

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NUMBER: 2003-0971-PST-E TCEQ ID NO: RN102024577 ENF ID: 9459**  
**RESPONDENT NAME: LAKEPORT DEVELOPMENT, INC.**

**ORDER TYPE:**

<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> EMERGENCY ORDER	

**CASE TYPE:**

<input type="checkbox"/> AGRICULTURE	<input type="checkbox"/> AIR	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE	<input type="checkbox"/> MUNICIPAL SOLID WASTE
<input type="checkbox"/> OCCUPATIONAL CERTIFICATION	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> RADIOACTIVE WASTE
<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL	<input type="checkbox"/> USED OIL
<input type="checkbox"/> USED OIL FILTER	<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> DRY CLEANER REGISTRATION	

**SITE WHERE VIOLATION(S) OCCURRED:** Highway 322 and Highway 149, Longview, Gregg County

**TYPE OF OPERATION:** Convenience store with retail sales of gasoline.

**SMALL BUSINESS:**  Yes  No

**OTHER SIGNIFICANT MATTERS:** There are no previous complaints. There is no record of additional pending enforcement actions regarding this facility.

**INTERESTED PARTIES:** No one other than the ED and the Respondent has expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired on February 26, 2007. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Ms. Kathleen C. Decker, Litigation Division, MC 175, (512) 239-6500; Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873

**TCEQ Enforcement Coordinator:** Mr. Terry Murphy, Enforcement Division, Section III, MC 149 (512) 239-5025

**TCEQ Regional Contact:** Mr. Michael Brashear, Tyler Regional Office, MC R-5, (903) 535-5176

**Respondent:** Mr. Jerry Springer, President and Registered Agent, Lakeport Development, Inc., P.O. Box 31, Longview, Texas 75606

**Respondent's Attorney:** Mr. Garrett W. Wilson, Sloan, Bagley & Perry, 101 East Whaley Street, P.O. Box 2909 Longview, Texas 75606

**RESPONDENT'S NAME: LAKEPORT DEVELOPMENT, INC.  
DOCKET NO.: 2003-0971-PST-E**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b> <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date(s) of Investigation(s) Relating to this Case:</b> November 18, 2002 through November 27, 2002 (Investigation) and September 23, 2003 (Record Review).</p> <p><b>Date(s) of NOV(s)/NOE(s) Relating to this Case:</b> None. Lakeport received notice of the violations when it was added as a party pursuant to filing of the EDTARP. Lakeport received the EDTARP on June 12, 2006 per the signature on the certified mailing "green card."</p> <p><b>Background Facts:</b></p> <p>This case was initially filed against Honey Stop Food Marts, Inc. for 3 separate facilities; Honey Stop # 3, Honey Stop #17 and Honey Stop #19. The matter was referred to SOAH and during the discovery process, the Executive Director determined that Lakeport Development, Inc. was the actual owner and operator of Honey Stop #19 rather than Honey Stop Food Marts, Inc. Mr. Jerry Springer is the President and Registered Agent for both Honey Stop Food Marts, Inc. and Lakeport Development, Inc. A motion to sever was filed and the ALJ ordered that the action against Lakeport Development, Inc. be severed from Honey Stop Food Marts, Inc. A signed Agreed Order was received from Lakeport Development, Inc. on or about December 21, 2006.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p><b>PST:</b></p> <ol style="list-style-type: none"> <li>Failed to report to the Commission a suspected release from a UST within 24 hours of discovery of the suspected release [30 TEX. ADMIN. CODE § 334.72(3)].</li> <li>Failed to conduct release investigation and confirmation steps within 30 days of discovery of a suspected release [30 TEX. ADMIN. CODE § 334.74].</li> </ol>	<p><b>Total Assessed:</b> \$9,900</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>Total Paid/Due to General Revenue:</b> \$275/\$9,625</p> <p>The Respondent has paid \$275 of the administrative penalty. The remaining amount of \$9,625 of the administrative penalty shall be payable in thirty-five monthly payments of \$275 each.</p> <p><b>Site Compliance History Classification:</b>  <input checked="" type="checkbox"/> High <input type="checkbox"/> Avg. <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b>  <input checked="" type="checkbox"/> High <input type="checkbox"/> Avg. <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Action Taken:</b>  The Executive Director recognizes that the Facility was sold on February 14, 2003.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (09/02)

PCW Revision 6/12/2003

DATES			
PCW	29-Sep-2006	Screening	29-Sep-2003
		Priority Due	27-Jan-2004
		EPA Due	
RESPONDENT INFORMATION			
Respondent	Lakeport Development, Inc.		
Respondent/Site ID No(s)	Skinner's Corner Store, formerly known as Honey Stop Food Mart 19 PST Facility ID No. 57634, RN102024577		
Facility/Site Region	5 - Tyler	Major/Minor Source	Minor
CASE INFORMATION			
Enf./Case ID No(s)	9459		No. Violations
Docket No.	2003-0971-PST-E		2
Case Priority	3	Order Type	1660 without deferral
Enf. Coordinator	Terry Murphy	EC's Team	Enforcement Team 5
Media Program(s)	Petroleum Storage Tank		
Admin. Penalty \$ Limit	Minimum \$0	Maximum	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY</b> ( <i>Sum of violation base penalties</i> )		<b>Subtotal 1</b>	\$11,000
<b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>			
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.			+
<b>Compliance History</b>	-10% Reduction	<b>Subtotals 2, 3 &amp; 7</b>	-\$1,100
Notes	Reduction due to High Performer classification.		+
<b>Culpability</b>	0% Enhancement	<b>Subtotal 4</b>	\$0
Notes	No <input checked="" type="checkbox"/> Select Yes/No The Respondent does not meet culpability criteria.		+
<b>Good Faith Effort to Comply</b>	0% Reduction	<b>Subtotal 5</b>	\$0
Extraordinary	Before NOV	NOV to EDPRP/Settlement Offer	
Ordinary			
None of the above	X	(mark with small x)	+
Notes	The Respondent is not yet in compliance.		
<b>Economic Benefit</b>	0% Enhancement*	<b>Subtotal 6</b>	\$0
	\$138	Total EB Amounts	*
	\$3,020	Approx. Cost of Compliance	=
<b>SUM OF SUBTOTALS 1-7</b>		<b>Final Subtotal</b>	\$9,900
			+
<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>		<b>Adjustment</b>	\$0
Reduces or enhances the Final Subtotal by the indicated percentage. (enter number only; e.g. -30 for -30%)			
Notes			=
			<b>Final Penalty Amount</b>
			\$9,900
<b>STATUTORY LIMIT ADJUSTMENT</b>			<b>Final Assessed Penalty</b>
			\$9,900
			-
<b>DEFERRAL</b>	Deferral	0% Reduction	<b>Adjustment</b>
Reduces the Final Assessed Penalty by the indicated percentage. (enter number only; e.g. 20 for 20% reduction)			\$0
Notes	No deferral is offered because Respondent failed to settle prior to the settlement due date of December 13, 2003.		=

<b>Screening Date</b>	29-Sep-2003	<b>Docket Number</b>	2003-0971-PST-E	<b>PCW</b>
<b>Respondent</b>	Lakeport Development, Inc.			<b>Policy Revision 2 (09/02)</b>
<b>Case ID No.</b>	9459			<b>PCW Revision 6/12/2003</b>
<b>Respondent/Site ID No.</b>	Skinner's Corner Store, formerly known as Honey Stop Food Mart 19			
<b>Media [Statute]</b>	Petroleum Storage Tank			
<b>Enf. Coordinator</b>	Terry Murphy			
<b>Site Address</b>	Highway 322 & Highway 149, Longview, Gregg County			

**Compliance History Worksheet**

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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 (number of judgements or consent decrees meeting criteria)	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 (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	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 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please enter Yes or No</i>			
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)**

No  Select Yes/No **Adjustment Percentage (Subtotal 3)** 0%

>> **Compliance History Person Classification (Subtotal 7)**

High Performer  Select High, Average or Poor **Adjustment Percentage (Subtotal 7)** -10%

**Compliance History Summary**

**Compliance History Notes**

Reduction due to High Performer classification.

**Total Adjustment Percentage (Subtotals 2, 3 & 7)** -10%

<b>Screening Date</b>	29-Sep-03	<b>Docket Number</b>	2003-0971-PST-E	<b>PCW</b>
<b>Respondent</b>	Lakeport Development, Inc.			<b>Policy Revision 2 (09/02)</b>
<b>Case ID No.</b>	9459			<b>PCW Revision 6/12/2003</b>
<b>Respondent/Site ID No.</b>	Skinner's Corner Store, formerly known as Honey Stop Food Mart 19			
<b>Media [Statute]</b>	Petroleum Storage Tank			
<b>Enf. Coordinator</b>	Terry Murphy			
<b>Violation Number</b>	1			
<b>Primary Rule Cite</b>	30 Tex. Admin. Code §334.72(3)			
<b>Secondary Cite(s)</b>				
<b>Violation Description</b>	Failed to report suspected releases from the facility's petroleum underground storage tanks ("USTs") within 24 hours of their discovery, as documented during an investigation conducted November 18, 2002 through November 27, 2002 and a record review conducted on September 23, 2003.			

**Base Penalty** \$10,000

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

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

» **Programmatic Matrix**

		Major	Moderate	Minor	
OR	Falsification	x			<b>Percent</b> 10%

**Matrix Notes**  
Failure to report suspected releases from USTs based on vapor monitoring results means that 100% of the rule requirement was not met.

**Adjustment** -\$9,000

**Base Penalty Subtotal** \$1,000

**Violation Events**

**Number of Violation Events**

<i>mark only one; use small x</i>	daily	<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** \$1,000

**Events Notes**  
One single events is recommended based on the Respondent's failure to report a suspected leak from a UST.

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
<b>Estimated EB Amount (\$)</b> <input type="text" value="\$13"/>	<b>Violation Final Penalty total</b> <input type="text" value="\$900"/>
<b>This Violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$900"/>	

### Economic Benefit Worksheet

**Respondent** Lakeport Development, Inc.  
**ID Number(s)** 9459  
**Media [Statute]** Petroleum Storage Tank  
**Violation Number** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	---	---------------	------------	-----	----------------	---------------	-----------

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (As needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (As Needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling	\$20	30-Apr-2002	4-Dec-2002	0.6	\$1	\$12	\$13
Supplies/equip				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

The estimated expense of \$20 is for an employee paid \$10 per hour for one hour to report two suspected releases on 4/29/02 and 12/3/02.

Approx Cost of Compliance \$20

**TOTAL** \$13

<b>Screening Date</b>	29-Sep-03	<b>Docket Number</b>	2003-0971-PST-E	<b>PCW</b>
<b>Respondent</b>	Lakeport Development, Inc.	<b>Policy Revision 2 (09/02)</b>		
<b>Case ID No.</b>	9459	<b>PCW Revision 6/12/2003</b>		
<b>Respondent/Site ID No.</b>	Skinner's Corner Store, formerly known as Honey Stop Food Mart 19			
<b>Media [Statute]</b>	Petroleum Storage Tank			
<b>Enf. Coordinator</b>	Terry Murphy			
<b>Violation Number</b>	2			
<b>Primary Rule Cite</b>	30 Tex. Admin. Code §334.74			
<b>Secondary Cite(s)</b>				
<b>Violation Description</b>	Failure to conduct release investigation and confirmation steps within 30 days of discovery of a suspected release from the facility's three USTs, as documented during an investigation conducted November 18, 2002 through November 27, 2002 and a record review conducted on September 23, 2003.			
	<b>Base Penalty</b>	\$10,000		

» Environmental, Property and Human Health Matrix				
	<b>Harm</b>			
	<b>Release</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>
<i>OR</i>	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<b>Percent</b>	<input type="text" value="25%"/>		
» Programmatic Matrix				
	<b>Falsification</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>
<i>OR</i>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<b>Percent</b>	<input type="text"/>		
<b>Matrix Notes</b>	Failure to conduct release investigation and confirmation steps within 30 days of discovery of suspected releases can result in the exposure of a significant amount of contaminants which may exceed levels that are protective to human health and the environment.			
	<b>Adjustment</b>	<input type="text" value="-7,500"/>		
	<b>Base Penalty Subtotal</b>	\$2,500		

<b>Violation Events</b>				
	<b>Number of Violation Events</b>	<input type="text" value="4"/>		
<i>mark only one; use small x</i>	<b>daily</b>	<input type="text"/>		
	<b>monthly</b>	<input type="text"/>		
	<b>quarterly</b>	<input checked="" type="checkbox"/>		
	<b>semiannual</b>	<input type="text"/>		
	<b>annual</b>	<input type="text"/>		
	<b>single event</b>	<input type="text"/>		
	<b>Violation Base Penalty</b>	\$10,000		
<b>Events Notes</b>	Four quarterly events are recommended based on the first date that a suspected release report was generated (May 13, 2002) through the change of owner/operator date of February 14, 2003.			

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
<b>Estimated EB Amount (\$)</b> <input type="text" value="\$126"/>	<b>Violation Final Penalty total</b> <input type="text" value="\$9,000"/>
<b>This Violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$9,000"/>	

**Economic Benefit Worksheet**

Respondent Lakeport Development, Inc.  
 ID Number(s) 9459  
 Media [Statute] Petroleum Storage Tank  
 Violation Number 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Overtime Costs	EB Amount
------------------	---	---------------	------------	-----	----------------	----------------	-----------

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (As needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$1,500	3-Jan-2003	15-Mar-2004	1.2	\$6	\$120	\$126
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (As Needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to investigate and follow confirmation steps for a suspected release arising from the 12/3/02 data collection date. Date Required is based on 30 days following the 12/3/02 data collection date. Final Date is based on the projected date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling	\$1,500	29-May-2002	29-May-2002	0.0	\$0	\$0	\$0
Supplies/equip				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to investigate and follow confirmation steps for a suspected release arising from the 4/29/02 data collection date. Date Required and Final Date are based on 30 days following the data collection date of 4/29/02.

Approx Cost of Compliance

\$3,000

**TOTAL**

**\$126**



## COMPLIANCE HISTORY

Customer/Respondent/Owner-Operator: Lakeport Development, Inc. Classification: High

---

Regulated Entity/ID Nos.: Skinner's Corner Store, formerly known as  
Honey Stop Food Mart 19  
PST Facility ID No. 57634  
RN102024577 Site Rating: 0.0

---

Location: Highway 322 & Highway 149, Longview, Texas 75601; Gregg County Repeat Violator: (y/n) n

---

Date Compliance History Prepared: 9/17/03

---

Agency Decision Requiring Compliance History (mark one):

- |                                     |   |
|-------------------------------------|---|
| <input type="checkbox"/>            | the issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit |
| <input checked="" type="checkbox"/> | enforcement   |
| <input type="checkbox"/>            | the use of announced investigations (Field Ops)   |
| <input type="checkbox"/>            | participation in innovative programs  |

Compliance Period: 9/17/08 through 9/17/03

---

TNRCC staff person to contact for additional information regarding this compliance history:

Name: Terry Murphy Phone: (512) 239-5025

---

### Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period?  Yes  No  Unk
2. Has there been a (known) change in ownership of the site during the compliance period?  Yes  No  Unk
3. If Yes, who is the current owner? Skinner's Corner Store Inc. CN602298259
- 
4. If Yes, who was/were the prior owner(s)? Lakeport Development, Inc. CN600923577
- 
5. When did the change(s) in ownership occur? 2/14/03
- 

Components (multimedia) for the Site **during the portion of the five-year compliance history the site was owned by the person who is the subject of this compliance history:**

- A. Final enforcement orders, court judgments, and consent decrees of the state of Texas and the federal government
1. Effective Date: N/A Type of Action:
- Violation Citation 1:
- Violation Description:
- B. Any criminal convictions of the state of Texas and the federal government.
- Conviction Date: N/A
- Count 1:
- C. Chronic excessive emissions events: None

D. The dates of investigations.

1. 9/17/03
2. 1/29/2003
3. 11/19/2002

E. Written notices of violation (NOV)

1. Date: N/A

Self-reported?

Yes

No

Violation Citation 1:

Violation Description:

F. Environmental audits.

1. Notice of Intent Date: N/A

Disclosure Date:

Violation Citation 1:

Violation Description:

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

State: N/A

Site Name:

Location:

Type of Action:

Effective Date:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
AGAINST LAKEPORT  
DEVELOPMENT, INC.;  
RN102024577

§ BEFORE THE  
§ TEXAS COMMISSION ON  
§ ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2003-0971-PST-E

I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Lakeport Development, Inc. ("Lakeport") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Lakeport, represented by Mr. Garrett W. Wilson of the law firm of Sloan, Bagley & Perry, appear before the Commission and together stipulate that:

1. At the time of the violations, Lakeport owned and operated a convenience store with retail sales of gasoline located at Highway 322 and Highway 149, Longview, Gregg County, Texas ("the Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and Lakeport agree that the Commission has jurisdiction to enter this Agreed Order, and that Lakeport is subject to the Commission's jurisdiction.
4. Lakeport received notice of the violations alleged in Section II ("Allegations") on or about June 12, 2006.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Lakeport of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of nine thousand nine hundred dollars (\$9,900.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Lakeport has paid two hundred seventy-five dollars (\$275.00) of the administrative penalty. The remaining amount of nine thousand six hundred twenty-five dollars (\$9,625.00) of the administrative penalty shall be payable in thirty-five monthly payments of two hundred seventy-five dollars (\$275.00) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If Lakeport fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of Lakeport to meet the payment schedule of this Agreed Order constitutes the failure of Lakeport to timely and satisfactorily comply with all of the terms of this Agreed Order.
7. 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.
8. The Executive Director of the TCEQ and Lakeport have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director of the TCEQ recognizes that the Facility was sold on February 14, 2003.
10. 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 Lakeport has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
- 12.. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

Lakeport is alleged to have violated:

1. 30 TEX. ADMIN. CODE § 334.72(3), by failing to report to the Commission a suspected release from a UST within 24 hours of discovery of the suspected release, as documented during an investigation conducted from November 18, 2002 through November 27, 2002 and during a record review conducted on September 23, 2003.
2. 30 TEX. ADMIN. CODE § 334.74, by failing to conduct release investigation and confirmation steps within 30 days of discovery of a suspected release, as documented during an investigation conducted from November 18, 2002 through November 27, 2002 and during a record review conducted on September 23, 2003.

## III. DENIALS

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

## IV. ORDER

1. It is, therefore, ordered by the TCEQ that Lakeport pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Lakeport's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Lakeport Development, Inc.; Enforcement ID No. 9459; Docket No. 2003-0971-PST-E" to:

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

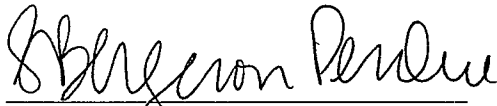
2. The provisions of this Agreed Order shall apply to and be binding upon Lakeport.

3. This Agreed Order, issued by the Commission, shall not be admissible against Lakeport in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed 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.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Lakeport, or three days after the date on which the Commission mails notice of the Order to Lakeport, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission



\_\_\_\_\_  
For the Executive Director

2/19/07

\_\_\_\_\_  
Date

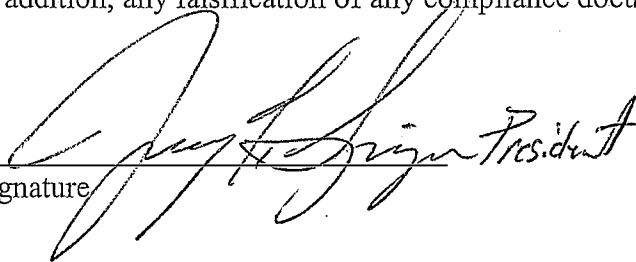
I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that Lakeport's failure to comply with the Ordering Provisions, if any, in this order and/or Lakeport's failure to timely pay the penalty amount, may result in:

- A negative impact on Lakeport's compliance history;
- Greater scrutiny of any permit applications submitted by Lakeport;
- 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 against Lakeport;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Lakeport; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

\_\_\_\_\_  
Signature



December 21, 2006

\_\_\_\_\_  
Date

Jerry T. Springer

\_\_\_\_\_  
Name (Printed or typed)

Authorized representative

Lakeport Development, Inc.

President

\_\_\_\_\_  
Title