

**Executive Summary – Enforcement Matter – Case No. 61531**  
**COWBOY STAR INC. dba Smith Corner**  
**RN102238334**  
**Docket No. 2021-1447-PST-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

PST

**Small Business:**

No

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

Smith Corner, 106 East Dempsey Street, Bryson, Jack 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: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** December 2, 2022

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$10,025

**Amount Deferred for Expedited Settlement:** \$2,005

**Total Paid to General Revenue:** \$195

**Total Due to General Revenue:** \$7,825

Payment Plan: 34 payments of \$225 each and one final payment of \$175

**Compliance History Classifications:**

Person/CN - Satisfactory

Site/RN - High

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** January 2021

***Investigation Information***

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

**Complaint Information:** N/A

**Date(s) of Investigation:** September 8, 2021

**Date(s) of NOE(s):** October 29, 2021

***Violation Information***

1. Failed to monitor the USTs for releases at a frequency of at least once every 30 days [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].

**Executive Summary – Enforcement Matter – Case No. 61531**  
**COWBOY STAR INC. dba Smith Corner**  
**RN102238334**  
**Docket No. 2021-1447-PST-E**

2. Failed to report a suspected release to the TCEQ within 24 hours of discovery. Specifically, monthly inventory control records for June 2021 through August 2021 for manifolded Tanks Nos. 1 and 4 indicate a suspected release which was not reported [30 TEX. ADMIN. CODE § 334.72].

3. Failed to investigate a suspected release to the TCEQ within 30 days. Specifically, monthly inventory control records for June 2021 through August 2021 for manifolded Tanks Nos. 1 and 4 indicate a suspected release which was not investigated [30 TEX. ADMIN. CODE § 334.74].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

The Order will require the Respondent to:

- a. Within 30 days:
  - i. Implement a release detection method for the USTs;
  - ii. Develop and implement procedures designed to ensure the timely reporting of suspected releases; and
  - iii. Conduct an investigation of the suspected release and implement appropriate corrective measures.
- b. Within 45 days, submit written certification to demonstrate compliance with a.

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Ken Moller, Enforcement Division, Enforcement Team 3, MC 219, (512) 239-6111; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

**Respondent:** Kapil D. Adhikari, President, COWBOY STAR INC., 132 Trail Ridge, Weatherford, Texas 76087

Haribol Bhandari, Owner, Smith Corner, 106 East Dempsey Street, Bryson, Texas 76427

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



# Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

<b>DATES</b>	<b>Assigned</b>	1-Nov-2021	
	<b>PCW</b>	4-Nov-2021	
	<b>Screening</b>	4-Nov-2021	
	<b>EPA Due</b>		

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	COWBOY STAR INC. dba Smith Corner
<b>Reg. Ent. Ref. No.</b>	RN102238334
<b>Facility/Site Region</b>	3-Abilene
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	61531	<b>No. of Violations</b>	3
<b>Docket No.</b>	2021-1447-PST-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Ken Moller
		<b>EC's Team</b>	Enforcement Team 3
<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>	\$10,000
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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>	0.0%	Adjustment	<b>Subtotals 2, 3, &amp; 7</b>	\$0
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<b>Notes</b>	No adjustment for compliance history.
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<b>Culpability</b>	No	0.0%	Enhancement	<b>Subtotal 4</b>	\$0
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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>	\$0
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<b>Economic Benefit</b>	0.0%	Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$153
Estimated Cost of Compliance	\$2,625

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$10,000
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.3%	Adjustment	\$25
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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. 2.
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<b>Final Penalty Amount</b>	\$10,025
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$10,025
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<b>DEFERRAL</b>	20.0%	Reduction	Adjustment	-\$2,005
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Reduces the Final Assessed Penalty by the indicated percentage.

<b>Notes</b>	Deferral offered for expedited settlement.
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<b>PAYABLE PENALTY</b>	\$8,020
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Screening Date

4-Nov-2021

Docket No.

2021-1447-PST-E

PCW

Respondent

COWBOY STAR INC. dba Smith Corner

Case ID No.

61531

Reg. Ent. Reference No.

RN102238334

Media

Petroleum Storage Tank

Enf. Coordinator

Ken Moller

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

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)

NoAdjustment Percentage (Subtotal 3)0%

>> Compliance History Person Classification (Subtotal 7)

Satisfactory PerformerAdjustment Percentage (Subtotal 7)0%

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)0%

>> Final Compliance History Adjustment

Final Adjustment Percentage \*capped at 100%0%

<b>Screening Date</b> 4-Nov-2021		<b>Docket No.</b> 2021-1447-PST-E		<b>PCW</b>	
<b>Respondent</b> COWBOY STAR INC. dba Smith Corner		<i>Policy Revision 5 (January 28, 2021)</i>			
<b>Case ID No.</b> 61531		<i>PCW Revision February 11, 2021</i>			
<b>Reg. Ent. Reference No.</b> RN102238334					
<b>Media</b> Petroleum Storage Tank					
<b>Enf. Coordinator</b> Ken Moller					
<b>Violation Number</b>		1			
<b>Rule Cite(s)</b>		30 Tex. Admin. Code § 334.50(b)(1)(A) and Tex. Water Code § 26.3475(c)(1)			
<b>Violation Description</b>		Failed to monitor the underground storage tanks ("USTs") for releases at a frequency of at least once every 30 days.			
		<b>Base Penalty</b>		\$25,000	
>> Environmental, Property and Human Health Matrix					
OR	<b>Release</b>		<b>Harm</b>		
	Major	Moderate	Minor		
	Actual				
	Potential	x			<b>Percent</b> 15.0%
>> Programmatic Matrix					
	Falsification	Major	Moderate	Minor	
					<b>Percent</b> 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.				
				<b>Adjustment</b>	\$21,250
					\$3,750
>> Violation Events					
Number of Violation Events		1	57	Number of violation days	
	daily				
	weekly				
	monthly				
	quarterly	x		<b>Violation Base Penalty</b> \$3,750	
	semiannual				
	annual				
	single event				
One quarterly event is recommended from the September 8, 2021 investigation date to the November 4, 2021 screening date.					
<b>Good Faith Efforts to Comply</b>		0.0%		Reduction \$0	
	Extraordinary				
	Ordinary				
	N/A	x			
Notes	The Respondent does not meet the good faith criteria for this violation.				
				<b>Violation Subtotal</b>	\$3,750
<b>Economic Benefit (EB) for this violation</b>			<b>Statutory Limit Test</b>		
<b>Estimated EB Amount</b>		\$73	<b>Violation Final Penalty Total</b>		\$3,761
<b>This violation Final Assessed Penalty (adjusted for limits)</b>				\$3,761	

Economic Benefit Worksheet

Respondent Case ID No. COWBOY STAR INC. dba Smith Corner  
Reg. Ent. Reference No. 61531  
Media RN102238334  
Violation No. Petroleum Storage Tank  
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)	\$1,500	8-Sep-2021	28-Aug-2022	0.97	\$73	n/a	\$73
Notes for DELAYED costs	Estimated delayed cost to implement a release detection method for the USTs at the Facility. The Date Required is the investigation date, and the Final Date is the estimated date of compliance.						

Avoided Costs ANNUALIZE avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Notes for AVOIDED costs							

Approx. Cost of Compliance	\$1,500	TOTAL	\$73
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<b>Screening Date</b>	4-Nov-2021	<b>Docket No.</b>	2021-1447-PST-E	<b>PCW</b>
<b>Respondent</b>	COWBOY STAR INC. dba Smith Corner			<i>Policy Revision 5 (January 28, 2021)</i>
<b>Case ID No.</b>	61531			<i>PCW Revision February 11, 2021</i>
<b>Reg. Ent. Reference No.</b>	RN102238334			
<b>Media</b>	Petroleum Storage Tank			
<b>Enf. Coordinator</b>	Ken Moller			
<b>Violation Number</b>	2			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 334.72			
<b>Violation Description</b>	Failed to report a suspected release to the TCEQ within 24 hours of discovery. Specifically, monthly inventory control records for June 2021 through August 2021 for manifolded Tanks Nos. 1 and 4 indicate a suspected release which was not reported.			
<b>Base Penalty</b>				\$25,000
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
<b>OR</b>	<b>Release</b>	<b>Harm</b>		
		Major	Moderate	Minor
	Actual			
	Potential			
				<b>Percent</b> 0.0%
<b>&gt;&gt; Programmatic Matrix</b>				
	Falsification	Major	Moderate	Minor
		x		
				<b>Percent</b> 10.0%
<b>Matrix Notes</b>	Greater than 70% of the rule requirement was not met.			
<b>Adjustment</b>				\$22,500
				\$2,500
<b>Violation Events</b>				
Number of Violation Events		1	96	Number of violation days
	daily			
	weekly			
	monthly			
	quarterly			
	semiannual			
	annual			
	single event	x		
				<b>Violation Base Penalty</b> \$2,500
One single event is recommended for the manifolded USTs with an unreported suspected release.				
<b>Good Faith Efforts to Comply</b>		0.0%	Reduction \$0	
		Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer	
	Extraordinary			
	Ordinary			
	N/A	x		
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.			
<b>Violation Subtotal</b>				\$2,500
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>		
<b>Estimated EB Amount</b>		\$30	<b>Violation Final Penalty Total</b> \$2,508	
<b>This violation Final Assessed Penalty (adjusted for limits)</b>				\$2,508

# Economic Benefit Worksheet

**Respondent** COWBOY STAR INC. dba Smith Corner  
**Case ID No.** 61531  
**Reg. Ent. Reference No.** RN102238334  
**Media** Petroleum Storage Tank  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	8-Sep-2021	28-Aug-2022	0.97	\$5	n/a	\$5
Notes for DELAYED costs	Estimated delayed cost to develop and implement procedures designed to ensure timely reporting of suspected releases. 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)	\$25	31-Jul-2021	4-Nov-2021	0.26	\$0	\$25	\$25
Notes for AVOIDED costs	Estimated avoided cost to report a suspected release. The Date Required is the suspected release report due date and the Final Date is the screening date.						

Approx. Cost of Compliance	\$125	TOTAL	\$30
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<b>Screening Date</b>	4-Nov-2021	<b>Docket No.</b>	2021-1447-PST-E	<b>PCW</b>
<b>Respondent</b>	COWBOY STAR INC. dba Smith Corner			<i>Policy Revision 5 (January 28, 2021)</i>
<b>Case ID No.</b>	61531			<i>PCW Revision February 11, 2021</i>
<b>Reg. Ent. Reference No.</b>	RN102238334			
<b>Media</b>	Petroleum Storage Tank			
<b>Enf. Coordinator</b>	Ken Moller			
<b>Violation Number</b>	3			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 334.74			
<b>Violation Description</b>	Failed to investigate a suspected release requiring reporting under 30 Tex. Admin. Code § 334.72 to the TCEQ within 30 days of discovery. Specifically, monthly inventory control records for June 2021 through August 2021 for manifolded Tanks Nos. 1 and 4 indicate a suspected release which was not investigated.			
<b>Base Penalty</b>				\$25,000
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
<b>OR</b>	<b>Release</b>	<b>Harm</b>		
		Major	Moderate	Minor
	Actual			
	Potential	x		
<b>Percent</b>				15.0%
<b>&gt;&gt; Programmatic Matrix</b>				
	Falsification	Major	Moderate	Minor
<b>Percent</b>				0.0%
<b>Matrix Notes</b>	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.			
<b>Adjustment</b>				\$21,250
				\$3,750
<b>Violation Events</b>				
Number of Violation Events		1	67	Number of violation days
	daily			
	weekly			
	monthly			
	quarterly	x		
	semiannual			
	annual			
	single event			
<b>Violation Base Penalty</b>				\$3,750
One quarterly event is recommended from the August 29, 2021 suspected release investigation due date to the November 4, 2021 screening date.				
<b>Good Faith Efforts to Comply</b>		0.0%	Reduction	
		Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer	
	Extraordinary			
	Ordinary			
	N/A	x		
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.			
<b>Violation Subtotal</b>				\$3,750
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>		
<b>Estimated EB Amount</b>		\$50	<b>Violation Final Penalty Total</b>	
			\$3,761	
<b>This violation Final Assessed Penalty (adjusted for limits)</b>				\$3,761

Economic Benefit Worksheet

Respondent Case ID No. COWBOY STAR INC. dba Smith Corner  
Reg. Ent. Reference No. 61531  
Media RN102238334  
Violation No. Petroleum Storage Tank  
3

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)	\$1,000	29-Aug-2021	28-Aug-2022	1.00	\$50	n/a	\$50
Notes for DELAYED costs	Estimated cost to conduct an investigation of the suspected release and implement appropriate corrective measures. The Date Required is the date the suspected release investigation was due and the Final Date is the estimated date of compliance.						

Avoided CostsANNUALIZE 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	\$50
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# Compliance History Report

Compliance History Report for CN604297382, RN102238334, Rating Year 2021 which includes Compliance History (CH) components from September 1, 2016, through August 31, 2021.

**Customer, Respondent, or Owner/Operator:** CN604297382, COWBOY STAR INC.

**Classification:** SATISFACTORY

**Rating:** 7.64

**Regulated Entity:** RN102238334, Smith Corner

**Classification:** HIGH

**Rating:** 0.00

**Complexity Points:** 3

**Repeat Violator:** NO

**CH Group:** 14 - Other

**Location:** 106 East Dempsey Street in Bryson, Jack County, Texas

**TCEQ Region:** REGION 03 - ABILENE

**ID Number(s):**

PETROLEUM STORAGE TANK REGISTRATION REGISTRATION  
57130

**Compliance History Period:** September 01, 2016 to August 31, 2021

**Rating Year:** 2021

**Rating Date:** 09/01/2021

**Date Compliance History Report Prepared:** January 18, 2022

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** January 18, 2017 to January 18, 2022

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

**Name:** Tyler Richardson

**Phone:** (512) 239-4872

## 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	November 26, 2018	(1530434)
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### **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  
COWBOY STAR INC. DBA  
SMITH CORNER  
RN102238334**

**§           BEFORE THE  
§  
§  
§           TEXAS COMMISSION ON  
§  
§           ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2021-1447-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 COWBOY STAR INC. dba Smith Corner (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 convenience store with retail sales of gasoline located at 106 East Dempsey Street in Bryson, Jack 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 \$10,025 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid \$195 of the penalty and \$2,005 is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Order. The deferred amount shall be waived only upon full compliance with all the terms and conditions contained in this Order. If the Respondent fails to timely and satisfactorily comply with any of the terms or requirements contained in this Order, the Executive Director may demand payment of all or part of the deferred penalty amount.

The remaining amount of \$7,825 of the undeferred penalty shall be paid in 34 monthly payments of \$225 each and one final payment of \$175. 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 September 8, 2021, an investigator documented that the Respondent:

1. Failed to monitor the USTs for releases at a frequency of at least once every 30 days, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1).
2. Failed to report a suspected release to the TCEQ within 24 hours of discovery, in violation of 30 TEX. ADMIN. CODE § 334.72. Specifically, monthly inventory control records for June 2021 through August 2021 for manifolded Tanks Nos. 1 and 4 indicate a suspected release which was not reported.
3. Failed to investigate a suspected release requiring reporting under 30 TEX. ADMIN. CODE § 334.72 to the TCEQ within 30 days, in violation of 30 TEX. ADMIN. CODE § 334.74. Specifically, monthly inventory control records for June 2021 through August 2021 for manifolded Tanks Nos. 1 and 4 indicate a suspected release which was not investigated.

### **III. DENIALS**

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

### **IV. ORDERING PROVISIONS**

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

1. The Respondent is assessed a penalty as set forth in Section I, Paragraph 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: COWBOY STAR INC. dba Smith Corner, Docket No. 2021-1447-PST-E" to:

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

2. The Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Order:
    - i. Implement a release detection method for the USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.50;
    - ii. Develop and implement procedures designed to ensure the timely reporting of suspected releases, in accordance with 30 TEX. ADMIN. CODE § 334.72; and
    - iii. Conduct an investigation of the suspected release and implement appropriate corrective measures, in accordance with 30 TEX. ADMIN. CODE § 334.74.
  - b. Within 45 days after the effective date of this Order, submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. 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  
Abilene Regional Office  
Texas Commission on Environmental Quality  
1977 Industrial Boulevard  
Abilene, Texas 79602-7833

3. All relief not expressly granted in this Order is denied.
4. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. If the Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Order Compliance Team at the address listed above.
7. This Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and



may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms: electronic transmission, owner, person, writing, and written, shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

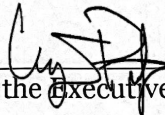
9. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

  
For the Executive Director

8/21/2023

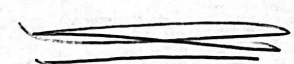
Date

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.

  
Signature

8-1-23  
Date

Harish Bhandari  
Name (Printed or typed)  
Authorized Representative of  
COWBOY STAR INC. dba Smith Corner

Owner  
Title

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

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