

TCEQ Interoffice Memorandum

To: Mary Smith, General Counsel

Thru: *MSC* Melissa Cordell, Interim Deputy Director
Enforcement Division

From: *MP* Michael Parrish, Team Leader
Special Functions Team

Date: December 5, 2022

Subject: Backup Revision
December 14, 2022 Commission Agenda
Draft Item No. 40 – COWBOY STAR INC. dba Beckley's Food Mart
Docket No. 2021-1502-PST-E

Enclosed please find the following:

Executive Summary:

- Page 2, Violation Information Item No. 3: Remove unnecessary language – “in violation of.”

Please do not hesitate to call Michael Parrish at (512) 239-2548 if you have any questions regarding this matter.

cc: Garrett Arthur, Public Interest Counsel
Melissa Schmidt, Public Interest Counsel
Gill Valls, Office of General Counsel
Katherine McKenzie, Agenda Coordinator, Litigation Division
Melissa Cordell, Interim Deputy Director, Enforcement Division
Rebecca Margain-Nunez, Executive Assistant, Enforcement Division
Madelyn Flannigan, Team Leader, Waste Section, Enforcement Division
Ken Moller, Waste Section, Enforcement Division

**Executive Summary – Enforcement Matter – Case No. 61455
COWBOY STAR INC. dba Beckley's Food Mart
RN102057411
Docket No. 2021-1502-PST-E**

Violation Information

1. Failed to monitor the UST and the associated pressurized piping in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring for tanks and associated pressurized piping installed on or after January 1, 2009. Specifically, the tanks and associated pressurized piping were installed on May 26, 2016, and the Respondent was not using interstitial monitoring as the primary form of release detection [30 TEX. ADMIN. CODE § 334.50(b)(1)(B) and (b)(2)(A)(iii) and TEX. WATER CODE § 26.3475(a) and (c)(1)].
2. Failed to test the spill prevention equipment and containment sumps used for interstitial monitoring of piping at least once every three years to ensure the equipment is liquid tight. Specifically, the Respondent had not conducted the triennial spill prevention equipment and containment sump testing [30 TEX. ADMIN. CODE § 334.48(g)(1)(A)(ii) and TEX. WATER CODE § 26.3475(c)(2)].
3. Failed to inspect the overfill prevention equipment at least once every three years, **in violation of**. Specifically, the Respondent had not conducted a triennial inspection of overfill prevention equipment [30 TEX. ADMIN. CODE § 334.48(g)(1)(B) and TEX. WATER CODE § 26.3475(c)(2)].
4. Failed to ensure that a certified Class C operator is retrained within three years of the last training date. Specifically, the Respondent's most recent Class C operator training certification expired on July 5, 2021 [30 TEX. ADMIN. CODE § 334.605(b)].
5. Failed to retrain a certified Class A and Class B operator by January 1, 2020, with a course submitted to and approved by the TCEQ after April 1, 2018. Specifically, an employee took PASS A/B operator training on December 25, 2018, and did not retrain by January 1, 2020, with an approved course [30 TEX. ADMIN. CODE § 334.605(d)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Respondent shall undertake the following technical requirements:

- a. Within 30 days:
 - i. Implement interstitial monitoring release detection for the UST system (tanks and pressurized piping);

Executive Summary – Enforcement Matter – Case No. 61455
COWBOY STAR INC. dba Beckley's Food Mart
RN102057411
Docket No. 2021-1502-PST-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Beckley's Food Mart, 600 West Commerce Street, Brady, McCulloch 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: N/A

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: July 22, 2022

Comments Received: No

Penalty Information

Total Penalty Assessed: \$8,400

Amount Deferred for Expedited Settlement: \$1,680

Total Paid to General Revenue: \$210

Total Due to General Revenue: \$6,510

Payment Plan: 35 payments of \$186 each

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - Satisfactory

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: July 28, 2021

Date(s) of NOE(s): August 20, 2021

Executive Summary – Enforcement Matter – Case No. 61455
COWBOY STAR INC. dba Beckley's Food Mart
RN102057411
Docket No. 2021-1502-PST-E

Violation Information

1. Failed to monitor the UST and the associated pressurized piping in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring for tanks and associated pressurized piping installed on or after January 1, 2009. Specifically, the tanks and associated pressurized piping were installed on May 26, 2016, and the Respondent was not using interstitial monitoring as the primary form of release detection [30 TEX. ADMIN. CODE § 334.50(b)(1)(B) and (b)(2)(A)(iii) and TEX. WATER CODE § 26.3475(a) and (c)(1)].
2. Failed to test the spill prevention equipment and containment sumps used for interstitial monitoring of piping at least once every three years to ensure the equipment is liquid tight. Specifically, the Respondent had not conducted the triennial spill prevention equipment and containment sump testing [30 TEX. ADMIN. CODE § 334.48(g)(1)(A)(ii) and TEX. WATER CODE § 26.3475(c)(2)].
3. Failed to inspect the overfill prevention equipment at least once every three years, in violation of. Specifically, the Respondent had not conducted a triennial inspection of overfill prevention equipment [30 TEX. ADMIN. CODE § 334.48(g)(1)(B) and TEX. WATER CODE § 26.3475(c)(2)].
4. Failed to ensure that a certified Class C operator is retrained within three years of the last training date. Specifically, the Respondent's most recent Class C operator training certification expired on July 5, 2021 [30 TEX. ADMIN. CODE § 334.605(b)].
5. Failed to retrain a certified Class A and Class B operator by January 1, 2020, with a course submitted to and approved by the TCEQ after April 1, 2018. Specifically, an employee took PASS A/B operator training on December 25, 2018, and did not retrain by January 1, 2020, with an approved course [30 TEX. ADMIN. CODE § 334.605(d)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Respondent shall undertake the following technical requirements:

a. Within 30 days:

- i. Implement interstitial monitoring release detection for the UST system (tanks and pressurized piping);

Executive Summary – Enforcement Matter – Case No. 61455
COWBOY STAR INC. dba Beckley's Food Mart
RN102057411
Docket No. 2021-1502-PST-E

- ii. Conduct the triennial testing of the spill prevention equipment and containment sumps used for interstitial monitoring of piping for the UST system;
 - iii. Conduct the triennial inspection of the overfill prevention equipment for the UST system;
 - iv. Retrain the Class C operator; and
 - v. Retrain the Class A and Class B operator.
- 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 Adhikari, President, COWBOY STAR INC., 132 Trail Ridge, Weatherford, Texas 76087

Haribol Bhandari, Owner, COWBOY STAR INC., 132 Trail Ridge, Weatherford, Texas 76087

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	23-Aug-2021			
	PCW	18-Nov-2021	Screening	4-Oct-2021	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	COWBOY STAR INC. dba Beckley's Food Mart				
Reg. Ent. Ref. No.	RN102057411				
Facility/Site Region	8-San Angelo	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	61455	No. of Violations	4		
Docket No.	2021-1502-PST-E	Order Type	1660		
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Ken Moller		
		EC's Team	Enforcement Team 7		
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$25,000	

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$7,000
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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.

Compliance History	20.0%	Adjustment	Subtotals 2, 3, & 7	\$1,400
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Notes	Enhancement for one prior order containing a denial of liability.			
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Culpability	No	0.0%	Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.			
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0%	Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$152	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$2,600	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$8,400
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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	\$8,400
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$8,400
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DEFERRAL	20.0%	Reduction	Adjustment	-\$1,680
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes	Deferral offered for expedited settlement.			
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PAYABLE PENALTY	\$6,720
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Screening Date	4-Oct-2021	Docket No.	2021-1502-PST-E	PCW
Respondent	COWBOY STAR INC. dba Beckley's Food Mart			<i>Policy Revision 5 (January 28, 2021)</i>
Case ID No.	61455			<i>PCW Revision February 11, 2021</i>
Reg. Ent. Reference No.	RN102057411			
Media	Petroleum Storage Tank			
Enf. Coordinator	Ken Moller			

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	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 prior 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

4-Oct-2021

Docket No.

2021-1502-PST-E

PCW

Respondent

COWBOY STAR INC. dba Beckley's Food Mart

Policy Revision 5 (January 28, 2021)

Case ID No.

61455

PCW Revision February 11, 2021

Reg. Ent. Reference No.

RN102057411

Media

Petroleum Storage Tank

Enf. Coordinator

Ken Moller

Violation Number

1

Rule Cite(s)

30 Tex. Admin. Code § 334.50(b)(1)(B) and (b)(2)(A)(iii) and Tex. Water Code § 26.3475(a) and (c)(1)

Violation Description

Failed to monitor the underground storage tank ("UST") and the associated pressurized piping in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring for tanks and associated pressurized piping installed on or after January 1, 2009. Specifically, the tanks and associated pressurized piping were installed on May 26, 2016, and the Respondent was not using interstitial monitoring as the primary form of release detection.

Base Penalty

\$25,000

>> Environmental, Property and Human Health Matrix

OR

Release

Major

Moderate

Minor

Actual

Potential

x

Percent

15.0%

>>Programmatic Matrix

Falsification

Major

Moderate

Minor

Percent

0.0%

Matrix Notes

Human health or the environment will or could be exposed to 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

68

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 July 28, 2021 investigation date to the October 4, 2021 screening date.

Good Faith Efforts to Comply

0.0%

Reduction

\$0

Before NOE/NOV

NOE/NOV to EDPRP/Settlement Offer

Extraordinary

Ordinary

N/A

x

Notes

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

Violation Subtotal

\$3,750

Economic Benefit (EB) for this violation

Estimated EB Amount

\$67

Statutory Limit Test

Violation Final Penalty Total

\$4,500

This violation Final Assessed Penalty (adjusted for limits)

\$4,500

Economic Benefit Worksheet

Respondent Case ID No. COWBOY STAR INC. dba Beckley's Food Mart
Reg. Ent. Reference No. 61455
Media RN102057411
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	\$1,500	28-Jul-2021	19-Jun-2022	0.89	\$67	n/a	\$67
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 implement interstitial monitoring release detection for the UST system (tanks and pressurized piping) 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	\$67
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Screening Date	4-Oct-2021	Docket No.	2021-1502-PST-E	PCW
Respondent	COWBOY STAR INC. dba Beckley's Food Mart			<i>Policy Revision 5 (January 28, 2021)</i>
Case ID No.	61455			<i>PCW Revision February 11, 2021</i>
Reg. Ent. Reference No.	RN102057411			
Media	Petroleum Storage Tank			
Enf. Coordinator	Ken Moller			
Violation Number	2			
Rule Cite(s)	30 Tex. Admin. Code § 334.48(g)(1)(A)(ii) and Tex. Water Code § 26.3475(c)(2)			
Violation Description	Failed to test the spill prevention equipment and containment sumps used for interstitial monitoring of piping at least once every three years to ensure the equipment is liquid tight. Specifically, the Respondent had not conducted the triennial spill prevention equipment and containment sump testing.			
	Base Penalty	\$25,000		

>> Environmental, Property and Human Health Matrix

OR

	Release	Harm	
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 5.0%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants that would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

68

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 \$37

Violation Final Penalty Total \$1,500

This violation Final Assessed Penalty (adjusted for limits) \$1,500

Economic Benefit Worksheet

Respondent Case ID No. COWBOY STAR INC. dba Beckley's Food Mart
Reg. Ent. Reference No. 61455
Media RN102057411
Violation No. Petroleum Storage Tank
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)	\$500	1-Jan-2021	19-Jun-2022	1.46	\$37	n/a	\$37
Notes for DELAYED costs	Estimated delayed cost to conduct the triennial testing of the spill prevention equipment and containment sumps used for interstitial monitoring of piping for the UST system. The Date Required is the rule implementation 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	\$37
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Screening Date	4-Oct-2021	Docket No.	2021-1502-PST-E	PCW
Respondent	COWBOY STAR INC. dba Beckley's Food Mart			<i>Policy Revision 5 (January 28, 2021)</i>
Case ID No.	61455			<i>PCW Revision February 11, 2021</i>
Reg. Ent. Reference No.	RN102057411			
Media	Petroleum Storage Tank			
Enf. Coordinator	Ken Moller			
Violation Number	3			
Rule Cite(s)	30 Tex. Admin. Code § 334.48(g)(1)(B) and Tex. Water Code § 26.3475(c)(2)			
Violation Description	Failed to inspect the overfill prevention equipment at least once every three years. Specifically, the Respondent had not conducted a triennial inspection of overfill prevention equipment.			
Base Penalty				\$25,000

>> Environmental, Property and Human Health Matrix

OR

		Harm			
Release		Major	Moderate	Minor	
Actual					Percent 5.0%
Potential			x		

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
					Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to 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	1	68	Number of violation days
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	daily		Violation Base Penalty \$1,250
	weekly		
	monthly		
	quarterly		
	semiannual		
	annual		
	single event	x	

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	\$37	Violation Final Penalty Total	\$1,500
This violation Final Assessed Penalty (adjusted for limits)		\$1,500	

Economic Benefit Worksheet

Respondent Case ID No. COWBOY STAR INC. dba Beckley's Food Mart
Reg. Ent. Reference No. 61455
Media RN102057411
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)	\$500	1-Jan-2021	19-Jun-2022	1.46	\$37	n/a	\$37
Notes for DELAYED costs	Estimated delayed cost to conduct the triennial inspection of the overfill prevention equipment for the UST system. The Date Required is the rule implementation 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	\$37
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Screening Date	4-Oct-2021	Docket No.	2021-1502-PST-E	PCW	
Respondent	COWBOY STAR INC. dba Beckley's Food Mart			<i>Policy Revision 5 (January 28, 2021)</i>	
Case ID No.	61455			<i>PCW Revision February 11, 2021</i>	
Reg. Ent. Reference No.	RN102057411				
Media	Petroleum Storage Tank				
Enf. Coordinator	Ken Moller				
Violation Number	4				
Rule Cite(s)	30 Tex. Admin. Code § 334.605(b) and (d)				
Violation Description	<p>Failed to ensure that a certified Class C operator is retrained within three years of the last training date. Specifically, the Respondent's most recent Class C operator training certification expired on July 5, 2021. Also, failed to retrain a certified Class A and Class B operator by January 1, 2020, with a course submitted to and approved by the TCEQ after April 1, 2018. Specifically, an employee took PASS A/B operator training on December 25, 2018, and did not retrain by January 1, 2020, with an approved course.</p>				
		Base Penalty	\$25,000		
>> Environmental, Property and Human Health Matrix					
OR		Release	Harm		
			Major Moderate Minor		
	Actual				
	Potential			x	
			Percent	3.0%	
>> Programmatic Matrix					
		Falsification	Major	Moderate	Minor
		Percent	0.0%		
Matrix Notes	Human health or the environment will or could be exposed to insignificant amounts of pollutants that would not exceed levels that are protective of human health or environmental receptors as a result of the violation.				
		Adjustment	\$24,250		
			\$750		
Violation Events					
	Number of Violation Events	1	642	Number of violation days	
	daily				
	weekly				
	monthly				
	quarterly				
	semiannual				
	annual				
	single event	x			
			Violation Base Penalty	\$750	
	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	\$750		
Economic Benefit (EB) for this violation					
	Estimated EB Amount	\$11	Violation Final Penalty Total	\$900	
	This violation Final Assessed Penalty (adjusted for limits)			\$900	

Economic Benefit Worksheet

Respondent Case ID No. COWBOY STAR INC. dba Beckley's Food Mart
Reg. Ent. Reference No. 61455
Media RN102057411
Violation No. Petroleum Storage Tank
4

Percent Interest	Years of Depreciation
5.0	15

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

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$10	5-Jul-2021	19-Jun-2022	0.96	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$90	1-Jan-2020	19-Jun-2022	2.47	\$11	n/a	\$11

Notes for DELAYED costs

Estimated delayed cost to retrain the Class C operator for the Facility (\$10). The Date Required is the expiration date of the previous Class C operator training, and the Final Date is the estimated date of compliance.

Estimated delayed cost to retrain the Class A and Class B operator for the Facility (\$90). The Date Required is the operator retraining deadline, 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	\$100	TOTAL	\$11
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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 CN604297382, RN102057411, 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: RN102057411, Beckley's Food Mart **Classification:** SATISFACTORY **Rating:** 8.44

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

CH Group: 14 - Other

Location: 600 West Commerce Street, Brady, McCulloch County, Texas

TCEQ Region: REGION 08 - SAN ANGELO

ID Number(s):
PETROLEUM STORAGE TANK REGISTRATION
REGISTRATION 19887

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

Date Compliance History Report Prepared: January 05, 2022

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: January 22, 2017 to January 22, 2022

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

Name: Ken Moller **Phone:** (512) 239-6111

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: 02/22/2017 ADMINORDER 2016-0851-PST-E (1660 Order-Agreed Order With Denial)
- Classification: Moderate
- Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)
30 TAC Chapter 37, SubChapter I 37.815(b)
- 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
- Classification: Moderate
- Citation: 2D TWC Chapter 26, SubChapter A 26.3475(d)
30 TAC Chapter 334, SubChapter C 334.49(c)(2)(C)
30 TAC Chapter 334, SubChapter C 334.49(c)(4)(C)
- Description: Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components were operating properly and failed to test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years
- Classification: Moderate
- Citation: 30 TAC Chapter 334, SubChapter N 334.602(a)
- Description: Failure to designate at least one Class A, Class B, and Class C operator for the facility.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

Item 1	September 28, 2018	(1517679)
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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
BECKLEY'S FOOD MART
RN102057411**

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

AGREED ORDER DOCKET NO. 2021-1502-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 Beckley's Food Mart (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 600 West Commerce Street in Brady, McCulloch 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 \$8,400 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid \$210 of the penalty and \$1,680 is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Order and shall be waived only upon full compliance with all the terms and conditions of this Order.

The remaining amount of \$6,510 of the undeferred penalty shall be paid in 35 monthly payments of \$186 each. The first monthly payment shall be paid within 30 days after the effective date of this Order. The subsequent payments shall each be paid not later than

30 days following the due date of the previous payment until the penalty is paid in full. If the Respondent fails to comply with the payment requirements of this Order, including the payment schedule, the Executive Director may accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. The Respondent's failure to meet the payment schedule of this Order and/or the acceleration of any remaining balance constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms and conditions of this Order and the Executive Director may demand payment of all or part of the deferred penalty amount.

5. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a). Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
6. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Order.
7. This Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.

II. ALLEGATIONS

During an investigation conducted on July 28, 2021, an investigator documented that the Respondent:

1. Failed to monitor the UST and the associated pressurized piping in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring for tanks and associated pressurized piping installed on or after January 1, 2009, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(B) and (b)(2)(A)(iii) and TEX. WATER CODE § 26.3475(a) and (c)(1). Specifically, the tanks and associated pressurized piping were installed on May 26, 2016, and the Respondent was not using interstitial monitoring as the primary form of release detection.
2. Failed to test the spill prevention equipment and containment sumps used for interstitial monitoring of piping at least once every three years to ensure the equipment is liquid tight, in violation of 30 TEX. ADMIN. CODE § 334.48(g)(1)(A)(ii) and TEX. WATER CODE § 26.3475(c)(2). Specifically, the Respondent had not conducted the triennial spill prevention equipment and containment sump testing.
3. Failed to inspect the overfill prevention equipment at least once every three years, in violation of 30 TEX. ADMIN. CODE § 334.48(g)(1)(B) and TEX. WATER CODE

§ 26.3475(c)(2). Specifically, the Respondent had not conducted a triennial inspection of overfill prevention equipment.

4. Failed to ensure that a certified Class C operator is retrained within three years of the last training date, in violation of 30 TEX. ADMIN. CODE § 334.605(b). Specifically, the Respondent's most recent Class C operator training certification expired on July 5, 2021.
5. Failed to retrain a certified Class A and Class B operator by January 1, 2020, with a course submitted to and approved by the TCEQ after April 1, 2018, in violation of 30 TEX. ADMIN. CODE § 334.605(d). Specifically, an employee took PASS A/B operator training on December 25, 2018, and did not retrain by January 1, 2020, with an approved course.

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 Beckley's Food Mart, Docket No. 2021-1502-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 interstitial monitoring release detection for the UST system (tanks and pressurized piping) at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.50;
 - ii. Conduct the triennial testing of the spill prevention equipment and containment sumps used for interstitial monitoring of piping for the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.48;
 - iii. Conduct the triennial inspection of the overfill prevention equipment for the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.48;

- iv. Retrain the Class C operator for the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.605; and
- v. Retrain the Class A and Class B operator for the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.605.
- 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
San Angelo Regional Office
Texas Commission on Environmental Quality
622 South Oakes, Suite K
San Angelo, Texas 76903-7035

- 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.

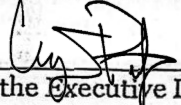
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. 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

10/12/2022

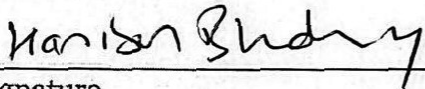
Date

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

6-06-22
Date

Nadeia Brannon
Name (Printed or typed)
Authorized Representative of
COWBOY STAR INC. dba Beckley's Food Mart

Owner
Title

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