EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-1861-PST-E **TCEQ ID:** RN102426616 **CASE NO.:** 31507

RESPONDENT NAME: Esteem Enterprise, Inc. dba Speedy Mart 1

ORDER TYPE:

X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__AMENDED ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__SHUTDOWN ORDER	__FINDINGS DEFAULT ORDER	__EMERGENCY ORDER	

CASE TYPE:

__AGRICULTURE	__AIR	__INDUSTRIAL AND HAZARDOUS WASTE	__MUNICIPAL SOLID WASTE
__OCCUPATIONAL CERTIFICATION	X PETROLEUM STORAGE TANKS	__PUBLIC WATER SUPPLY	__RADIOACTIVE WASTE
__MULTI-MEDIA (check all that apply)	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL	__USED OIL
__USED OIL FILTER	__WATER QUALITY		

SITE WHERE VIOLATION(S) OCCURRED: Speedy Mart 1, 1708 North Wayside Drive, Houston, Harris County

TYPE OF OPERATION: Convenience store with retail sales of gasoline

SMALL BUSINESS: __X__ Yes ____ No

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

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 March 19, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Mr. Thomas Greimel, Enforcement Division, Enforcement Section IV, MC 128, (512) 239-5690; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896
TCEQ Field Investigator: Mr. Daniel Stinson, Houston Regional Office, MC R-12, (713) 767-3500
Respondent: Mr. Dilawar S. Maknojia, Registered Agent/President, Esteem Enterprise, Inc. dba Speedy Mart 1, 10350 Landsend Drive, No. 2809, Houston, Texas 77099
Respondent's Attorney: Not represented by counsel on this enforcement matter

RESPONDENT'S NAME: Esteem Enterprise, Inc. dba Speedy Mart 1
DOCKET NO.: 2006-1861-PST-E

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint _X_ Routine __ Enforcement Follow-up __ Records Review **Date of Complaint Relating to this Case:** None **Date of Investigation Relating to this Case:** July 28, 2006 **Date of NOE Relating to this Case:** August 17, 2006 (NOE) **Background Facts:** This was a routine investigation. Two violations were documented. **WASTE** 1) Failed to provide proper release detection for the piping associated with the underground storage tank ("UST") system. Specifically, monthly monitoring or annual piping tightness test had not been conducted [30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a)]. 2) Failed to test the line leak detector at least once per year for performance and operational reliability. Specifically, the line leak detector had not been performance tested annually [30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a)].	**Total Assessed:** $4,000 **Total Deferred:** $800 _X_ Expedited Settlement __ Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid (Due) to General Revenue:** $100 (remaining $3,100 due in 31 monthly payments of $100 each) **Site Compliance History Classification:** _X_ High __ Avg. __ Poor **Person Compliance History Classification:** _X_ High __ Avg. __ Poor **Major Source:** _X_ Yes __ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that Esteem Enterprise submitted documentation to the University of Texas at Arlington Continuing Education Division, verifying that the Facility conducted a passing annual tightness test and successfully tested the line leak detectors on August 19, 2006.

Penalty Calculation Worksheet (PCW)

TCEQ

Policy Revision 2 (September 2002) *PCW Revision May 19, 2005*

DATES					
Assigned	05-Sep-2006				
PCW	01-Dec-2006	Screening	06-Sep-2006	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Esteem Enterprise, Inc. dba Speedy Mart 1		
Reg. Ent. Ref. No.	RN102426616		
Facility/Site Region	12-Houston	Major/Minor Source	Major Source

CASE INFORMATION

Enf./Case ID No.	31507	No. of Violations	1
Docket No.	2006-1861-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Thomas Greimel
Multi-Media		EC's Team	Enforcement Team 7
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* $5,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History -10% Enhancement *Subtotals 2, 3, & 7* -$500

Notes: Penalty reduction due to high performer classification.

Culpability No 0% Enhancement *Subtotal 4* $0

Notes: The respondent does not meet the culpability criteria.

Good Faith Effort to Comply 10% Reduction *Subtotal 5* -$500

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		x
N/A		*(mark with a small x)*

Notes: The respondent came into compliance on August 19, 2006, after the NOE issued on 8/17/06.

Economic Benefit 0% Enhancement* *Subtotal 6* $0

**Capped at the Total EB $ Amount*

Total EB Amounts	$1,055
Approx. Cost of Compliance	$2,500

SUM OF SUBTOTALS 1-7 Final Subtotal $4,000

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment $0

Reduces or enhances the Final Subtotal by the indicated percentage. *(Enter number only; e.g. -30 for -30%.)*

Notes:

Final Penalty Amount $4,000

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty $4,000

DEFERRAL 20% Reduction Adjustment -$800

Reduces the Final Assessed Penalty by the indicted percentage. *(Enter number only; e.g. 20 for 20% reduction.)*

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY $3,200

Screening Date 06-Sep-2006 **Docket No.** 2006-1861-PST-E **PCW**

Respondent Esteem Enterprise, Inc. dba Speedy Mart 1 *Policy Revision 2 (September 2002)*

Case ID No. 31507 *PCW Revision May 19, 2005*

Reg. Ent. Reference No. RN102426616

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

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*	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%
		Please Enter Yes or No	
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

Adjustment Percentage (Subtotal 3) **0%**

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

High Performer

Adjustment Percentage (Subtotal 7) **-10%**

>> **Compliance History Summary**

Compliance History Notes Penalty reduction due to high performer classification.

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

PCW

Policy Revision 2 (September 2002)
PCW Revision May 19, 2005

Screening Date	06-Sep-2006
Docket No.	2006-1861-PST-E
Respondent	Esteem Enterprise, Inc. dba Speedy Mart 1
Case ID No.	31507
Reg. Ent. Reference No.	RN102426616
Media [Statute]	Petroleum Storage Tank
Enf. Coordinator	Thomas Greimel

Violation Number	1
Primary Rule Cite(s)	30 Tex. Admin. Code § 334.50(b)(2) and 334.50(b)(2)(A)(i)(III)
Secondary Rule Cite(s)	Tex. Water Code § 26.3475(a)
Violation Description	Failed to provide proper release detection for the piping associated with the UST system. Specifically, monthly monitoring or annual piping tightness test had not been conducted. Failed to test the line leak detector at least once per year for performance and operational reliability. Specifically, the line leak detector had not been performance tested annually.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential	X		

Percent 50%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent

Matrix Notes: Human health or the environment could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment -$5,000

Base Penalty Subtotal $5,000

Violation Events

Number of Violation Events: 1

mark only one use a small x	
daily	
monthly	X
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $5,000

One monthly event is recommended from the July 28, 2006 investigation date to August 19, 2006 date of compliance.

Economic Benefit (EB) for this violation

Estimated EB Amount $1,055

Statutory Limit Test

Violation Final Penalty Total $4,000

This violation Final Assessed Penalty (adjusted for limits) $4,000

Economic Benefit Worksheet

Respondent	Esteem Enterprise, Inc. dba Speedy Mart 1
Case ID No.	31507
Reg. Ent. Reference No.	RN102426616
Media [Statute]	Petroleum Storage Tank
Violation No.	1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	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
Other (as needed)				0.0	$0	n/a	$0
Other (as needed)	$1,500	28-Jul-2006	19-Aug-2006	0.1	$5	n/a	$5
Notes for DELAYED costs	Estimated cost to provide release detection for the piping. The Date Required is the investigation date. The Final Date is the 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				0.0	$0	$0	$0
Supplies/equipment				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)	$1,000	28-Jul-2005	19-Aug-2006	1.0	$50	$1,000	$1,050
Notes for AVOIDED costs	Estimated cost to conduct the annual test on the line leak detector. The Date Required is 12 months prior to the investigation date. The Final Date is the compliance date.						

Approx. Cost of Compliance: $2,500

TOTAL: $1,055

Compliance History

Customer/Respondent/Owner-Operator:	CN602678336	Esteem Enterprise Inc.	Classification: HIGH	Rating: 0.00
Regulated Entity:	RN102426616	SPEEDY MART 1	Classification: HIGH	Site Rating: 0.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	39834	
Location:	1708 N WAYSIDE DR, HOUSTON, TX, 77020	Rating Date: 9/1/2006	Repeat Violator: NO	
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	October 25, 2006			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	October 25, 2001 to October 25, 2006			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Thomas Greimel Phone: (512) 239-5690

Site Compliance History Components

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 of the site during the compliance period?	No
3. If Yes, who is the current owner?	N/A
4. if Yes, who was/were the prior owner(s)?	N/A
5. When did the change(s) in ownership occur?	N/A

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

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

1 08/17/2006 (497655)

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

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	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
ESTEEM ENTERPRISE, INC. DBA	§	
SPEEDY MART 1	§	**ENVIRONMENTAL QUALITY**
RN102426616		

AGREED ORDER
DOCKET NO. 2006-1861-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Esteem Enterprise, Inc. dba Speedy Mart 1 ("Esteem Enterprise") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Esteem Enterprise appear before the Commission and together stipulate that:

1. Esteem Enterprise owns and operates a convenience store with retail sales of gasoline at 1708 North Wayside Drive in Houston, Harris County, Texas (the "Facility").

2. Esteem Enterprise's one underground storage tank ("UST") is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.

3. The Commission and Esteem Enterprise agree that the Commission has jurisdiction to enter this Agreed Order, and that Esteem Enterprise is subject to the Commission's jurisdiction.

4. Esteem Enterprise received notice of the violations alleged in Section II ("Allegations") on or about August 22, 2006.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Esteem Enterprise of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Four Thousand Dollars ($4,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Esteem Enterprise has paid One Hundred Dollars ($100) of the administrative penalty and Eight Hundred Dollars ($800) is deferred contingent upon Esteem Enterprise's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the

terms of this Agreed Order. If Esteem Enterprise fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Esteem Enterprise to pay all or part of the deferred penalty.

The remaining amount of Three Thousand One Hundred Dollars ($3,100) of the administrative penalty shall be payable in 31 monthly payments of One Hundred Dollars ($100) 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 Esteem Enterprise fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's 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 Esteem Enterprise to meet the payment schedule of this Agreed Order constitutes the failure by Esteem Enterprise to timely and satisfactorily comply with all 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 Esteem Enterprise have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. The Executive Director recognizes that Esteem Enterprise submitted documentation to the University of Texas at Arlington Continuing Education Division, verifying that the Facility conducted a passing annual tightness test and successfully tested the line leak detectors on August 19, 2006.

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 Esteem Enterprise 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

As owner and operator of the Facility, Esteem Enterprise is alleged to have:

1. Failed to provide proper release detection for the piping associated with the UST system, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a), as documented during an investigation conducted on July 28, 2006. Specifically, monthly monitoring or annual piping tightness test had not been conducted.

2. Failed to test the line leak detector at least once per year for performance and operational reliability, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a), as documented during an investigation conducted on July 28, 2006. Specifically, the line leak detector had not been performance tested annually.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Esteem Enterprise pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Esteem Enterprise'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 requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Esteem Enterprise, Inc. dba Speedy Mart 1, Docket No. 2006-1861-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 Esteem Enterprise. Esteem Enterprise is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

3. If Esteem Enterprise fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Esteem Enterprise's failure to comply is not a violation of this Agreed Order. Esteem Enterprise shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Esteem Enterprise shall notify the Executive Director within seven days after

Esteem Enterprise becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Esteem Enterprise shall be made in writing to the Executive Director. Extensions are not effective until Esteem Enterprise receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

5. This Agreed Order, issued by the Commission, shall not be admissible against Esteem Enterprise 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.

6. 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.

7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Esteem Enterprise, or three days after the date on which the Commission mails notice of the Order to Esteem Enterprise, 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

3/27/07
Date

I, the undersigned, have read and understand the attached Agreed Order. 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 my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

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

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

D. S. Maknojia
Signature

12/20/06
Date

Dilawar S. Maknojia
Name (Printed or typed)
Authorized Representative of
Esteem Enterprise, Inc. dba Speedy Mart 1

President
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.