. through 1.e.

Litigation Information

Date Petition(s) Filed: June 6, 2022
Date(s) of Service: June 9, 2022
Date Answer(s) Filed: June 29, 2022
Settlement Date: January 9, 2023

Contact Information

TCEQ Attorneys: William Hogan, 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, 512-239-2142
TCEQ Regional Contact: Michelle Baetz, Tyler Regional Office, (903) 535-5100
Respondent Contact: Jeffrey Love, Manager, US C-Store Operations, LLC, 1601 Elm Street, Suite 4210,
Dallas, Texas 75201-7282
Respondent's Attorney: Stephanie Giotes, US C-Store Operations, LLC, 1601 Elm Street, Suite 4210,
Dallas, Texas 75201-7282



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	26-Jul-2021	Screening	27-Jul-2021	EPA Due	
	PCW	17-Sep-2021				

RESPONDENT/FACILITY INFORMATION	
Respondent	US C-Store Operations, LLC dba Midtown Pentry
Reg. Ent. Ref. No.	RN102255536
Facility/Site Region	5-Tyler
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	61107	No. of Violations	4
Docket No.	2021-0976-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Berenice Munoz
		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	\$12,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1		
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>		
Compliance History	20.0% Adjustment	Subtotals 2, 3, & 7 \$2,500

Notes: Enhancement for one Agreed Order containing a denial of liability.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$207
 Estimated Cost of Compliance: \$4,143
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$15,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0% Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$15,000
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$15,000
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DEFERRAL	0.0% Reduction Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$15,000
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Screening Date 27-Jul-2021

Docket No. 2021-0976-PST-E

PCW

Respondent US C-Store Operations, LLC dba Midtown Pentry

Policy Revision 5 (January 28, 2021)

Case ID No. 61107

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN102255536

Media Petroleum Storage Tank

Enf. Coordinator Berenice Munoz

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 Agreed Order containing a denial of liability.

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

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 20%

Screening Date 27-Jul-2021

Docket No. 2021-0976-PST-E

PCW

Respondent US C-Store Operations, LLC dba Midtown Pentry

Policy Revision 5 (January 28, 2021)

Case ID No. 61107

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN102255536

Media Petroleum Storage Tank

Enf. Coordinator Berenice Munoz

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 37.815(a) and (b)

Violation Description

Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum underground storage tanks ("USTs").

Base Penalty

\$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	X		

Percent 10.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment

\$22,500

\$2,500

Violation Events

Number of Violation Events 1

70 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty

\$2,500

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

\$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$100

Violation Final Penalty Total

\$3,000

This violation Final Assessed Penalty (adjusted for limits)

\$3,000

Economic Benefit Worksheet

Respondent US C-Store Operations, LLC dba Midtown Pentry
Case ID No. 61107
Reg. Ent. Reference No. RN102255536
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)	\$1,980	18-May-2021	22-May-2022	1.01	\$100	n/a	\$100

Notes for DELAYED costs

Estimated delayed cost to provide financial assurance for three USTs at the Facility (\$660 per each tank).
 The Date Required is the date the last policy expired 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 \$1,980

TOTAL \$100

Screening Date 27-Jul-2021 **Docket No.** 2021-0976-PST-E **PCW**
Respondent US C-Store Operations, LLC dba Midtown Pentry *Policy Revision 5 (January 28, 2021)*
Case ID No. 61107 *PCW Revision February 11, 2021*
Reg. Ent. Reference No. RN102255536
Media Petroleum Storage Tank
Enf. Coordinator Berenice Munoz

Violation Number 2
Rule Cite(s) 30 Tex. Admin. Code § 334.49(c)(4)(C), and Tex. Water Code § 26.3475(d)
Violation Description Failed to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years. Specifically, the triennial testing of the corrosion protection system had not been conducted.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

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 62 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$3,750

One single event is recommended.

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOE/NOV	NOE/NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	

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

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$25 **Violation Final Penalty Total** \$4,500

This violation Final Assessed Penalty (adjusted for limits) \$4,500

Economic Benefit Worksheet

Respondent US C-Store Operations, LLC dba Midtown Pentry
Case ID No. 61107
Reg. Ent. Reference No. RN102255536
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	\$500	26-May-2021	22-May-2022	0.99	\$25	n/a	\$25
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 conduct the triennial testing of the corrosion protection system 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

\$500

TOTAL

\$25

Screening Date 27-Jul-2021 **Docket No.** 2021-0976-PST-E **PCW**
Respondent US C-Store Operations, LLC dba Midtown Pentry *Policy Revision 5 (January 28, 2021)*
Case ID No. 61107 *PCW Revision February 11, 2021*
Reg. Ent. Reference No. RN102255536
Media Petroleum Storage Tank
Enf. Coordinator Berenice Munoz

Violation Number 3
Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A) and (b)(2) and Tex. Water Code § 26.3475(a) and (c)(1)
Violation Description Failed to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days. Also, failed to provide release detection for the pressurized piping associated with the UST system. Specifically, the annual line leak detector and piping tightness tests had not been conducted.

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 62 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 May 26, 2021 investigation date to the July 27, 2021 screening date.

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOE/NOV	NOE/NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	

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

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$80 **Violation Final Penalty Total** \$4,500

This violation Final Assessed Penalty (adjusted for limits) \$4,500

Economic Benefit Worksheet

Respondent US C-Store Operations, LLC dba Midtown Pentry
Case ID No. 61107
Reg. Ent. Reference No. RN102255536
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	\$118	26-May-2021	22-May-2022	0.99	\$6	n/a	\$6
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	26-May-2021	22-May-2022	0.99	\$74	n/a	\$74

Notes for DELAYED costs

Estimated delayed cost to conduct the annual line leak detector and piping tightness tests (\$118) and to implement a release detection method for the USTs at the Facility (\$1,500). The Dates Required are the investigation 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				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,618

TOTAL

\$80

Screening Date 27-Jul-2021 **Docket No.** 2021-0976-PST-E **PCW**
Respondent US C-Store Operations, LLC dba Midtown Pentry *Policy Revision 5 (January 28, 2021)*
Case ID No. 61107 *PCW Revision February 11, 2021*
Reg. Ent. Reference No. RN102255536
Media Petroleum Storage Tank
Enf. Coordinator Berenice Munoz

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

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="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text" value="10.0%"/>

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="checkbox"/>

Violation Base Penalty

Good Faith Efforts to Comply Reduction

	Before NOE/NOV	NOE/NOV to EDRP/ Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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 US C-Store Operations, LLC dba Midtown Pentry
Case ID No. 61107
Reg. Ent. Reference No. RN102255536
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	\$45	26-May-2021	22-May-2022	0.99	\$2	n/a	\$2
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 begin maintaining operator training certification records on-site and make them available for inspection upon request by agency personnel. 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 \$45

TOTAL \$2

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 CN605698331, RN102255536, Rating Year 2021 which includes Compliance History (CH) components from September 1, 2016, through August 31, 2021.

Customer, Respondent, or Owner/Operator: CN605698331, US C-Store Operations, LLC
Classification: SATISFACTORY **Rating:** 11.25

Regulated Entity: RN102255536, Midtown Pentry
Classification: SATISFACTORY **Rating:** 22.50

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

CH Group: 14 - Other

Location: 720 South Fleishel Avenue, Tyler, Smith County, Texas 75701-2040

TCEQ Region: REGION 05 - TYLER

ID Number(s):

PETROLEUM STORAGE TANK REGISTRATION
REGISTRATION 7423

Compliance History Period: September 01, 2016 to August 31, 2021 **Rating Year:** 2021 **Rating Date:** 09/01/2021

Date Compliance History Report Prepared: May 23, 2022

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: September 21, 2016 to September 21, 2021

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

Name: Berenice Munoz

Phone: (512) 239-2915

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? US C-Store Operations, LLC OWNER OPERATOR since 5/20/2020
- 4) Who was/were the prior owner(s)/operator(s)? DIAMOND FORTUNE INC, OWNER OPERATOR, 12/5/2017 to 5/19/2020
Aaina Enterprises Inc., OWNER OPERATOR, 5/15/2007 to 1/2/2018

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

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

- 1 Effective Date: 10/25/2016 ADMINORDER 2015-1387-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 every month (not to exceed 35 days between each monitoring)
Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(a)
30 TAC Chapter 334, SubChapter C 334.50(b)(2)
Description: Failure to provide proper release detection for the piping associated with UST systems.

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 06, 2018 (1486604)

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
US C-STORE OPERATIONS, LLC DBA
MIDTOWN PENTRY;
RN102255536**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2021-0976-PST-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding US C-Store Operations, LLC dba Midtown Pentry ("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 Stephanie Giotes, together stipulate that:

1. Respondent owns and operates, 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 720 South Fleishel Avenue in Tyler, Smith County, Texas (Facility ID No. 7423) (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 it contains or contained a regulated petroleum substance as defined in the rules of the TCEQ.
2. The Executive Director and Respondent agree that 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 Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of fifteen thousand dollars (\$15,000.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid four hundred forty dollars (\$440.00) of the penalty. The remaining amount of fourteen thousand five hundred sixty dollars (\$14,560.00) shall be paid in thirty-five (35) monthly payments of four hundred sixteen dollars (\$416.00) 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 Respondent fails to timely and satisfactorily comply with the payment requirements of this Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Respondent's failure to meet the payment schedule of this Order and/or the acceleration of any remaining balance constitutes the failure by Respondent to timely and satisfactorily comply with all the terms of this Order.
5. The Executive Director and Respondent agree on a settlement of the matters addressed in this Order, 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 contained 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 full compliance with all the terms and conditions set forth in this Order, whichever is later.

II. ALLEGATIONS

1. During an investigation conducted on and around May 26, 2021, an investigator documented that Respondent:
 - a. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b);
 - b. Failed to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years, in violation of TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(c)(4)(C). Specifically, the triennial testing of the corrosion protection system had not been conducted;
 - c. Failed to monitor the USTs in a manner which would 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);
 - d. Failed to provide release detection for the pressurized piping associated with the UST system, in violation of TEX. WATER CODE § 26.3475(a) and 30 TEX. ADMIN. CODE § 334.50(b)(2). Specifically, the annual line leak detector and piping tightness tests had not been conducted; and
 - e. Failed to maintain operator training certification records on-site and make them available for inspection upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 334.606. Specifically, training certification records for Class A, Class B, and Class C Operators were not available.

III. DENIALS

Respondent generally denies each Allegation in Section II.

IV. ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty as set forth in Section I, Paragraph 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 actions 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: US C-Store Operations, LLC dba Midtown Pentry, Docket No. 2021-0976-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

2. Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order:
 - i. Demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in accordance with 30 TEX. ADMIN. CODE § 37.815;
 - ii. Conduct the triennial testing of the corrosion protection system for the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.49;
 - iii. Implement a release detection method for the USTs, in accordance with 30 TEX. ADMIN. CODE § 334.50;
 - iv. Conduct the annual line leak detector and piping tightness tests, in accordance with 30 TEX. ADMIN. CODE § 334.50; and
 - v. Begin maintaining operator training certification records on-site and make them available for inspection upon request by agency personnel, in accordance with 30 TEX. ADMIN. CODE § 334.606.
 - b. Within 45 days after the effective date of this Order, submit written certification to demonstrate compliance with Ordering Provision No. 2.a.i. through 2.a.v. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by Respondent, and shall include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The written certification and supporting documentation necessary to demonstrate compliance with these Ordering Provisions shall be sent 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

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. 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. 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 TCEQ's jurisdiction or of a rule adopted or an order or permit issued by the TCEQ 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



4/10/23

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 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;
- 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.



Signature - Jeffrey Love, Manager
US C-Store Operations, LLC dba Midtown Pentry
1601 Elm Street, Suite 4210
Dallas, Texas 75201-7282

Date

1/9/2023

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