

**Executive Summary – Enforcement Matter – Case No. 64416**  
**BFS Asset Holdings LLC dba BMC West**  
**RN100608793**  
**Docket No. 2023-1015-PST-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

PST

**Small Business:**

No

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

BMC West, 4501 Burluson Road, Austin, Travis County

**Type of Operation:**

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

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** January 19, 2024

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$8,313

**Amount Deferred for Expedited Settlement:** \$1,662

**Total Paid to General Revenue:** \$6,651

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**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:** February 14, 2023

**Date(s) of NOE(s):** May 12, 2023

**Executive Summary – Enforcement Matter – Case No. 64416**  
**BFS Asset Holdings LLC dba BMC West**  
**RN100608793**  
**Docket No. 2023-1015-PST-E**

***Violation Information***

1. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the regulated UST. Specifically, two fuel deliveries were accepted without a valid, current TCEQ delivery certificate during the months of November and December 2022 [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)].
2. Failed to notify the agency of any change or additional information regarding the UST system within 30 days of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current operational status of UST No. 1 [30 TEX. ADMIN. CODE §§ 334.7(d)(1)(B) and (d)(3) and 334.54(e)(2)].
3. Failed to inspect the overfill prevention equipment at least once every three years. Specifically, the Respondent had not conducted the triennial inspection of the overfill prevention equipment [30 TEX. ADMIN. CODE § 334.48(g)(1)(B) and TEX. WATER CODE § 26.3475(c)(2)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

The Respondent implemented the following corrective measures:

- a. Submitted a properly completed UST registration and self-certification form and obtained a valid, current TCEQ delivery certificate on March 17, 2023;
- b. Submitted an amended UST registration and self-certification form reflecting the current temporarily out-of-service status of UST No. 1 on April 12, 2023; and
- c. Conducted the triennial inspection of the overfill prevention equipment on April 10, 2023.

**Technical Requirements:**

N/A

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Eunice Adegelu, Enforcement Division, Enforcement Team 3, MC R-12, (512) 239-5082; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

**Respondent:** Minator Azemi, Vice President & General Counsel, BFS Asset Holdings LLC, 4501 Burluson Road, Austin, Texas 78744-1203

**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>	21-Jul-2023	<b>Screening</b>	31-Jul-2023	<b>EPA Due</b>	
	<b>PCW</b>	22-Aug-2023				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	BFS Asset Holdings LLC dba BMC West
<b>Reg. Ent. Ref. No.</b>	RN100608793
<b>Facility/Site Region</b>	11-Austin
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	64416	<b>No. of Violations</b>	3
<b>Docket No.</b>	2023-1015-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>	Eunice Adegelu
		<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>	<b>\$8,750</b>
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

<b>Compliance History</b>	<b>20.0%</b> Adjustment	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$1,750</b>
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<b>Notes</b>	Enhancement for one Agreed Order containing a denial of liability.
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<b>Culpability</b>	No	<b>0.0%</b> Enhancement	<b>Subtotal 4</b>	<b>\$0</b>
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>-\$2,187</b>
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<b>Economic Benefit</b>	<b>0.0%</b> Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts	\$35	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$380	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$8,313</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	<b>0.0%</b> Adjustment	<b>\$0</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	
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<b>Final Penalty Amount</b>	<b>\$8,313</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$8,313</b>
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<b>DEFERRAL</b>	<b>20.0%</b> Reduction	<b>Adjustment</b>	<b>-\$1,662</b>
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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>	<b>\$6,651</b>
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Screening Date 31-Jul-2023

Docket No. 2023-1015-PST-E

PCW

Respondent BFS Asset Holdings LLC dba BMC West

Policy Revision 5 (January 28, 2021)

Case ID No. 64416

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN100608793

Media Petroleum Storage Tank

Enf. Coordinator Eunice Adegelu

### 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** 31-Jul-2023 **Docket No.** 2023-1015-PST-E **PCW**  
**Respondent** BFS Asset Holdings LLC dba BMC West *Policy Revision 5 (January 28, 2021)*  
**Case ID No.** 64416 *PCW Revision February 11, 2021*  
**Reg. Ent. Reference No.** RN100608793  
**Media** Petroleum Storage Tank  
**Enf. Coordinator** Eunice Adegelu

**Violation Number**

**Rule Cite(s)**

**Violation Description**

**Base Penalty**

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

<b>OR</b>	<b>Harm</b>			<b>Percent</b> <input type="text" value="0.0%"/>	
	<b>Release</b>	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	<b>Percent</b> <input type="text" value="10.0%"/>
	<input type="text"/>	x	<input type="text"/>	<input type="text"/>	

**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	x

**Violation Base Penalty**

**Good Faith Efforts to Comply**

Reduction

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	x	<input type="text"/>
N/A	<input type="text"/>	<input type="text"/>

**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** BFS Asset Holdings LLC dba BMC West  
**Case ID No.** 64416  
**Reg. Ent. Reference No.** RN100608793  
**Media 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)	\$40	31-Oct-2022	17-Mar-2023	0.38	\$1	n/a	\$1

**Notes for DELAYED costs**  
 Estimated delayed cost to renew a delivery certificate by submitting a properly completed UST registration and self-certification form to obtain a valid, current TCEQ delivery certificate. The Date Required is the expiration date of the previously issued delivery certificate and the Final Date is the date of compliance.

### Avoided Costs

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

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

**Notes for AVOIDED costs**

Approx. Cost of Compliance \$40

**TOTAL** \$1

**Screening Date** 31-Jul-2023 **Docket No.** 2023-1015-PST-E **PCW**  
**Respondent** BFS Asset Holdings LLC dba BMC West *Policy Revision 5 (January 28, 2021)*  
**Case ID No.** 64416 *PCW Revision February 11, 2021*  
**Reg. Ent. Reference No.** RN100608793  
**Media** Petroleum Storage Tank  
**Enf. Coordinator** Eunice Adegelu

**Violation Number**   
**Rule Cite(s)**   
**Violation Description**

**Base Penalty**

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" 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="text" value="x"/>	<input type="text"/>	<input type="text"/>	<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="text" value="x"/>

**Violation Base Penalty**

**Good Faith Efforts to Comply**  Reduction

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input checked="" type="text" value="x"/>	<input type="text"/>
N/A	<input type="text"/>	<input type="text"/>

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** BFS Asset Holdings LLC dba BMC West  
**Case ID No.** 64416  
**Reg. Ent. Reference No.** RN100608793  
**Media 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)	\$40	14-Feb-2023	12-Apr-2023	0.16	\$0	n/a	\$0

**Notes for DELAYED costs** Estimated delayed cost to submit an amended UST registration form reflecting the current temporarily out-of-service status of UST No. 1. The Date Required is the investigation date and the Final Date is the date of compliance.

### Avoided Costs

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

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

**Notes for AVOIDED costs**

Approx. Cost of Compliance \$40

**TOTAL** \$0

**Screening Date** 31-Jul-2023 **Docket No.** 2023-1015-PST-E **PCW**  
**Respondent** BFS Asset Holdings LLC dba BMC West *Policy Revision 5 (January 28, 2021)*  
**Case ID No.** 64416 *PCW Revision February 11, 2021*  
**Reg. Ent. Reference No.** RN100608793  
**Media** Petroleum Storage Tank  
**Enf. Coordinator** Eunice Adegelu

**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 the triennial inspection of the overfill prevention equipment.

**Base Penalty** \$25,000

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

<b>OR</b>		<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor	
	Actual				
	Potential		x		<b>Percent</b> 5.0%

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
					<b>Percent</b> 0.0%

**Matrix Notes** Human health or the environment will or could be exposed to 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 55 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** 25.0% Reduction \$312

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	x	
N/A		

**Notes** The Respondent came into compliance by inspecting the overfill prevention equipment on April 10, 2023, before the May 12, 2023 NOE.

**Violation Subtotal** \$938

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

**Estimated EB Amount** \$34 **Violation Final Penalty Total** \$1,188

**This violation Final Assessed Penalty (adjusted for limits)** \$1,188

# Economic Benefit Worksheet

**Respondent** BFS Asset Holdings LLC dba BMC West  
**Case ID No.** 64416  
**Reg. Ent. Reference No.** RN100608793  
**Media 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)	\$300	1-Jan-2021	10-Apr-2023	2.27	\$34	n/a	\$34

**Notes for DELAYED costs** Estimated delayed cost to conduct the triennial inspection of the overfill prevention equipment for the UST at the Facility (\$300, \$100 per overfill prevention device). The Date Required is the inspection due date, and the Final Date is the 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 \$300

**TOTAL** \$34



# Compliance History Report

Compliance History Report for CN602982993, RN100608793, Rating Year 2023 which includes Compliance History (CH) components from September 1, 2018, through August 31, 2023.

<b>Customer, Respondent, or Owner/Operator:</b>	CN602982993, BFS Asset Holdings LLC	<b>Classification:</b>	SATISFACTORY	<b>Rating:</b>	13.12
<b>Regulated Entity:</b>	RN100608793, BMC WEST	<b>Classification:</b>	SATISFACTORY	<b>Rating:</b>	21.00
<b>Complexity Points:</b>	5	<b>Repeat Violator:</b>	NO		
<b>CH Group:</b>	14 - Other				
<b>Location:</b>	4501 BURLESON ROAD, AUSTIN, TRAVIS COUNTY, TEXAS 78744-1203				
<b>TCEQ Region:</b>	REGION 11 - AUSTIN				
<b>ID Number(s):</b>					
<b>AIR NEW SOURCE PERMITS ACCOUNT NUMBER TH0007U</b>			<b>AIR NEW SOURCE PERMITS AFS NUM 4845300018</b>		
<b>PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 19679</b>			<b>STORMWATER PERMIT TXR05Y950</b>		
<b>Compliance History Period:</b>	September 01, 2018 to August 31, 2023	<b>Rating Year:</b>	2023	<b>Rating Date:</b>	09/01/2023
<b>Date Compliance History Report Prepared:</b>	November 28, 2023				
<b>Agency Decision Requiring Compliance History:</b>	Enforcement				
<b>Component Period Selected:</b>	November 28, 2018 to November 28, 2023				
<b>TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.</b>					
<b>Name:</b>	Eunice Adegelu		<b>Phone:</b>	(512) 239-5082	

## 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:

- Effective Date: 06/29/2021 ADMINORDER 2020-0421-PST-E (1660 Order-Agreed Order With Denial)  
Classification: Minor  
Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(1)(B)  
30 TAC Chapter 334, SubChapter A 334.7(d)(3)  
Description: Failed to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(1)(B) and (3). Specifically, on July 1, 2016 UST Tank No. 1 was placed as temporarily out-of-service status.  
Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(a)  
30 TAC Chapter 334, SubChapter A 334.8(c)(5)(A)(i)  
Description: Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting a delivery of regulated substance into the USTs, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a). Specifically, one fuel delivery was accepted without a valid delivery certificate on January 23, 2020.  
Classification: Moderate  
Citation: 30 TAC Chapter 334, SubChapter A 334.8(c)(4)(A)(vii)  
30 TAC Chapter 334, SubChapter A 334.8(c)(5)(B)(ii)  
Description: Failed to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date, Specifically, the delivery certificate expired on October 31, 2017.

**B. Criminal convictions:**

N/A

**C. Chronic excessive emissions events:**

N/A

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

N/A

**E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):**

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

**F. Environmental audits:**

N/A

**G. Type of environmental management systems (EMSs):**

N/A

**H. Voluntary on-site compliance assessment dates:**

N/A

**I. Participation in a voluntary pollution reduction program:**

N/A

**J. Early compliance:**

N/A

**Sites Outside of Texas:**

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
BFS ASSET HOLDINGS LLC  
DBA BMC WEST  
RN100608793

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

## AGREED ORDER DOCKET NO. 2023-1015-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 BFS Asset Holdings LLC dba BMC West (the "Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates, as defined in 30 TEX. ADMIN. CODE § 334.2(78) and (75), an underground storage tank ("UST") system and a fleet refueling facility located at 4501 Burluson Road in Austin, Travis 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 \$8,313 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid \$6,651 of the penalty and \$1,662 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.
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.
9. The Executive Director recognizes that the Respondent implemented the following corrective measures at the Facility:
  - a. Submitted a properly completed UST registration and self-certification form and obtained a valid, current TCEQ delivery certificate on March 17, 2023;
  - b. Submitted an amended UST registration and self-certification form reflecting the current temporarily out-of-service status of UST No. 1 on April 12, 2023; and
  - c. Conducted the triennial inspection of the overfill prevention equipment on April 10, 2023.

## II. ALLEGATIONS

During an investigation at the Facility conducted on February 14, 2023, an investigator documented that the Respondent:

1. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the regulated UST, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a). Specifically, two fuel deliveries were accepted without a valid, current TCEQ delivery certificate during the months of November and December 2022.
2. Failed to notify the agency of any change or additional information regarding the UST system within 30 days of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE §§ 334.7(d)(1)(B) and (d)(3) and 334.54(e)(2). Specifically, the registration was not updated to reflect the current operational status of UST No. 1.
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 the triennial inspection of the overfill prevention equipment.

### 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: BFS Asset Holdings LLC dba BMC West, Docket No. 2023-1015-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. All relief not expressly granted in this Order is denied.
3. 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.
4. 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.
5. 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.
6. 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.

7. 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

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For the Commission

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Date

  
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For the Executive Director

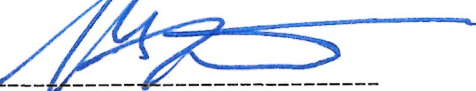
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2/2/2024  
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Date

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 OAG 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 OAG 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.

  
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Signature

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12/21/2023  
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Date

MIVATOR AZEMI  
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Name (Printed or typed)  
Authorized Representative of  
BFS Asset Holdings LLC dba BMC West

VP & Asst. General Counsel  
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Title

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