

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2004-1701-PST-E TCEQ ID: RN102011566 CASE NO.: 21046

RESPONDENT NAME: MOMENTUM INVESTMENT, INC. DBA ANGELS GAS & GROCERY

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 2928 North Farm-to-Market Road 565, Mont Belvieu, Chambers County</p> <p>TYPE OF OPERATION: Convenience store with retail sales of gasoline</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on September 24, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Ms. Rebecca Johnson, Air Enforcement Section, R-12, (713) 422-8931 TCEQ Regional Contact: Ms. Nicole Bealle, Houston Regional Office, R-12, (713) 767-3623 Respondent: Mr. Rasheed Ali Dhuka, President, Momentum Investment, Inc. dba Angels Gas and Grocery, P.O. Box 116, Mont Belvieu, Texas 77560 Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

RESPONDENT NAME: MOMENTUM INVESTMENT, INC. DBA ANGELS GAS & GROCERY
DOCKET NO.: 2004-1701-PST-E

<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: August 24, 2004</p> <p>Date of NOE Relating to this Case: October 14, 2004</p> <p>Background Facts:</p> <p>The EDPRP was filed on September 6, 2005. The EDFARP was filed on January 29, 2007. Settlement was achieved and a signed Agreed Order was received on June 15, 2007.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>PST:</p> <p>1. Failed to monitor the underground storage tanks ("USTs") and associated piping for releases [30 TEX. ADMIN. CODE §§ 334.50(b)(2)(A)(i)(III) and (b)(2)(A)(ii), and TEX. WATER CODE § 26.3475(a) and (c)(1)].</p> <p>2. Failed to maintain the Stage II Vapor Recovery System in an operating condition that includes the installation of all components [30 TEX. ADMIN. CODE § 115.242(3)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>3. Failed to verify proper operation of the Stage II Equipment at least once every twelve months by conducting compliance testing in accordance with the procedure found in the Vapor Recovery Test Procedures Handbook [30 TEX. ADMIN. CODE § 115.245(1) and (2), and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>4. Failed to maintain records to demonstrate compliance with applicable requirements [30 TEX. ADMIN. CODE §§ 115.246(5) and 334.10(b)(1)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$15,950</p> <p>Total Paid/Due to General Revenue: \$1,331/\$14,619</p> <p>The Respondent has paid \$1,331 of the administrative penalty. The remaining amount of \$14,619 of the administrative penalty shall be payable in 11 monthly payments of \$1,329 each.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures in response to this enforcement action:</p> <p>a. Installed swivel adapters on the fill ports and Stage I dry breaks; and</p> <p>b. Had the line leak detectors tested.</p> <p>Ordering Provisions:</p> <p>The Respondent shall undertake the following requirements:</p> <p>1. Within 30 days:</p> <p>a. Begin conducting compliance testing for the Stage II Vapor Recovery System; and</p> <p>b. Begin maintaining on-site all UST and Stage II records, including, but not limited to, records of the results of Stage II and corrosion protection system testing.</p> <p>2. Within 45 days submit written certification demonstrating compliance.</p>
--	--	--



Policy Revision 2 (September 2002)

Gas AGENDA PCW-2nd revised.qpw
Penalty Calculation Worksheet (PCW)

PCW Revision May 17, 2004

DATES

PCW Screening Priority Due EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent
 Reg. Ent. Ref. No.
 Additional ID No(s)
 Facility/Site Region Major/Minor Source

CASE INFORMATION

Enf./Case ID No.	<input type="text" value="21046"/>	No. of Violations	<input type="text" value="4"/>
Docket No.	<input type="text" value="2004-1701-PST-E"/>	Order Type	<input type="text" value="1660 without deferral"/>
Case Priority	<input type="text" value="3"/>	Enf. Coordinator	<input type="text" value="Rebecca Johnson"/>
Media Program(s)	<input type="text" value="Petroleum Storage Tank"/>	EC's Team	<input type="text" value="Enforcement Team 4"/>
Multi-Media	<input type="text"/>		
Admin. Penalty \$ Limit Minimum	<input type="text" value="\$0"/>	Maximum	<input type="text" value="\$10,000"/>

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1

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

Notes

Culpability 0% Enhancement Subtotal 4

Notes

Good Faith Effort to Comply 0% Reduction Subtotal 5

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/>	<i>(mark with a small x)</i>

Notes

Economic Benefit 0% Enhancement* Subtotal 6

Total EB Amounts *Capped at the Total EB \$ Amount
 Approx. Cost of Compliance

SUM OF SUBTOTALS 1-7 Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment

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

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty

DEFERRAL Reduction Adjustment

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

Notes

PAYABLE PENALTY

Screening Date 20-Oct-2004 Gas\AGENDA\PCW-2nd revised.gpw Docket No. 2004-1701-PST-E **PCW**

Respondent Momentum Investment, Inc. dba Angels Gas & Grocery Policy Revision 2 (September 2002)
 Case ID No. 21046 PCW Revision May 17, 2004

Reg. Ent. Reference No. RN102011566
 Additional ID No(s). Petroleum Storage Tank Facility ID No. 45486
 Media [Statute] Petroleum Storage Tank
 Enf. Coordinator Rebecca Johnson
 Site Address 2928 North Farm-to-Market Road 565, Mont Belvieu, Chambers County

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 <i>(number of NOVs meeting criteria)</i>	2	10%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	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 <i>(number of judgements or consent decrees meeting criteria)</i>	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 <i>(number of counts)</i>	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 <i>(number of audits for which notices were)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%
<small>Please Enter Yes or No.</small>			
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) 10%

>> 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 two NOVs for same or similar violations issued to the station during the compliance history period reviewed.

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

Screening Date 20-Oct-2004 **Gas AGENDA PCW-2nd revised opw** Docket No. 2004-1701-PST-E **PCW**

Respondent Momentum Investment, Inc. dba Angels Gas & Grocery *Policy Revision 2 (September 2002)*
Case ID No. 21046 *PCW Revision May 17, 2004*

Reg. Ent. Reference No. RN102011566
Additional ID No(s). Petroleum Storage Tank Facility ID No. 45486
Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rebecca Johnson

Violation Number 1

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

Violation Description
 Failure to monitor the piping of the underground storage tanks ("USTs") for releases. Specifically, failure to have the line leak detectors tested once per year, and have each pressurized line tested or monitored for releases.

Base Penalty \$10,000

>> **Environmental, Property and Human Health Matrix**

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				50%
Potential	X			

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent

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 -\$5,000

Base Penalty Subtotal \$5,000

Violation Events

Number of Violation Events 2

<i>mark only one use a small x</i>	daily	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$10,000

Two quarterly events are recommended based on the August 24, 2004 investigation date to the February 12, 2005 settlement deadline to make the penalty commensurate with the situation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$11,000

This violation Final Assessed Penalty (adjusted for limits) \$11,000

Economic Benefit Worksheet

Respondent Momentum Investment, Inc. dba Angels Gas & Grocery
 Case ID No. 21046
 Reg. Ent. Reference No. RN102011566
 Additional ID No(s). Petroleum Storage Tank Facility ID No. 45486
 Media [Statute] Petroleum Storage Tank
 Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$700	24-Aug-2004	31-Aug-2004	0.0	\$0	\$1	\$1
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: Estimated cost to monitor the piping for releases. Date required based on the investigation date. Final date based on the compliance date.

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 TOTAL

Screening Date 20-Oct-2004 *Gas\AGENDA\PCW-2nd revised.opw*
 Docket No. 2004-1701-PST-E

PCW

Respondent Momentum Investment, Inc. dba Angels Gas & Grocery

Policy Revision 2 (September 2002)

Case ID No. 21046

PCW Revision May 17, 2004

Reg. Ent. Reference No. RN102011566

Additional ID No(s). Petroleum Storage Tank Facility ID No. 45486

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rebecca Johnson

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

		Harm			
Release		Major	Moderate	Minor	
OR	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	

>> Programmatic Matrix

		Major	Moderate	Minor	
	Falsification	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text"/>

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

<i>mark only one use a small x</i>	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="checkbox"/>

Violation Base Penalty

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Momentum Investment, Inc. dba Angels Gas & Grocery
 Case ID No. 21046
 Reg. Ent. Reference No. RN102011566
 Additional ID No(s). Petroleum Storage Tank Facility ID No. 45486
 Media [Statute] Petroleum Storage Tank
 Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment	\$350	24-Aug-2004	18-Oct-2004	0.2	\$0	\$4	\$4
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: Estimated cost to install swivel adapters. Date required based on the investigation date. Final date based on the compliance date.

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 \$350 . TOTAL \$4

Screening Date 20-Oct-2004

Gas\AGENDA\PCW-2nd revised.opw
Docket No. 2004-1701-PST-E

PCW

Respondent Momentum Investment, Inc. dba Angels Gas & Grocery

Policy Revision 2 (September 2002)

Case ID No. 21046

PCW Revision May 17, 2004

Reg. Ent. Reference No. RN102011566

Additional ID No(s). Petroleum Storage Tank Facility ID No. 45486

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rebecca Johnson

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description
 Failure to verify proper operation of the Stage II equipment at least once every twelve months by conducting compliance testing in accordance with the procedure found in the Vapor Recovery Test Procedures Handbook. Specifically, the Stage II equipment was tested on March 24, 2004, however a pressure decay test was not conducted due to low fuel levels in the tanks. A subsequent successful pressure decay test was conducted on April 30, 2004, however since 30 days had elapsed since the March 24, 2004 test all components were required to be retested and were not.

Base Penalty

>> Environmental, Property and Human Health Matrix

		Harm			
Release		Major	Moderate	Minor	
OR	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>				

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

Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one use a small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="checkbox"/>

Violation Base Penalty

One single event is recommended based on the August 24, 2004 investigation date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Gas\AGENDA\PCW-2nd revised.cpw
Economic Benefit Worksheet

Respondent Momentum Investment, Inc. dba Angels Gas & Grocery
Case ID No. 21046
Reg. Ent. Reference No. RN102011566
Additional ID No(s). Petroleum Storage Tank Facility ID No. 45486
Media [Statute] Petroleum Storage Tank
Violation No. 3

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)	\$400	30-Apr-2004	29-Aug-2006	2.3	\$3	\$62	\$65
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 Estimated cost to retest all the components required to be tested during the annual Stage II test. Date required based on the date of the subsequent pressure decay test at which time all components were required to be retested and were not. Final date based on the compliance date.

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

TOTAL

Screening Date 20-Oct-2004 Gas\AGENDA\PCW:2nd revised.cpw Docket No. 2004-1701-PST-E PCW

Respondent Momentum Investment, Inc. dba Angels Gas & Grocery Policy Revision 2 (September 2002)

Case ID No. 21046 PCW Revision May 17, 2004

Reg. Ent. Reference No. RN102011566

Additional ID No(s). Petroleum Storage Tank Facility ID No. 45486

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rebecca Johnson

Violation Number 4

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.10(b)(1)(A) and 115.246(5)

Secondary Rule Cite(s) Tex. Health & Safety Code § 382.085(b)

Violation Description Failure to maintain records to demonstrate compliance with applicable requirements. Specifically, the respondent could not provide records demonstrating compliance with the corrosion protection testing requirements or records demonstrating Stage II testing conducted prior to the March 12, 2004 annual test.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	X			25%

Matrix Notes 100% of the rule requirements were not met.

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 1

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

Violation Base Penalty \$2,500

One single event is recommended based on the August 24, 2004 investigation date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$19

Violation Final Penalty Total \$2,750

This violation Final Assessed Penalty (adjusted for limits) \$2,750

Economic Benefit Worksheet

Respondent Momentum Investment, Inc. dba Angels Gas & Grocery
 Case ID No. 21046
 Reg. Ent. Reference No. RN102011566
 Additional ID No(s): Petroleum Storage Tank Facility ID No. 45486
 Media [Statute] Petroleum Storage Tank
 Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	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	\$250	24-Aug-2004	16-Feb-2006	1.5	\$19	n/a	\$19
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 develop and maintain a record keeping system. Date required based on the investigation date. Final date based on the projected compliance date.

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

TOTAL

Compliance History

Customer/Respondent/Owner-Operator:	CN600927966 Momentum Investment, Inc.	Classification: AVERAGE	Rating: 1.850
Regulated Entity:	RN102011566 ANGELS GAS & GROCERY	Classification: AVERAGE	Site Rating: 4.25
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	45486
Location:	2928 N FM 565, MONT BELVIEU, TX, 77580		Rating Date: 9/1/04 Repeat Violator: NO
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	October 18, 2004		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	October 18, 1999 to October 18, 2004		

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

Name: Rebecca Johnson Phone: (713) 422-8931

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? | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>N/A</u> |
| 5. When did the change(s) in ownership occur? | <u>N/A</u> |

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 06/18/2004 (275755)
- 2 03/31/2004 (266734)
- 3 08/04/2003 (276209)
- 4 10/14/2004 (292337)

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

Date: 06/18/2004 (275755)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(5)

Description: Failure to maintain a record of the results of testing conducted at the facility according to 115.245 (Testing Requirements).

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)

Description: Failure to verify proper operation of the Stage II equipment at least once every twelve months or upon major system replacement or modification. The verification shall include all functional tests that were required for the initial system test, which must be performed at least once every 36 months.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(B)

Description: Failure to maintain hose in a manner that the hose is not crimped, kinked, or flattened such that the vapor passage is blocked, or the back-pressure through the vapor system exceeds the value as certified in the approved system's CARB Executive Order(s).

Date: 03/31/2004 (266734)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(6)

Description: Failure to maintain a daily inspection log according to 115.244 (Inspection Requirements).

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(4)

Description: Failure to maintain proof of attendance and completion of training as specified in 115.248 (state approved Stage II training course) and documentation of all Stage II training for each employee.

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(5)

Description: Failure to maintain a record of the results of testing conducted at the facility according to 115.245 (Testing Requirements).

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)

Description: Failure to verify proper operation of the Stage II equipment at least once every twelve months or upon major system replacement or modification. The verification shall include all functional tests that were required for the initial system test, which must be performed at least once every 36 months.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(B)

Description: Failure to maintain hose in a manner that the hose is not crimped, kinked, or flattened such that the vapor passage is blocked, or the back-pressure through the vapor system exceeds the value as certified in the approved system's CARB Executive Order(s).

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.242(9)(G)

Description: Failure to post operating instructions conspicuously on the front of each dispenser equipped with a Stage II system.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
MOMENTUM INVESTMENT, INC.
DBA ANGELS GAS & GROCERY
RN102011566

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2004-1701-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Momentum Investment, Inc. dba Angels Gas & Grocery ("Momentum") under the authority of TEX. WATER CODE chs. 7 and 26, and TEX. HEALTH & SAFETY CODE ch. 382. The Executive Director of the TCEQ, represented by the Litigation Division, and Momentum appear before the Commission and together stipulate that:

1. Momentum owns and operates a convenience store with retail sales of gasoline located at 2928 North Farm-to-Market Road 565, Mont Belvieu, Chambers County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 382, TEX. WATER CODE ch. 26, and TCEQ rules.
3. The Commission and Momentum agree that the Commission has jurisdiction to enter this Agreed Order, and that Momentum is subject to the Commission's jurisdiction.
4. Momentum received notice of the violations alleged in Section II ("Allegations") on or about October 19, 2004.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Momentum of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of fifteen thousand nine hundred fifty dollars (\$15,950.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Momentum has paid one thousand three hundred thirty-one dollars (\$1,331.00) of the administrative penalty. The remaining amount of fourteen thousand six hundred nineteen dollars (\$14,619.00) of the administrative penalty shall be payable in 11 monthly payments of one thousand three hundred twenty-nine dollars (\$1,329.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Momentum fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his 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, Momentum's failure to meet the payment schedule of this Agreed Order constitutes the failure by Momentum to timely and satisfactorily comply with all of 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 Momentum 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 Momentum has implemented the following corrective measures at the Facility in response to this enforcement action:
 - a. Installed swivel adapters on the fill ports and Stage I dry breaks; and
 - b. Had the line leak detectors tested.
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 Momentum 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

1. As documented during an investigation conducted on August 24, 2004, Momentum is alleged to have violated:
 - a. 30 TEX. ADMIN. CODE §§ 334.50(b)(2)A(i)(III) and (b)(2)(A)(ii), and TEX. WATER CODE § 26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (“USTs”) and associated piping for releases. Specifically, failure to have the line leak detectors tested once per year, and have each pressurized line tested or monitored for releases;
 - b. 30 TEX. ADMIN. CODE § 115.242(3)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to maintain the Stage II Vapor Recovery System in an operating condition that includes the installation of all components that are part of the approved system. Specifically, during the investigation it was documented that swivel adapters had not been installed on any of the fill ports or on one of the Stage I dry breaks;
 - c. 30 TEX. ADMIN. CODE § 115.245(1) and (2), and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to verify proper operation of the Stage II equipment at least once every twelve months by conducting compliance testing in accordance with the procedure found in the Vapor Recovery Test Procedures Handbook. Specifically, the Stage II equipment was tested on March 24, 2004, however a pressure decay test was not conducted due to low fuel levels in the tanks. A subsequent successful pressure decay test was conducted on April 30, 2004, however since 30 days had elapsed since the March 24, 2004 test all components were required to be retested and were not; and
 - d. 30 TEX. ADMIN. CODE §§ 115.246(5) and 334.10(b)(1)(A), and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to maintain records to demonstrate compliance with applicable requirements. Specifically, the respondent could not provide records demonstrating compliance with the corrosion protection testing requirements or records demonstrating Stage II testing conducted prior to the March 12, 2004 annual test.

III. DENIALS

1. Momentum generally denies each allegation in Section II (“Allegations”).

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Momentum pay an administrative penalty as set forth in Section I, Paragraph 6, above. The payment of this administrative penalty and Momentum'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 considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Momentum Investment, Inc. dba Angels Gas & Grocery, Docket No. 2004-1701-PST" 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. Momentum shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, Momentum shall:
 - i. Begin conducting compliance testing for the Stage II vapor recovery system in accordance with the procedures referenced in 30 TEX. ADMIN. CODE § 115.245 (relating to Testing Requirements); and
 - ii. Begin maintaining on-site all UST and Stage II records, including, but not limited to, records of the results of Stage II and corrosion protection system testing, in accordance with the recordkeeping requirements in 30 TEX. ADMIN. CODE § 334.10(b)(1)(A) and 30 TEX. ADMIN. CODE § 115.246.
 - b. Within 45 days after the effective date of this Order, Momentum shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with ordering provision Nos. 2.a.i. and a.ii. 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.”

Momentum shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a.i. and a.ii. to:

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

and

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

3. The provisions of this Agreed Order shall apply to and be binding upon Momentum. Momentum is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Momentum 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, Momentum's failure to comply is not a violation of this Agreed Order. Momentum shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Momentum shall notify the Executive Director within seven days after Momentum 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 Momentum shall be made in writing to the Executive Director. Extensions are not effective until Momentum 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 Momentum in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of

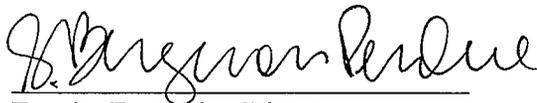
this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

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) and TEX. GOV'T. CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Momentum, or three days after the date on which the Commission mails notice of the Order to Momentum, 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

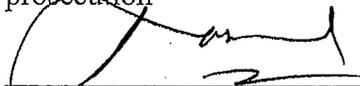
8/29/07
~~8/15/12/07~~
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity 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 in this order and/or Momentum's failure to timely pay the penalty amount, may result in:

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

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution



Signature

RASHEED DHUKA

Name (Printed or typed)

Authorized representative of

Momentum Investment, Inc. dba Angels Gas & Grocery

8/12/07
Date

Date

President

Title