

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2006-1977-PST-E TCEQ ID: RN102858974 CASE NO.: 31700
RESPONDENT NAME: IBM, Inc. dba Stop & Save

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"/> WATERQUALITY		

SITE WHERE VIOLATION(S) OCCURRED: Stop & Save, 1151 East Seminary Drive, Fort Worth, Tarrant County

TYPE OF OPERATION: Convenience store with retail sales of gasoline

SMALL BUSINESS: 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 April 9, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Mr. Philip DeFrancesco, Enforcement Division, Enforcement Section IV, MC R-04, (817) 588-5933; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896

Respondent: Mr. Barkatali Hussain, President/Owner, IBM, Inc. dba Stop & Save, 1151 East Seminary Drive, Fort Worth, Texas 76115-2831

Respondent's Attorney: Not represented by counsel on this enforcement matter

RESPONDENT'S NAME: IBM, Inc. dba Stop & Save
DOCKET NO.: 2006-1977-PST-E

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: October 2, 2006</p> <p>Date of NOE Relating to this Case: October 31, 2006 (NOE)</p> <p>Background Facts: This was a routine investigation. Two violations were documented.</p> <p>WASTE</p> <p>1) Failed to verify proper operation of the Stage II equipment at least once every 36 months. Specifically, the Stage II triennial testing was not performed [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2) Failed to maintain records for the Stage II vapor recovery system on-site and make available for inspection by Commission personnel. Specifically, the daily inspection log and maintenance records were not available for review at the time of the investigation [30 TEX. ADMIN. CODE § 115.246(1) and (3) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total assessed: \$3,325</p> <p>Total Deferred: \$665 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$160 (remaining \$2,500 due in 25 monthly payments of \$100 each)</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that IBM, Inc. has implemented the following corrective measures at the Station:</p> <p>a. As of November 3, 2006, the TCEQ Dallas/Fort Worth Regional Office received documentation verifying that the triennial testing of the Stage II equipment had been successfully conducted; and</p> <p>b. As of November 3, 2006, the TCEQ Dallas/Fort Worth Regional Office received documentation verifying that all Stage II records are being maintained at the Station.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 17, 2006

TCEQ

DATES	Assigned	7-Nov-2006	Screening	13-Nov-2006	EPA Due	
	PCW	16-Nov-2006				

RESPONDENT/FACILITY INFORMATION			
Respondent	IBM, Inc. dba Stop & Save		
Reg. Ent. Ref. No.	RN102858974		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	31700	No. of Violations	2	
Docket No.	2006-1977-PST-E	Order Type	1660	
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Philip DeFrancesco	
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 \$3,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 5% Enhancement Subtotals 2, 3, & 7 \$175

Notes: Enhancement for one prior NOV with same or similar violations.

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 \$350

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		X
N/A		(mark with x)

Notes: The respondent came into compliance on 11/3/06 (NOE date 10/31/06).

Total EB Amounts 0% Enhancement* Subtotal 6 \$0
 Approx. Cost of Compliance \$1,201 *Capped at the Total EB \$ Amount \$1,200

SUM OF SUBTOTALS 1-7 Final Subtotal \$3,325

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 \$3,325

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$3,325

DEFERRAL 20% Reduction Adjustment -\$665

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

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY \$2,660

Screening Date 13-Nov-2006

Docket No. 2006-1977-PST-E

PCW

Respondent IBM, Inc. dba Stop & Save

Policy Revision 2 (September 2002)

Case ID No. 31700

PCW Revision November 17, 2006

Reg. Ent. Reference No. RN102858974

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Phillip DeFrancesco

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)	1	5%
	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) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one prior NOV with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 13-Nov-2006

Docket No. 2006-1977-PST-E

PCW

Respondent IBM, Inc. dba Stop & Save

Policy Revision 2 (September 2002)

Case ID No. 31700

PCW Revision November 17, 2006

Reg. Ent. Reference No. RN102858974

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Philip DeFrancesco

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 115.245(2) and Tex. Health and Safety Code § 382.085(b)

Violation Description Failed to verify proper operation of the Stage II equipment at least once every 36 months. Specifically, the Stage II triennial testing was not performed.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or 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 \$7,500

\$2,500

Violation Events

Number of Violation Events 1

1127 Number of violation days

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$2,500

One single event is recommended for the three-year period preceding the October 2, 2006 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,200

Violation Final Penalty Total \$2,375

This violation Final Assessed Penalty (adjusted for limits) \$2,375

Economic Benefit Worksheet

Respondent: IBM, Inc. dba Stop & Save
Case ID No: 31700
Reg. Ent. Reference No: RN102858974
Media: Petroleum Storage Tank
Violation No: 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Overtime Costs	EB Amount
No commas or \$							

Delayed Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Overtime Costs	EB Amount
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]	\$1,000	2-Oct-2003	3-Nov-2006	4.0	\$200	\$1,000	\$1,200
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost for the triennial testing to verify proper operation of the Stage II equipment. The date required is three years prior to the investigation date and the final date is the compliance date.

Approx. Cost of Compliance

\$1,000

TOTAL:

\$1,200

Screening Date 13-Nov-2006

Docket No. 2006-1977-PST-E

PCW

Respondent IBM, Inc. dba Stop & Save

Policy Revision 2 (September 2002)

Case ID No. 31700

PCW Revision November 17, 2006

Reg. Ent. Reference No. RN102858974

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Philip DeFrancesco

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 115.246(1) and (3) and Tex. Health and Safety Code § 382.085(b)

Violation Description

Failed to maintain records for the Stage II vapor recovery system on-site and make available for inspection by Commission personnel. Specifically, the daily inspection log and maintenance records were not available for review at the time of the investigation.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

32 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the October 2, 2006 investigation date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$950

This violation Final Assessed Penalty (adjusted for limits) \$950

Economic Benefit Worksheet

Respondent: IBM, Inc. dba Stop & Save
Case ID No.: 31700
Reg. Ent. Reference No.: RN102858974
Media: Petroleum Storage Tank
Violation No.: 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$200	2-Oct-2006	3-Nov-2006	0.1	\$1	n/a	\$1
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 maintain Stage II records as required. The date required is the investigation date and the final date is the date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$200

TOTAL

\$1

Compliance History

Customer/Respondent/Owner-Operator:	CN600505473 IBM, Inc.	Classification: AVERAGE	Rating: 2.25
Regulated Entity:	RN102858974 STOP & SAVE	Classification: AVERAGE	Site Rating: 3.75
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	754
Location:	1151 E SEMINARY DR, FT WORTH, TX, 76115	Rating Date: 9/1/2006	Repeat Violator: NO
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	November 10, 2006		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	November 10, 2001 to November 10, 2006		

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

Name: Philip DeFrancesco Phone: (817) 588-5933

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 | 01/06/2004 | (258721) |
| 2 | 02/28/2006 | (456032) |
| 3 | 10/11/2005 | (432908) |
| 4 | 10/31/2006 | (515237) |

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

- | | | | |
|--------------|---|----------|--------------------------|
| Date: | 10/11/2005 | (432908) | |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.244(1) | | |
| Description: | Failure to conduct daily inspections for the Stage II Vapor Recovery System. These inspections shall include the applicable portions of 115.242(4) and 115.242(3)(A)-(F), (H)-(I), and (K). | | |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.244(3) | | |
| Description: | Failure to conduct a monthly inspection of the components listed in 114.242(3)(J). | | |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.248(1)[G] | | |
| Description: | Failure to make every current and future employee aware of the purposes and correct operating procedures of the system. | | |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.248(2) | | |
| Description: | Failure to ensure at least one facility representative received training and instruction in the operation and maintenance of the Stage II vapor recovery system by successfully completing a training course approved by the Texas Commission on Environmental Quality. | | |
| Self Report? | NO | | Classification: Moderate |

Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)[G]
Description: Failure to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first. The verification shall include all functional tests that were required for the initial system test, except for TXP-101, and TXP-103, which must be performed

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
IBM, INC. DBA STOP & SAVE
RN102858974**

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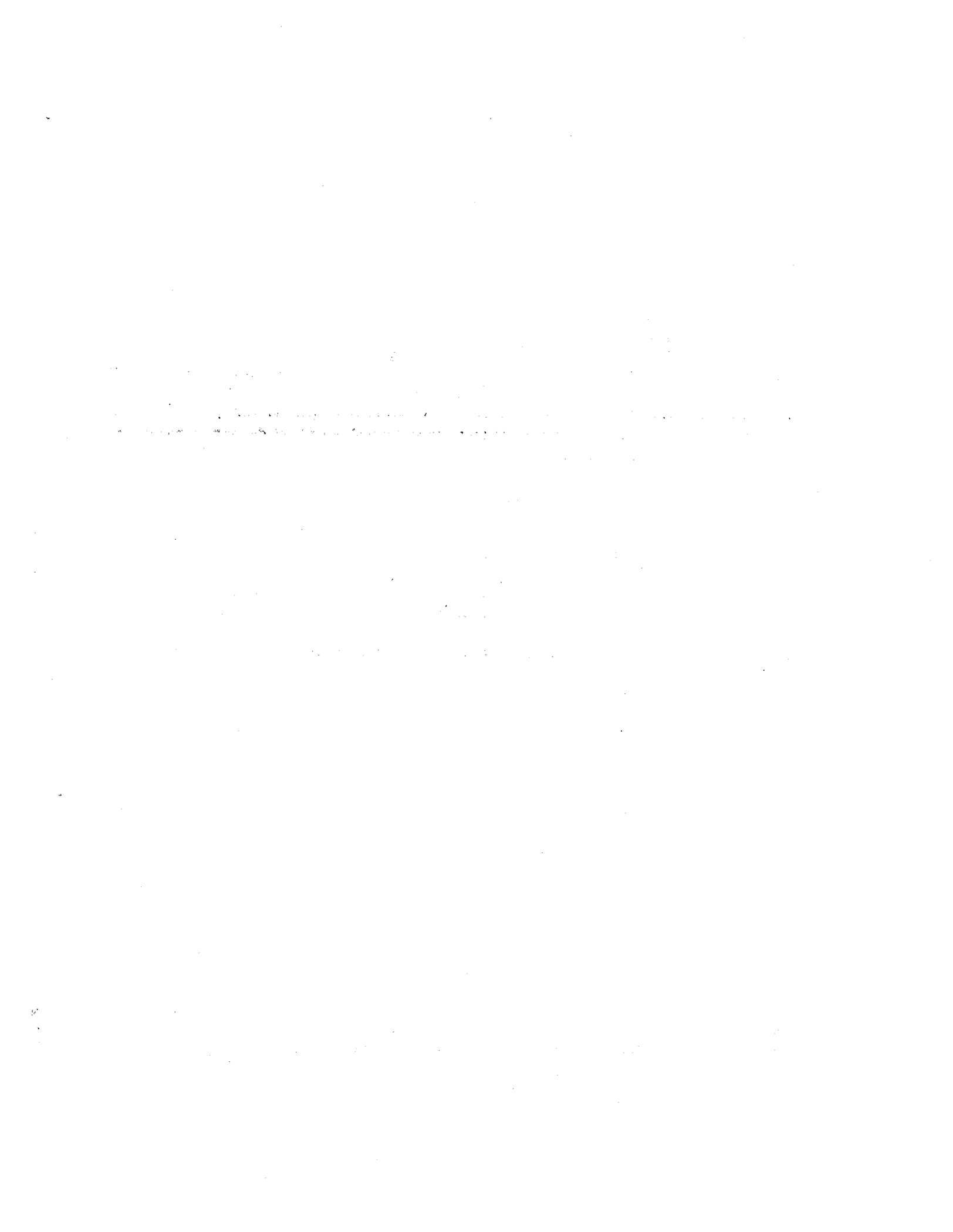
**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2006-1977-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 IBM, Inc. dba Stop & Save ("IBM, Inc.") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and IBM, Inc. appear before the Commission and together stipulate that:

1. IBM, Inc. owns and operates a convenience store with retail sales of gasoline at 1151 East Seminary Drive in Fort Worth, Tarrant County, Texas (the "Station").
2. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and IBM, Inc. agree that the Commission has jurisdiction to enter this Agreed Order, and that IBM, Inc. is subject to the Commission's jurisdiction.
4. IBM, Inc. received notice of the violations alleged in Section II ("Allegations") on or about November 5, 2006.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by IBM, Inc. of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Three Thousand Three Hundred Twenty-Five Dollars (\$3,325) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). IBM, Inc. has paid One Hundred Sixty Dollars (\$160) of the administrative penalty and Six Hundred Sixty-Five Dollars (\$665) is deferred contingent upon IBM, Inc.'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 IBM, Inc. fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require IBM, Inc. to pay all or part of the deferred penalty.

The remaining amount of Two Thousand Five Hundred Dollars (\$2,500) of the administrative penalty shall be payable in twenty-five 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 IBM, Inc. 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 IBM, Inc. to meet the payment schedule of this Agreed Order constitutes the failure by IBM, Inc. 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 IBM, Inc. 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 IBM, Inc. has implemented the following corrective measures at the Station:
 - a. As of November 3, 2006, the TCEQ Dallas/Fort Worth Regional Office received documentation verifying that the triennial testing of the Stage II equipment had been successfully conducted; and
 - b. As of November 3, 2006, the TCEQ Dallas/Fort Worth Regional Office received documentation verifying that all Stage II records are being maintained at the Station.
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 IBM, Inc. 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 Station, IBM, Inc. is alleged to have:

1. Failed to verify proper operation of the Stage II equipment at least once every 36 months, in violation of 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on October 2, 2006. Specifically, the Stage II triennial testing was not performed.
2. Failed to maintain records for the Stage II vapor recovery system on-site and make available for inspection by Commission personnel, in violation of 30 TEX. ADMIN. CODE § 115.246(1) and (3) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on October 2, 2006. Specifically, the daily inspection log and maintenance records were not available for review at the time of the investigation.

III. DENIALS

IBM, Inc. generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that IBM, Inc. pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and IBM, Inc.'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: IBM, Inc. dba Stop & Save, Docket No. 2006-1977-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 IBM, Inc. IBM, Inc. is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Station operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against IBM, Inc. 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), the effective date is the date of hand-delivery of the Order to IBM, Inc. or three days after the date on which the Commission mails notice of the Order to IBM, Inc. 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

Date 4/20/07

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.



Signature

Date 1/30/07

BARKATALI HUSSAIN
Name (Printed or typed)
Authorized Representative of
IBM, Inc. dba Stop & Save

Title Owner

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.

