EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-1979-AIR-E **TCEQ ID:** RN100815133 **CASE NO.:** 31749

RESPONDENT NAME: Ultra Fuel & Oil, L.L.C. dba Rio Grande Supermarket

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
X AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Rio Grande Supermarket, 7240 Doniphan Drive, Canutillo, El Paso County

TYPE OF OPERATION: Supermarket 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. Bryan Elliott, Enforcement Division, Enforcement Section III, MC 149, (512) 239-6162; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896

Respondent: Mr. Jim Whitlatch, Owner, Rio Grande Supermarket, 7240 Doniphan Drive, Canutillo, Texas 79835

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

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: ___ Complaint _X_ Routine ___ Enforcement Follow-up ___ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** October 8, 2006 **Date of NOE Relating to this Case:** November 10, 2006 (NOE) **Background Facts:** This was a routine investigation. One violation was documented. **AIR** Failed to supply fuel with the minimum oxygen content of 2.7% by weight. Specifically, a sample taken from the premium gasoline at Pump No. 2 was found to contain 1.75% oxygen content by weight [30 TEX. ADMIN. CODE § 114.100(a) and TEX. HEALTH & SAFETY CODE § 382.085(b)].	**Total Assessed:** $1,000 **Total Deferred:** $200 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $800 **Site Compliance History Classification** **_X_ High __ Average __ Poor** **Person Compliance History Classification** **__ High _X_ Average __ Poor** **Major Source:** ___ Yes __X_ No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** The Order will require the Respondent to: a. Within 30 days after the effective date of this Agreed Order, establish and implement a process which will ensure that gasoline supplied, sold, or dispensed for use as motor vehicle fuel in El Paso County between October 1st and March 31st of each year shall have the minimum oxygen content of 2.7% by weight; and b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision November 15, 2006*

TCEQ

DATES					
Assigned	13-Nov-2006				
PCW	15-Nov-2006	Screening	15-Nov-2006	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Ultra Fuel & Oil, L.L.C. dba Rio Grande Supermarket		
Reg. Ent. Ref. No.	RN100815133		
Facility/Site Region	6-El Paso	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	31749	No. of Violations	1
Docket No.	2006-1979-AIR-E	Order Type	1660
Media Program(s)	Air Quality	Enf. Coordinator	Bryan Elliott
Multi-Media		EC's Team	EnforcementTeam 5
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 0% Enhancement — *Subtotals 2, 3, & 7* $0

Notes: No change due to average performer classification.

Culpability — No — 0% Enhancement — *Subtotal 4* $0

Notes: Respondent does not meet the culpability criteria.

Good Faith Effort to Comply — 0% Reduction — *Subtotal 5* $0

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

Notes: The Respondent does not meet the good faith criteria.

0% Enhancement* — *Subtotal 6* $0

**Capped at the Total EB $ Amount*

Total EB Amounts	$287
Approx. Cost of Compliance	$850

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $1,000

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 $1,000

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $1,000

DEFERRAL — 20% Reduction — *Adjustment* -$200

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 $800

Screening Date 15-Nov-2006 **Docket No.** 2006-1979-AIR-E **PCW**

Respondent Ultra Fuel & Oil, L.L.C. dba Rio Grande Supermarket

Policy Revision 2 (September 2002)

Case ID No. 31749

PCW Revision November 15, 2006

Reg. Ent. Reference No. RN100815133

Media [Statute] Air Quality

Enf. Coordinator Bryan Elliott

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%

		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)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No change due to average performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date	15-Nov-2006	**Docket No.** 2006-1979-AIR-E	**PCW**
Respondent	Ultra Fuel & Oil, L.L.C. dba Rio Grande Supermarket		*Policy Revision 2 (September 2002)*
Case ID No.	31749		*PCW Revision November 15, 2006*
Reg. Ent. Reference No.	RN100815133		
Media [Statute]	Air Quality		
Enf. Coordinator	Bryan Elliott		

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 114.100(a) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to supply fuel with the minimum oxygen content of 2.7% by weight, as documented by an investigation conducted on October 8, 2006. Specifically, a sample taken from the premium gasoline at Pump No. 2 was found to contain 1.75% oxygen content by weight.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			x
Potential			

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment was exposed to insignificant amounts of pollutants which did not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events: 1

37 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.

Economic Benefit (EB) for this violation

Estimated EB Amount $287

Statutory Limit Test

Violation Final Penalty Total $1,000

This violation Final Assessed Penalty (adjusted for limits) $1,000

Economic Benefit Worksheet

Respondent Ultra Fuel & Oil, L.L.C. dba Rio Grande Supermarket
Case ID No. 31749
Reg. Ent. Reference No. RN100815133
Media Air Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	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	$600	8-Oct-2006	1-Jun-2007	0.6	$19	n/a	$19
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 of implementing procedures to ensure the required oxygen content is maintained. The date required is the date of investigation. The final date is 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				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)	$250	8-Oct-2006	31-Mar-2007	1.4	$17	$250	$267
Notes for AVOIDED costs	The avoided cost is based on dispensing and utilizing gasoline without the minimum oxygen content of 2.7% by weight. The date required is the date of investigation. The final date is the end date of the oxygenated fuel control period.						

Approx. Cost of Compliance: $850

TOTAL: $287

Compliance History

Customer/Respondent/Owner-Operator:	CN600493308	Ultra Fuel & Oil, L.L.C.	Classification: AVERAGE	Rating: 1.21
Regulated Entity:	RN100815133	RIO GRANDE SUPERMARKET	Classification: HIGH	Site Rating: 0.00

ID Number(s):	AIR NEW SOURCE PERMITS PETROLEUM STORAGE TANK REGISTRATION	ACCOUNT NUMBER REGISTRATION	EE2178K 72682

Location: 7240 DONIPHAN DR, CANUTILLO, TX, 79835 Rating Date: 9/1/2006 Repeat Violator: NO

TCEQ Region: REGION 06 - EL PASO

Date Compliance History Prepared: November 14, 2006

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: November 14, 2001 to November 14, 2006

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

Name: Bryan Elliott Phone: 239-6162

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 08/13/2002 (4259)

2 11/07/2002 (15629)
3 03/19/2002 (75782)
4 10/20/2002 (14147)
5 12/05/2005 (439042)
6 06/30/2004 (277985)
7 11/10/2006 (518944)

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**
ULTRA FUEL & OIL, L.L.C. DBA RIO	§	
GRANDE SUPERMARKET	§	
RN100815133	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2006-1979-AIR-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 Ultra Fuel & Oil, L.L.C. dba Rio Grande Supermarket ("Ultra Fuel & Oil") 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 Ultra Fuel & Oil appear before the Commission and together stipulate that:

1. Ultra Fuel & Oil owns and operates a supermarket with retail sales of gasoline, located at 7240 Doniphan Drive in Canutillo, El Paso County, Texas (the "Store").

2. The Store consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).

3. The Commission and Ultra Fuel & Oil agree that the Commission has jurisdiction to enter this Agreed Order, and that Ultra Fuel & Oil is subject to the Commission's jurisdiction.

4. Ultra Fuel & Oil received notice of the violations alleged in Section II ("Allegations") on or about November 15, 2006.

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

6. An administrative penalty in the amount of One Thousand Dollars ($1,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Ultra Fuel & Oil has paid Eight Hundred Dollars ($800) of the administrative penalty and Two Hundred Dollars ($200) is deferred contingent upon Ultra Fuel & Oil'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 Ultra Fuel & Oil fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Ultra Fuel & Oil to pay all or part of the deferred penalty.

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 Ultra Fuel & Oil have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. 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 Ultra Fuel & Oil has not complied with one or more of the terms or conditions in this Agreed Order.

10. 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.

11. 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 Store, Ultra Fuel & Oil is alleged to have failed to supply fuel without the minimum oxygen content of 2.7% by weight, in violation of 30 TEX. ADMIN. CODE § 114.100(a) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented by an investigation conducted on October 8, 2006. Specifically, a sample taken from the premium gasoline at Pump No. 2 was found to contain 1.75% oxygen content by weight.

III. DENIALS

Ultra Fuel & Oil generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Ultra Fuel & Oil pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Ultra Fuel & Oil'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: Ultra Fuel & Oil, L.L.C. dba Rio Grande Supermarket, Docket No. 2006-1979-AIR-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. It is further ordered that Ultra Fuel & Oil shall undertake the following technical requirements:

   a. Within 30 days after the effective date of this Agreed Order, establish and implement a process which will ensure that gasoline supplied, sold, or dispensed for use as motor vehicle fuel in El Paso County between October 1st and March 31st of each year shall have the minimum oxygen content of 2.7% by weight; and

   b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

      "I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

      The certification shall be submitted to:

      Order Compliance Team
      Enforcement Division, MC 149A
      Texas Commission on Environmental Quality
      P.O. Box 13087
      Austin, Texas 78711-3087

with a copy to:

Air Quality Section, Manager
El Paso Regional Office
Texas Commission on Environmental Quality
401 East Franklin Avenue, Suite 560
El Paso, Texas 79901-1206

3. The provisions of this Agreed Order shall apply to and be binding upon Ultra Fuel & Oil. Ultra Fuel & Oil is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Store operations referenced in this Agreed Order.

4. If Ultra Fuel & Oil 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, Ultra Fuel & Oil's failure to comply is not a violation of this Agreed Order. Ultra Fuel & Oil shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Ultra Fuel & Oil shall notify the Executive Director within seven days after Ultra Fuel & Oil becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. 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 Ultra Fuel & Oil shall be made in writing to the Executive Director. Extensions are not effective until Ultra Fuel & Oil receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against Ultra Fuel & Oil 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.

7. 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.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Ultra Fuel & Oil, or three days after the date on which the Commission mails notice of the Order to Ultra Fuel & Oil, 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

5/7/07
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.

Signature

12/01/06
Date

Jim Whitlatch
Name (Printed or typed)
Authorized Representative of
Ultra Fuel & Oil, L.L.C. dba Rio Grande Supermarket

Director
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.