EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-2002-AIR-E **TCEQ ID:** RN102477627 **CASE NO.:** 31767

RESPONDENT NAME: C & R Distributing, Inc.

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: C & R Fuel Control 43, 800 Texas Avenue, El Paso County

TYPE OF OPERATION: Unmanned gas dispensing station

SMALL BUSINESS: ___ Yes __X__ 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 2, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Ms. Nadia Hameed, Enforcement Division, Enforcement Section III, MC R12, (713) 767-3629; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896

Respondent: Mr. Fernando Fierro, General Manager, C & R Distributing, Inc., 800 Texas Avenue, El Paso, Texas 79901

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 13, 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 ensure a minimum of 2.7% oxygenate in gasoline dispensed in El Paso County from October 1st to March 31st. Specifically, a gasoline sample taken during the October 13, 2006 investigation from pump No. 5 indicated that the gasoline was below the minimum 2.7% by weight oxygenated fuel requirement [30 TEX. ADMIN. CODE § 114.100(a) and TEX. HEALTH & SAFETY CODE § 382.085(b)].	**Total Assessed:** $1,100 **Total Deferred:** $220 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $880 **Site Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Person Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that on November 17, 2006, C & R added ethanol to the gasoline thereby increasing the oxygenated fuel component to above the required 2.7% by weight. This was verified by C & R on November 18, 2006, when a sample of the gasoline tested showed the oxygenated fuel component to be 2.9% by weight.

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision November 17, 2006*

TCEQ

DATES					
Assigned	10-Nov-2006				
PCW	10-Nov-2006	Screening	10-Nov-2006	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	C & R Distributing, Inc.		
Reg. Ent. Ref. No.	RN102477627		
Facility/Site Region	6-El Paso	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	31767	No. of Violations	1
Docket No.	2006-2002-AIR-E	Order Type	1660
Media Program(s)	Air Quality	Enf. Coordinator	Nadia Hameed
Multi-Media		EC's Team	EnforcementTeam 6
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 — 20% Enhancement — *Subtotals 2, 3, & 7* $200

Notes: Penalty enhancement due to one agreed order containing a denial of liability.

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

Notes: Respondent does not meet the culpability criteria.

Good Faith Effort to Comply — 10% Reduction — *Subtotal 5* $100

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

Notes: The Respondent came into compliance on November 18, 2006.

0% Enhancement* — *Subtotal 6* $0

**Capped at the Total EB $ Amount*

Total EB Amounts	$2
Approx. Cost of Compliance	$500

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $1,100

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 $1,100

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $1,100

DEFERRAL — 20% Reduction — *Adjustment* -$220

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 $880

Screening Date 10-Nov-2006 **Docket No.** 2006-2002-AIR-E **PCW**

Respondent C & R Distributing, Inc.

Case ID No. 31767

Reg. Ent. Reference No. RN102477627

Media [Statute] Air Quality

Enf. Coordinator Nadia Hameed

Policy Revision 2 (September 2002)

PCW Revision November 17, 2006

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*)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*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) 20%

>> 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

Penalty enhancement due to one agreed order containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 20%

Screening Date	10-Nov-2006	**Docket No.** 2006-2002-AIR-E	**PCW**
Respondent	C & R Distributing, Inc.		*Policy Revision 2 (September 2002)*
Case ID No.	31767		*PCW Revision November 17, 2006*
Reg. Ent. Reference No.	RN102477627		
Media [Statute]	Air Quality		
Enf. Coordinator	Nadia Hameed		

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 ensure a minimum of 2.7% oxygenate in gasoline dispensed in El Paso County from October 1st to March 31st. Specifically, a gasoline sample taken during the October 13, 2006 investigation from pump No. 5 indicated that the gas was below the minimum 2.7% by weight oxygenated fuel requirement.

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 has been 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 based on the non-compliant sample that was taken during the October 13, 2006 investigation.

Economic Benefit (EB) for this violation

Estimated EB Amount $2

Statutory Limit Test

Violation Final Penalty Total $1,100

This violation Final Assessed Penalty (adjusted for limits) $1,100

Economic Benefit Worksheet

Respondent C & R Distributing, Inc.
Case ID No. 31767
Reg. Ent. Reference No. RN102477627
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				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)	$500	13-Oct-2006	18-Nov-2006	0.1	$2	n/a	$2
Notes for DELAYED costs	On November 17, 2005, ethanol was added to the gasoline to bring up the oxygenated fuel component to the required minimum. Date required is the date the violation was documented. Final date is when the testing results confirmed that the gasoline meets the oxygenated fuel requirements.						
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)				0.0	$0	$0	$0
Notes for AVOIDED costs							

Approx. Cost of Compliance: $500

TOTAL: $2

Compliance History

Customer/Respondent/Owner-Operator:	CN600247753	C & R Distributing, Inc.	Classification: AVERAGE	Rating: 2.70
Regulated Entity:	RN102477627	C & R FUEL CONTROL 43	Classification: AVERAGE	Site Rating: 5.00

ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	44442
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	EE1272B

Location: 800 TEXAS AVE, EL PASO, TX, 79901 Rating Date: 9/1/2006 Repeat Violator: NO

TCEQ Region: REGION 06 - EL PASO

Date Compliance History Prepared: November 17, 2006

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: November 17, 2001 to November 17, 2006

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

Name: NHameed Phone: 713-767-3629

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 Effective Date: 07/15/2005 ADMINORDER 2004-1469-MLM-E

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.252(2)
5C THC Chapter 382, SubChapter A 382.085(b)

Description: Failure to comply with the 7.0 maximum Reid Vapor Pressure requirements during the control period of June 1, 2004 through September 16, 2004, for El Paso County.

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 07/13/2004 (278692)
N/A
2 06/25/2004 (277537)
3 08/10/2002 (3546)
4 11/10/2006 (518003)
5 03/13/2002 (74737)
6 05/16/2003 (37943)
7 06/26/2005 (396573)
8 05/31/2006 (450867)
9 11/06/2002 (15867)
10 05/06/2005 (375779)

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**
C & R DISTRIBUTING, INC.	§	
RN102477627	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2006-2002-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 C & R Distributing, Inc. ("C & R") 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 C & R, appear before the Commission and together stipulate that:

1. C & R owns and operates an unmanned gas dispensing station at 800 Texas Avenue in El Paso, El Paso 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 C & R agree that the Commission has jurisdiction to enter this Agreed Order, and that C & R is subject to the Commission's jurisdiction.

4. C & R 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 C & R of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of One Thousand One Hundred Dollars ($1,100) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). C & R has paid Eight Hundred Eighty Dollars ($880) of the administrative penalty and Two

Hundred Twenty Dollars ($220) is deferred contingent upon C & R'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 C & R fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require C & R 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 C & R 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 on November 17, 2006, C & R added ethanol to the gasoline thereby increasing the oxygenated fuel component to above the required 2.7% by weight. This was verified by C & R on November 18, 2006, when a sample of the gasoline tested showed the oxygenated fuel component to be 2.9% by weight.

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 C & R 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, C & R is alleged to have failed to ensure a minimum of 2.7% oxygenate in gasoline dispensed in El Paso County from October 1st to March 31st, in violation of 30 TEX. ADMIN. CODE § 114.100(a) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on October 13, 2006. Specifically, a gasoline sample taken during the October 13, 2006 investigation from pump No. 5 indicated that the gasoline was below the minimum 2.7% by weight oxygenated fuel requirement.

III. DENIALS

C & R generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that C & R pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and C & R'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: C & R Distributing, Inc., Docket No. 2006-2002-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. The provisions of this Agreed Order shall apply to and be binding upon C & R. C & R is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the operations referenced in this Agreed Order.

3. This Agreed Order, issued by the Commission, shall not be admissible against C & R 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 C & R, or three days after the date on which the Commission mails notice of the Order to C & R, 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

5/11/07
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.

Fernando Fier
Signature

1-25-07
Date

FERNANDO FIER
Name (Printed or typed)
Authorized Representative of
C & R Distributing, Inc.

GM
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.