EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-1983-PST-E **TCEQ ID:** RN100890979 **CASE NO.:** 32134

RESPONDENT NAME: S & S USA Enterprises, Inc. dba Berry Food Store

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:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	X 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: Berry Food Store, 516 Berry Road, 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 June 11, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Ms. Deana Holland, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-2504; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896

Respondent: Mr. Mohammed Ismail Ansari, President, S & S USA Enterprises, Inc., 22726 Johndate Court, Katy, Texas 77494

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 NOV/NOE Relating to this Case:** November 9, 2006 (NOE) **Background Facts:** This was a routine investigation. Sixteen violations were documented. **WASTE** 1) Failed to maintain all required Stage II records on-site and make immediately available for review upon request by a TCEQ representative. Specifically, S & S USA failed to maintain a copy of the California Air Resources Board (CARB) Executive Order(s) for the Stage II vapor recovery system, maintenance log for all repairs conducted, Stage II test results, and employee training records at the Station [30 TEX. ADMIN. CODE § 115.246(1), (3), (5) and (7)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. 2) Failed to conduct daily and monthly inspections of the Stage II vapor recovery system [30 TEX. ADMIN. CODE § 115.244(1) and (3), and TEX. HEALTH & SAFETY CODE § 382.085(b)]. 3) Failed to make each employee aware of the purposes and correct operation procedures of the Stage II equipment. Specifically, S & S USA failed to ensure that at least one Station representative receives training and instruction in the operation and maintenance of the Stage II vapor recovery system within three months of departure of the previously trained employee [30 TEX. ADMIN. CODE § 115.248(1) and TEX. HEALTH & SAFETY CODE § 382.085(b)].	**Total Assessed:** $13,950 **Total Deferred:** $2,790 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid (Due) to General Revenue:** $310 (remaining $10,850 due in 35 monthly payments of $310 each) **Site Compliance History Classification** _X_ **High** __ **Average** __ **Poor** **Person Compliance History Classification** _X_ **High** __ **Average** __ **Poor** **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** The Order will require the Respondent to: a. Immediately upon the effective date of this Agreed Order: i. Cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ by submitting a properly completed UST registration and self-certification form; ii. Begin maintaining Stage II records; and iii. Begin conducting effective manual or automatic inventory control procedures for the UST. b. Within 30 days after the effective date of this Agreed Order: i. Begin conducting required daily and monthly inspections of the Stage II vapor recovery system; ii. Conduct training to make every employee aware of the purposes and correct operation procedures of the Stage II System; iii. Conduct the annual testing of the Stage II equipment; iv. Post operating instructions conspicuously on the front of each dispenser equipped with a Stage II system; v. Implement a corrosion protection method for all USTs at the Station; and vi. Implement a release detection method for all USTs at the Station. c. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed

4) Failed to verify proper operation of the Stage II equipment at least once every 12 months [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. 5) Failed to post operating instructions conspicuously on the front of each dispenser equipped with a Stage II system. Specifically, at the time of the investigation the proper operating instructions were not observed on any dispensers [30 TEX. ADMIN. CODE § 115.242(9) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. 6) Failed to provide proper corrosion protection for all underground storage tanks ("USTs") [30 TEX. ADMIN. CODE § 334.49(a) and TEX. WATER CODE § 26.3475(d)]. 7) Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components were operating properly [30 TEX. ADMIN. CODE § 334.49(c)(2)(C) and TEX. WATER CODE § 26.3475(d)]. 8) Failed to inspect and test the cathodic protection system for operability and adequacy of protection at least once every three years [30 TEX. ADMIN. CODE § 334.49(c)(4) and TEX. WATER CODE § 26.3475(d)]. 9) Failed to provide a release detection method capable of detecting a release from any portion of the UST system which contained regulated substances [30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)]. 10) Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)]. 11) Failed to provide release detection for the piping associated with the UST system [30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a)]. 12) Failed to test the line leak detectors at least once per year for performance and operational reliability. Specifically, the line leak detectors had not been performance tested annually [30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a)].		supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a.i. through b.vi.

13) Failed to conduct effective manual or automatic inventory control procedures for the UST involved in the retail sale of petroleum substances used as a motor fuel [30 TEX. ADMIN. CODE § 334.48(c)]. 14) Failed to provide written notice of any change or additional information to the Commission within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first becomes aware of the change or addition. Specifically, S & S USA did not update the registration information to reflect the current operator information [30 TEX. ADMIN. CODE § 334.7(d)(3)]. 15) Failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date of the delivery certificate. Specifically, the delivery certificate expired on January 31, 2006 [30 TEX. ADMIN. CODE § 334.8(c)(4)(B) and (c)(5)(B)(ii)]. 16) Failed to make available to a common carrier a valid, TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, one fuel delivery was accepted without a delivery certificate [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)].		

Penalty Calculation Worksheet (PCW)

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

TCEQ

DATES					
Assigned	13-Nov-2006				
PCW	20-Nov-2006	Screening	18-Nov-2006	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	S & S USA Enterprises, Inc. dba Berry Food Store		
Reg. Ent. Ref. No.	RN100890979		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	32134	No. of Violations	10
Docket No.	2006-1983-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Deana Holland
Multi-Media		EC's Team	EnforcementTeam 7
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* **$15,500**

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* **-$1,550**

Notes: Reduction for high performer classification.

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

Notes: The 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**

Total EB Amounts	$3,923
Approx. Cost of Compliance	$7,550

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 *Final Subtotal* **$13,950**

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 **$13,950**

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* **$13,950**

DEFERRAL 20% Reduction *Adjustment* **-$2,790**

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 **$11,160**

Screening Date	18-Nov-2006	**Docket No.** 2006-1983-PST-E	**PCW**
Respondent	S & S USA Enterprises, Inc. dba Berry Food Store		*Policy Revision 2 (September 2002)*
Case ID No.	32134		*PCW Revision November 17, 2006*
Reg. Ent. Reference No.	RN100890979		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Deana Holland		

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)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Reduction for high performer classification.

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

Screening Date	18-Nov-2006	**Docket No.** 2006-1983-PST-E	**PCW**
Respondent	S & S USA Enterprises, Inc. dba Berry Food Store		*Policy Revision 2 (September 2002)*
Case ID No.	32134		*PCW Revision November 17, 2006*
Reg. Ent. Reference No.	RN100890979		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Deana Holland		

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 115.246(1), (3), (5) and (7)(A) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to maintain all required Stage II records on-site and make immediately available for review upon request by a TCEQ representative. Specifically, the respondent failed to maintain a copy of the California Air Resources Board (CARB) Executive Order(s) for the Stage II vapor recovery system, maintenance log for all repairs conducted, Stage II test results, and employee training records at the Station.

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

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 documentation of the violation during the October 13, 2006 investigation.

Economic Benefit (EB) for this violation

Estimated EB Amount $4

Statutory Limit Test

Violation Final Penalty Total $900

This violation Final Assessed Penalty (adjusted for limits) $900

Economic Benefit Worksheet

Respondent S & S USA Enterprises, Inc. dba Berry Food Store
Case ID No. 32134
Reg. Ent. Reference No. RN100890979
Media Petroleum Storage Tank
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	$100	13-Oct-2006	1-Aug-2007	0.8	$4	n/a	$4
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 required Stage II records. The Date Required is the date of the investigation and the Final Date is the estimated 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)				0.0	$0	$0	$0

Notes for AVOIDED costs:

Approx. Cost of Compliance: $100

TOTAL: $4

Screening Date	18-Nov-2006	**Docket No.** 2006-1983-PST-E	**PCW**
Respondent	S & S USA Enterprises, Inc. dba Berry Food Store		*Policy Revision 2 (September 2002)*
Case ID No.	32134		*PCW Revision November 17, 2006*
Reg. Ent. Reference No.	RN100890979		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Deana Holland		

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 115.244(1) and (3) and Texas Health & Safety Code § 382.085(b)

Violation Description Failed to conduct daily and monthly inspections of the Stage II vapor recovery system.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential		x	

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment will or could be exposed to significant amounts of pollutants which would 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	x
semiannual	
annual	
single event	

Violation Base Penalty $1,000

One quarterly event is recommended from the October 13, 2006 investigation to the November 18, 2006 screening date.

Economic Benefit (EB) for this violation

Estimated EB Amount $543

Statutory Limit Test

Violation Final Penalty Total $900

This violation Final Assessed Penalty (adjusted for limits) $900

Economic Benefit Worksheet

Respondent S & S USA Enterprises, Inc. dba Berry Food Store
Case ID No. 32134
Reg. Ent. Reference No. RN100890979
Media Petroleum Storage Tank
Violation No. 2

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
Permit Costs				0.0	$0	n/a	$0
Other (as needed)				0.0	$0	n/a	$0
Notes for DELAYED costs							
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	$0	$0	$0
Personnel				0.0	$0	$0	$0
Inspection/Reporting/Sampling				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)	$500	13-Oct-2006	1-Aug-2007	1.7	$43	$500	$543
Notes for AVOIDED costs	Estimated cost to conduct monthly inspections of Stage II vapor recovery system. The Date Required is the investigation date and the Final Date is the estimated date of compliance.						

Approx. Cost of Compliance $500

TOTAL $543

Screening Date	18-Nov-2006	**Docket No.** 2006-1983-PST-E	**PCW**
Respondent	S & S USA Enterprises, Inc. dba Berry Food Store		*Policy Revision 2 (September 2002)*
Case ID No.	32134		*PCW Revision November 17, 2006*
Reg. Ent. Reference No.	RN100890979		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Deana Holland		

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 115.248(1) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to make each employee aware of the purposes and correct operation procedures of the Stage II equipment. Specifically, the respondent failed to ensure that at least one Station representative receives training and instruction in the operation and maintenance of the Stage II vapor recovery system within three months of departure of the previously trained employee.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential		x	

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment will or could be exposed to significant amounts of pollutants which would 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	x
semiannual	
annual	
single event	

Violation Base Penalty $1,000

One quarterly event is recommended from the October 13, 2006 investigation to the November 18, 2006 screening date.

Economic Benefit (EB) for this violation

Estimated EB Amount $20

Statutory Limit Test

Violation Final Penalty Total $900

This violation Final Assessed Penalty (adjusted for limits) $900

Economic Benefit Worksheet

Respondent S & S USA Enterprises, Inc. dba Berry Food Store
Case ID No. 32134
Reg. Ent. Reference No. RN100890979
Media Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	No commas or $						
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	$500	13-Oct-2006	1-Aug-2007	0.8	$20	n/a	$20
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 Approximate cost of training by a certified Stage II station representative. The Date Required is the investigation and the Final Date is the estimated 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)				0.0	$0	$0	$0

Notes for AVOIDED costs

Approx. Cost of Compliance $500

TOTAL $20

Screening Date	18-Nov-2006	**Docket No.** 2006-1983-PST-E	**PCW**
Respondent	S & S USA Enterprises, Inc. dba Berry Food Store		*Policy Revision 2 (September 2002)*
Case ID No.	32134		*PCW Revision November 17, 2006*
Reg. Ent. Reference No.	RN100890979		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Deana Holland		

Violation Number 4

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

Violation Description Failed to verify proper operation of the Stage II equipment at least once every 12 months.

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 could be exposed to significant amounts of pollutants which would exceed levels that are protective of human health or environmental receptors.

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events: 1

365 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	x
single event	

Violation Base Penalty $2,500

One annual event is recommended for the 12 month period preceeding the October 13, 2006 investigation.

Economic Benefit (EB) for this violation

Estimated EB Amount $822

Statutory Limit Test

Violation Final Penalty Total $2,250

This violation Final Assessed Penalty (adjusted for limits) $2,250

Economic Benefit Worksheet

Respondent S & S USA Enterprises, Inc. dba Berry Food Store
Case ID No. 32134
Reg. Ent. Reference No. RN100890979
Media Petroleum Storage Tank
Violation No. 4

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)				0.0	$0	n/a	$0
Notes for DELAYED costs							
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	$0	$0	$0
Personnel				0.0	$0	$0	$0
Inspection/Reporting/Sampling				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)	$750	13-Oct-2005	13-Oct-2006	1.9	$72	$750	$822
Notes for AVOIDED costs	Estimated cost to verify proper operation of the Stage II equipment. The Date Required is one year prior to the date of the Investigation and the Final Date is the date of the Investigation.						

Approx. Cost of Compliance $750

TOTAL $822

Screening Date	18-Nov-2006	Docket No. 2006-1983-PST-E	PCW
Respondent	S & S USA Enterprises, Inc. dba Berry Food Store		Policy Revision 2 (September 2002)
Case ID No.	32134		PCW Revision November 17, 2006
Reg. Ent. Reference No.	RN100890979		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Deana Holland		

Violation Number 5

Rule Cite(s) 30 Tex. Admin. Code § 115.242(9) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to post operating instructions conspicuously on the front of each dispenser equipped with a Stage II system. Specifically, at the time of the investigation the proper operating instructions were not observed on any dispensers.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential		x	

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment will or could be exposed to significant amounts of pollutants which would 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	x
semiannual	
annual	
single event	

Violation Base Penalty $1,000

One quarterly event is recommended from the October 13, 2006 investigation date to the Noverber 18, 2006 screening date.

Economic Benefit (EB) for this violation

Estimated EB Amount $6

Statutory Limit Test

Violation Final Penalty Total $900

This violation Final Assessed Penalty (adjusted for limits) $900

Economic Benefit Worksheet

Respondent S & S USA Enterprises, Inc. dba Berry Food Store
Case ID No. 32134
Reg. Ent. Reference No. RN100890979
Media Petroleum Storage Tank
Violation No. 5

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	$100	13-Oct-2006	1-Aug-2007	0.8	$0	$5	$6
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: The estimated cost to post the operating instruction on each dispenser. The Date Required is the date of the investigation and the Final Date is the estimated 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)				0.0	$0	$0	$0

Notes for AVOIDED costs:

Approx. Cost of Compliance $100

TOTAL $6

Screening Date	18-Nov-2006	**Docket No.** 2006-1983-PST-E	**PCW**
Respondent	S & S USA Enterprises, Inc. dba Berry Food Store		*Policy Revision 2 (September 2002)*
Case ID No.	32134		*PCW Revision November 17, 2006*
Reg. Ent. Reference No.	RN100890979		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Deana Holland		

Violation Number 6

Rule Cite(s) 30 Tex. Admin. Code § 334.49(a), (c)(2)(C) and (c)(4) and Tex. Water Code § 26.3475(d)

Violation Description Failed to provide proper corrosion protection for all USTs. Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components were operating properly. Also, the respondent failed to inspect and test the cathodic protection system for operability and adequacy of protection at least once every three years.

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

37 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $2,500

One quarterly event is recommended from the October 13, 2006 investigation date to the November 18, 2006 screening date.

Economic Benefit (EB) for this violation

Estimated EB Amount $1,324

Statutory Limit Test

Violation Final Penalty Total $2,250

This violation Final Assessed Penalty (adjusted for limits) $2,250

Economic Benefit Worksheet

Respondent S & S USA Enterprises, Inc. dba Berry Food Store
Case ID No. 32134
Reg. Ent. Reference No. RN100890979
Media Petroleum Storage Tank
Violation No. 6

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)	$1,000	13-Oct-2006	1-Aug-2007	0.8	$40	n/a	$40
Notes for DELAYED costs	Estimated cost to provide proper corrosion protection. The Date Required is the investigation date. The Final Date is the estimated 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	$500	13-Aug-2006	13-Oct-2006	0.2	$4	$84	$88
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	13-Oct-2003	13-Oct-2006	3.9	$196	$1,000	$1,196
Notes for AVOIDED costs	Avoided cost of conducting bimonthly inspection of the cathodic protection system. The Date Required is two months prior to the investigation date and the Final Date is the investigation date. Avoided cost of completing the triennial test. The Date Required is three years prior to the investigation date and the Final Date is the investigation date.						

Approx. Cost of Compliance $2,500

TOTAL $1,324

Screening Date	18-Nov-2006	**Docket No.** 2006-1983-PST-E	**PCW**
Respondent	S & S USA Enterprises, Inc. dba Berry Food Store		*Policy Revision 2 (September 2002)*
Case ID No.	32134		*PCW Revision November 17, 2006*
Reg. Ent. Reference No.	RN100890979		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Deana Holland		

Violation Number 7

Rule Cite(s) 30 Tex. Admin. Code § 334.50(a)(1)(A), (b)(1)(A), (b)(2), and (b)(2)(A)(i)(III) and Tex. Water Code § 26.3475(a) and (c)(1)

Violation Description Failed to provide a release detection method capable of detecting a release from any portion of the UST system which contains regulated substances. Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Failed to provide release detection for the piping associated with the UST system. Specifically, the respondent did not conduct the annual piping tightness test. In addition, the respondent failed to test the line leak detectors at least once per year for performance and operational reliability. Specifically, the line leak detectors 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 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

1 | 37 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $2,500

One quarterly event is recommended based on the investigation date of October 13, 2006 and the screening date of November 18, 2006.

Economic Benefit (EB) for this violation

Estimated EB Amount $1,180

Statutory Limit Test

Violation Final Penalty Total $2,250

This violation Final Assessed Penalty (adjusted for limits) $2,250

Economic Benefit Worksheet

Respondent S & S USA Enterprises, Inc. dba Berry Food Store
Case ID No. 32134
Reg. Ent. Reference No. RN100890979
Media Petroleum Storage Tank
Violation No. 7

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	$1,500	13-Oct-2006	1-Aug-2007	0.8	$4	$80	$84
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	The estimated cost to provide a release detection method. The Date Required is the date of the investigation and the Final Date is the estimated 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	13-Oct-2005	13-Oct-2006	1.9	$96	$1,000	$1,096
Notes for AVOIDED costs	The estimated cost to conduct annual line leak detector and piping tightness tests. The Date Required is one year prior to the Investigation date and the Final Date is the investigation date.						

Approx. Cost of Compliance $2,500

TOTAL $1,180

Screening Date	18-Nov-2006	Docket No. 2006-1983-PST-E	PCW
Respondent	S & S USA Enterprises, Inc. dba Berry Food Store		Policy Revision 2 (September 2002)
Case ID No.	32134		PCW Revision November 17, 2006
Reg. Ent. Reference No.	RN100890979		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Deana Holland		

Violation Number 8

Rule Cite(s) 30 Tex. Admin. Code § 334.48(c)

Violation Description Failed to conduct effective manual or automatic inventory control procedures for the UST involved in the retail sale of petroleum substances used as a motor fuel.

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 could be exposed to significant amounts of pollutants which would exceed levels that are protective of human health or environmental receptors.

Adjustment $7,500

$2,500

Violation Events

1 | 37 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $2,500

One quarterly event is recommended based on documentation of the violation during the October 13, 2006 investigation to the November 18, 2006 screening date.

Economic Benefit (EB) for this violation

Estimated EB Amount $20

Statutory Limit Test

Violation Final Penalty Total $2,250

This violation Final Assessed Penalty (adjusted for limits) $2,250

Economic Benefit Worksheet

Respondent S & S USA Enterprises, Inc. dba Berry Food Store
Case ID No. 32134
Reg. Ent. Reference No. RN100890979
Media Petroleum Storage Tank
Violation No. 8

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	1-Aug-2007	0.8	$20	n/a	$20
Notes for DELAYED costs	Estimated cost to conduct the required inventory control. The Date required is the date of investigation and the Final date is estimated 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)				0.0	$0	$0	$0
Notes for AVOIDED costs							

Approx. Cost of Compliance: $500

TOTAL: $20

Screening Date	18-Nov-2006	**Docket No.** 2006-1983-PST-E	**PCW**
Respondent	S & S USA Enterprises, Inc. dba Berry Food Store		*Policy Revision 2 (September 2002)*
Case ID No.	32134		*PCW Revision November 17, 2006*
Reg. Ent. Reference No.	RN100890979		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Deana Holland		

Violation Number 9

Rule Cite(s) 30 Tex. Admin. Code § 334.7(d)(3), 334.8(c)(4)(B) and (c)(5)(B)(ii)

Violation Description Failed to provide written notice of any change or additional information to the Commission within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first becomes aware of the change or addition. Specifically, the respondent did not update the registration information to reflect the current operator information. In addition, the respondent failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date of the delivery certificate. Specifically, the delivery certificate expired on January 31, 2006.

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

255 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 13, 2006 investigation.

Economic Benefit (EB) for this violation

Estimated EB Amount $4

Statutory Limit Test

Violation Final Penalty Total $900

This violation Final Assessed Penalty (adjusted for limits) $900

Economic Benefit Worksheet

Respondent S & S USA Enterprises, Inc. dba Berry Food Store
Case ID No. 32134
Reg. Ent. Reference No. RN100890979
Media Petroleum Storage Tank
Violation No. 9

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
Permit Costs				0.0	$0	n/a	$0
Other (as needed)	$100	13-Sep-2006	1-Aug-2007	0.9	$4	n/a	$4
Notes for DELAYED costs	The estimated cost to amend or update the UST registration. The Date Required is 30 days before the date of the investigation and the Final Date is the estimated 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)				0.0	$0	$0	$0
Notes for AVOIDED costs							

Approx. Cost of Compliance $100

TOTAL $4

Screening Date	18-Nov-2006	**Docket No.** 2006-1983-PST-E	**PCW**
Respondent	S & S USA Enterprises, Inc. dba Berry Food Store		*Policy Revision 2 (September 2002)*
Case ID No.	32134		*PCW Revision November 17, 2006*
Reg. Ent. Reference No.	RN100890979		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Deana Holland		

Violation Number 10

Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(A)(i) and Tex. Water Code § 26.3467(a)

Violation Description Failed to make available to a common carrier a valid, TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically one fuel delivery was accepted without a delivery certificate.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			x

Percent 5%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

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

Adjustment $9,500

$500

Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $500

One single event (one per fuel drop) is recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $0

Statutory Limit Test

Violation Final Penalty Total $450

This violation Final Assessed Penalty (adjusted for limits) $450

Economic Benefit Worksheet

Respondent S & S USA Enterprises, Inc. dba Berry Food Store
Case ID No. 32134
Reg. Ent. Reference No. RN100890979
Media Petroleum Storage Tank
Violation No. 10

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)				0.0	$0	n/a	$0
Notes for DELAYED costs	Economic benefit included in Violation No. 9.						
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: $0

TOTAL: $0

Compliance History

Customer/Respondent/Owner-Operator:	CN603115056	S & S USA Enterprises, Inc.	Classification: HIGH	Rating: 0.00
Regulated Entity:	RN100890979	BERRY FOOD STORE	Classification: HIGH	Site Rating: 0.00

ID Number(s):	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	HG7713P
	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	37926

Location:	516 BERRY RD, HOUSTON, TX, 77022	Rating Date: September 01 06	Repeat Violator: NO

TCEQ Region:	REGION 12 - HOUSTON
Date Compliance History Prepared:	November 20, 2006
Agency Decision Requiring Compliance History:	Enforcement
Compliance Period:	November 20, 2001 to November 20, 2006

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

Name: Deana Holland Phone: 239-2504

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 08/27/2002 (9924)
2 11/09/2006 (517072)

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	§	
S & S USA ENTERPRISES, INC. DBA	§	**TEXAS COMMISSION ON**
BERRY FOOD STORE	§	
RN100890979	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2006-1983-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 S & S USA Enterprises, Inc. dba Berry Food Store ("S & S USA") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and S & S USA appear before the Commission and together stipulate that:

1. S & S USA owns and operates a convenience store with retail sales of gasoline at 516 Berry Road in Houston, Harris County, Texas (the "Station").

2. S & S USA's three underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).

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

4. S & S USA received notice of the violations alleged in Section II ("Allegations") on or about November 14, 2006.

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

6. An administrative penalty in the amount of Thirteen Thousand Nine Hundred Fifty Dollars ($13,950) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). S & S USA has paid Three Hundred Ten Dollars ($310) of the administrative penalty and Two Thousand Seven Hundred Ninety Dollars ($2,790) is deferred contingent upon S & S USA'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 S & S USA fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require S & S USA to pay all or part of the deferred penalty.

   The remaining amount of Ten Thousand Eight Hundred Fifty Dollars ($10,850) of the administrative penalty shall be payable in 35 monthly payments of Three Hundred Ten Dollars ($310) 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 S & S USA 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 S & S USA to meet the payment schedule of this Agreed Order constitutes the failure by S & S USA 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 S & S USA 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 S & S USA 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 Station, S & S USA is alleged to have:

1. Failed to maintain all required Stage II records on-site and make immediately available for review upon request by a TCEQ representative, in violation of 30 TEX. ADMIN. CODE § 115.246(1), (3), (5) and (7)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on October 13, 2006. Specifically, S & S USA failed to maintain a copy of the California Air Resources Board (CARB) Executive Order(s) for the Stage II vapor recovery

system, maintenance log for all repairs conducted, Stage II test results, and employee training records at the Station.

2. Failed to conduct daily and monthly inspections of the Stage II vapor recovery system, in violation of 30 TEX. ADMIN. CODE § 115.244(1) and (3), and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on October 13, 2006.

3. Failed to make each employee aware of the purposes and correct operation procedures of the Stage II equipment, in violation of 30 TEX. ADMIN. CODE § 115.248(1) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on October 13, 2006. Specifically, S & S USA failed to ensure that at least one Station representative receives training and instruction in the operation and maintenance of the Stage II vapor recovery system within three months of departure of the previously trained employee.

4. Failed to verify proper operation of the Stage II equipment at least once every 12 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 13, 2006.

5. Failed to post operating instructions conspicuously on the front of each dispenser equipped with a Stage II system, in violation of 30 TEX. ADMIN. CODE § 115.242(9) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on October 13, 2006. Specifically, at the time of the investigation the proper operating instructions were not observed on any dispensers.

6. Failed to provide proper corrosion protection for all USTs, in violation of 30 TEX. ADMIN. CODE § 334.49(a) and TEX. WATER CODE § 26.3475(d), as documented during an investigation conducted on October 13, 2006.

7. Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components were operating properly, in violation of 30 TEX. ADMIN. CODE § 334.49(c)(2)(C) and TEX. WATER CODE § 26.3475(d), as documented during an investigation conducted on October 13, 2006.

8. Failed to inspect and test the cathodic protection system for operability and adequacy of protection at least once every three years, in violation of 30 TEX. ADMIN. CODE § 334.49(c)(4) and TEX. WATER CODE § 26.3475(d), as documented during an investigation conducted on October 13, 2006.

9. Failed to provide a release detection method capable of detecting a release from any portion of the UST system which contained regulated substances, in violation of 30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on October 13, 2006.

10. Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on October 13, 2006.

11. Failed to provide 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 October 13, 2006.

12. Failed to test the line leak detectors 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 October 13, 2006. Specifically, the line leak detectors had not been performance tested annually.

13. Failed to conduct effective manual or automatic inventory control procedures for the UST involved in the retail sale of petroleum substances used as a motor fuel, in violation of 30 TEX. ADMIN. CODE § 334.48(c), as documented during an investigation conducted on October 13, 2006.

14. Failed to provide written notice of any change or additional information to the Commission within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first becomes aware of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3), as documented during an investigation conducted on October 13, 2006. Specifically, S & S USA did not update the registration information to reflect the current operator information.

15. Failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date of the delivery certificate, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(4)(B) and (c)(5)(B)(ii), as documented during an investigation conducted on October 13, 2006. Specifically, the delivery certificate expired on January 31, 2006.

16. Failed to make available to a common carrier a valid, TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a), as documented during an investigation conducted on October 13, 2006. Specifically, one fuel delivery was accepted without a delivery certificate.

III. DENIALS

S & S USA generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that S & S USA pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and S & S USA'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: S & S USA Enterprises, Inc. dba Berry Food Store, Docket No. 2006-1983-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. It is further ordered that S & S USA shall undertake the following technical requirements:

   a. Immediately upon the effective date of this Agreed Order:

      i. Cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ by submitting a properly completed UST registration and self-certification form, in accordance with 30 TEX. ADMIN. CODE § 334.8;

      ii. Begin maintaining Stage II records, in accordance with 30 TEX. ADMIN. CODE § 115.246; and

      iii. Begin conducting effective manual or automatic inventory control procedures for the UST, in accordance with 30 TEX. ADMIN. CODE § 334.48.

   b. Within 30 days after the effective date of this Agreed Order:

      i. Begin conducting required daily and monthly inspections of the Stage II vapor recovery system, in accordance with 30 TEX. ADMIN. CODE § 115.244;

      ii. Conduct training to make every employee aware of the purposes and correct operation procedures of the Stage II System, in accordance with 30 TEX. ADMIN. CODE § 115.248;

      iii. Conduct the annual testing of the Stage II equipment, in accordance with 30 TEX. ADMIN CODE § 115.245;

      iv. Post operating instructions conspicuously on the front of each dispenser equipped with a Stage II system, in accordance with 30 TEX. ADMIN CODE § 115.242;

      v. Implement a corrosion protection method for all USTs at the Station, in accordance with 30 TEX. ADMIN. CODE § 334.49; and

vi. Implement a release detection method for all USTs at the Station, in accordance with 30 TEX. ADMIN. CODE § 334.50.

c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a.i. through 2.b.vi.

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:

Waste Section Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

3. The provisions of this Agreed Order shall apply to and be binding upon S & S USA . S & S USA 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.

4. If S & S USA 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, S & S USA's failure to comply is not a violation of this Agreed Order. S & S USA shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. S & S USA shall notify the Executive Director within seven days after S & S USA 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 S & S USA shall be made in

writing to the Executive Director. Extensions are not effective until S & S USA 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 S & S USA 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 S & S USA, or three days after the date on which the Commission mails notice of the Order to S & S USA, 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

_____ 7/11/07
For the Executive Director 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.

_____ 03/30/07.
Signature Date

Mohammed I. Ansari President
Name (Printed or typed) Title
Authorized Representative of
S & S USA Enterprises, Inc. dba Berry Food Store

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.