

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

**DOCKET NO.: 2004-0407-PST -E TCEQ ID: RN102404985 CASE NO.: 13988
RESPONDENT NAME: VIRGINIA ENTERPRISES, INC. DBA SUPER FOOD STORE**

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: 1410 West Virginia Street, Beaumont, Jefferson 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 location.</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 April 28, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Anna M. Cox, Litigation Division, MC 175, (512) 239-0974 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Ms. Cheryl Thompson, Air Enforcement Section, MC R-4, (817) 588-5886 TCEQ Regional Contact: Mr. Derek Eades, Beaumont Regional Office, MC R-10, (409) 898-3838 Respondent: Mr. Firoz Jivani, President and Registered Agent, Virginia Enterprises, Inc., 1410 West Virginia Street, Beaumont Texas 77705 Respondent's Attorney: Ms. Jennifer Fleck, Ted A. Cox, P.C., 4910 Dacoma Street, Suite 100, Houston, Texas 77092</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<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>Date of Investigation Relating to this Case: September 2, 2003</p> <p>Date of NOE Relating to this Case: October 24, 2003</p> <p>Background Facts: The Litigation Division filed the EDRP on October 5, 2004 and the Respondent filed its Answer on October 26, 2004. After the case was referred to SOAH on January 4, 2005, Litigation and the Respondent engaged in extensive discovery and eventually reached a settlement agreement.</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 test the line leak detectors at least once per year for performance and operational reliability, as documented on September 2, 2003 [30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a)].</p> <p>2.) Failed to perform a piping tightness test for the pressurized line at least once per year on the UST system, as documented on September 2, 2003 [30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(ii)(I) and TEX. WATER CODE § 26.3475(a)].</p> <p>3.) Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), as documented on September 2, 2003 [30 TEX. ADMIN. CODE § 334.50(b)(1)(A), and TEX. WATER CODE § 26.3475(c)(1)].</p>	<p>Total Assessed: \$7,200</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>Total Paid/Due to General Revenue: \$3,780/\$3,420</p> <p>The Respondent has paid \$3,780 of the administrative penalty. The remaining amount of \$3,420 shall be payable in 15 monthly payments of \$228 each.</p> <p>Site Compliance History Classification: <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken</p> <p>The Executive Director recognizes that Respondent implemented the following corrective actions at the Station:</p> <p>1.) On September 4, 2003, began maintaining a record of the results of the daily inspections for Stage II equipment conducted at the Station.</p> <p>2.) On September 16, 2003, successfully performed a line leak detector test and a piping tightness test; and</p> <p>3.) On September 26, 2003, successfully performed the annual and triennial testing of the Stage II system.</p> <p>4.) On October 1, 2003, successfully trained a Stage II facility representative.</p> <p>The Executive Director further recognizes that Respondent ceased owning and operating the Station on March 1, 2004.</p>

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>4.) Failed to reconcile inventory control records on a monthly basis which are sufficiently accurate to detect a release which equals or exceeds the sum 1% of flow through plus 130 gallons, as documented on September 2, 2003 [30 TEX. ADMIN. CODE §§ 334.50(d)(1)(B)(ii) and 334.48(c)].</p> <p>5.) Failed to conduct inventory volume measurements for regulated substance inputs, withdrawals, and amount still remaining in the tanks on a daily basis, as documented on September 2, 2003 [30 TEX. ADMIN. CODE §§ 334.50(d)(1)(B)(iii)(I) and 334.48(c)].</p> <p>6.) Failed to maintain a copy of the California Air Resource Board (CARB) Executive Order for the Stage II recovery system, as documented on September 2, 2003 [30 TEX. ADMIN. CODE § 115.246(1) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>7.) Failed to maintain a record of maintenance conducted on any part of the Stage II equipment, as documented on September 2, 2003 [30 TEX. ADMIN. CODE § 115.246(3) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>8.) Failed to maintain a record of the results of the daily inspections of Stage II equipment conducted at the Station, as documented on September 2, 2003 [30 TEX. ADMIN. CODE § 115.246(6) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>9.) Failed to successfully perform annual Stage II testing within the preceding 12 months and triennial Stage II testing within the preceding 36 months, as documented on September 2, 2003 [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>10.) Failed to train a Stage II facility representative and failing to make each current employee aware of the purpose and correct operation of the Stage II equipment, as documented on September 2, 2003 [30 TEX. ADMIN. CODE § 115.248(1) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>		



Policy Revision 2 (09/02)

Penalty Calculation Worksheet (PCW)

PCW Revision 2/10/2004

DATES	
PCW 21-Feb-2008	Screening 23-Mar-2004
Priority Due 21-Jul-2004	EPA Due
RESPONDENT INFORMATION	
Respondent Virginia Enterprises Inc. dba Super Food Store	
Respondent/Site ID No(s) Petroleum Storage Tank Facility ID No. 20328; RN102404985	
Facility/Site Region 10 - Beaumont	Major/Minor Source Minor
CASE INFORMATION	
Enf./Case ID No(s) CCEDS Case No. 13988	No. Violations 4
Docket No. 2004-0407-PST-E	Order Type 1660 without deferral
Case Priority 3	EC's Team Enforcement Team 5
Enf. Coordinator Cheryl Thompson	
Media Program(s) Petroleum Storage Tank	
Admin. Penalty \$ Limit Minimum \$0	Maximum \$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 \$8,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History -10% Reduction Subtotals 2, 3 & 7 -\$800

Notes: Reduction due to high performer classification. +

Culpability 0% Enhancement Subtotal 4 \$0

No Select Yes/No
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	<input type="checkbox"/>	<input type="checkbox"/>	
Ordinary	<input type="checkbox"/>	<input type="checkbox"/>	
None of the above	X	(mark with small x)	+

Notes: The respondent sold the facility before compliance was achieved.

Economic Benefit 0% Enhancement* Subtotal 6 \$0

\$33	Total EB Amounts	*Capped at the Total EB \$ Amount	
\$1,600	Approx. Cost of Compliance		=

SUM OF SUBTOTALS 1-7 Final Subtotal \$7,200

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 \$7,200

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$7,200

DEFERRAL Deferral 0% Reduction Adjustment \$0

Reduces the Final Assessed Penalty by the indicated percentage. (enter number only; e.g. 20 for 20% reduction)
Notes: Deferral is not recommended due to settlement not achieved. =

PAYABLE PENALTY \$7,200

Screening Date 23-Mar-2004 **Docket Number** 2004-0407-PST-E **PCW**
Respondent Virginia Enterprises Inc. dba Super Food Store **Policy Revision 2 (09/02)**
Case ID No. CCEDS Case No. 13988 **PCW Revision 2/10/2004**
Respondent/Site ID No. Petroleum Storage Tank Facility ID No. 20328; RN102404985
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Cheryl Thompson
Site Address 1410 W. Virginia Street, Beaumont, Texas 77705

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>)	0	0%
	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 (<i>number of events</i>)	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 submitted</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%
<i>Please enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> **Repeat Violator (Subtotal 3)**

No Select Yes/No

Adjustment Percentage (Subtotal 3) 0%

>> **Compliance History Person Classification (Subtotal 7)**

High Performer Select High, Average or Poor

Adjustment Percentage (Subtotal 7) -10%

Compliance History Summary

Compliance History Notes

Reduction due to high performer classification.

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

Screening Date 23-Mar-04 Documents\2004-0407-pst-enforce\Virginia revised 11-4-gpw
 Docket Number 2004-0407-PST-E

PCW

Respondent Virginia Enterprises Inc. dba Super Food Store

Policy Revision 2 (09/02)

Case ID No. CCEDS Case No. 13988

PCW Revision 2/10/2004

Respondent/Site ID No. Petroleum Storage Tank Facility ID No. 20328; RN102404985

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Cheryl Thompson

Violation Number 1

Primary Rule Cite 30 Tex. Admin. Code §§ 334.50(b)(2)(A)(i)(III) and (ii)(I) and 334.50(b)(1)(A)

Secondary Cite(s) Tex. Water Code § 26.3475(a) and 26.3475(c)(1)

Violation Description
 Failed to test the line leak detectors at least once per year for performance and operational reliability, failed to perform a piping tightness test for the pressurized line at least once per year on the underground storage tank (UST) system, and failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).

Base Penalty \$10,000

» Environmental, Property and Human Health Matrix

Harm

Release	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

» 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 the environment.

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 1

mark only one; use small x

daily	
monthly	
quarterly	
semiannual	x
annual	
single event	

Violation Base Penalty \$2,500

Events Notes

One semiannual event is recommended for the period of September 2, 2003 (date of inspection) to March 1, 2004 (date of ownership transfer) to make the penalty commensurate with the situation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount (\$) \$15

Violation Final Penalty total \$2,250

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

Economic Benefit Worksheet

Respondent Virginia Enterprises Inc. dba Super Food Store
ID Number(s) CCEDS Case No. 13988
Media [Statute] Petroleum Storage Tank
Violation Number 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	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)	\$600	2-Sep-2003	1-Mar-2004	0.5	\$15	n/a	\$15

Notes for DELAYED costs

Estimated cost to monitor the UST system for releases at a frequency of at least once every month.

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/equip				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 23-Mar-04 Documents\2004-0407-pst-ecpp\Virginia revised 11-4-gaw Docket Number 2004-0407-PST-E

PCW

Respondent Virginia Enterprises Inc. dba Super Food Store

Policy Revision 2 (09/02)

Case ID No. CCEDS Case No. 13988

PCW Revision 2/10/2004

Respondent/Site ID No. Petroleum Storage Tank Facility ID No. 20328; RN102404985

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Cheryl Thompson

Violation Number

2

Primary Rule Cite

30 Tex. Admin. Code §§ 334.50(d)(1)(B)(ii) and (iii)(I) and 30 Tex. Admin. Code § 334.48(c)

Secondary Cite(s)

Violation Description

Failed to reconcile inventory control records on a monthly basis which are sufficiently accurate to detect a release which equals or exceeds the sum 1% of flow through plus 130 gallons, and failed to conduct inventory volume measurements for regulated substance inputs, withdrawals, and amount still remaining in the tanks on a daily basis.

Base Penalty \$10,000

» Environmental, Property and Human Health Matrix

Harm

Release	Major	Moderate	Minor
Actual			
Potential	X		

OR

Percent 25%

» Programmatic Matrix

Falsification	Major	Moderate	Minor

OR

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 the environment.

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 1

mark only one; use small x

daily	
monthly	
quarterly	
semiannual	X
annual	
single event	

Violation Base Penalty \$2,500

Events Notes

One semiannual event is recommended for the period of September 2, 2003 (date of inspection) to March 1, 2004 (date of ownership transfer) to make the penalty commensurate with the situation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount (\$) \$7

Violation Final Penalty total \$2,250

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

Screening Date 23-Mar-04 Documents\2004-0407-pst-enq-virginia-revised-11-4-qw
 Docket Number 2004-0407-PST-E

PCW

Respondent Virginia Enterprises Inc. dba Super Food Store
 Case ID No. CCEDS Case No. 13988

Policy Revision 2 (09/02)
 PCW Revision 2/10/2004

Respondent/Site ID No. Petroleum Storage Tank Facility ID No. 20328; RN102404985

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Cheryl Thompson

Violation Number 3

Primary Rule Cite 30 Tex. Admin. Code §§ 115.246(1), (3), and (6)

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

Violation Description Failed to maintain a copy of the California Air Resource Board (CARB) Executive Order for the Stage II recovery system, failed to maintain a record of maintenance conducted on any part of the Stage II equipment, and failed to maintain a record of the results of the daily inspections of the Stage II equipment conducted at the facility.

Base Penalty \$10,000

» Environmental, Property and Human Health Matrix

Harm

Release	Major	Moderate	Minor	Percent
Actual				
Potential				

» Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	x			10%

Matrix Notes 100% of the rule requirement was not met.

Adjustment -\$9,000
 Base Penalty Subtotal \$1,000

Violation Events

Number of Violation Events 1

mark only one; use small x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

Events Notes One single event is recommended based on the September 2, 2004 inspection date.

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount (\$) \$7 Violation Final Penalty total \$900

This Violation Final Assessed Penalty (adjusted for limits) \$900

Economic Benefit Worksheet

Respondent Virginia Enterprises Inc. dba Super Food Store
ID Number(s) CCEDS Case No. 13988
Media [Statute] Petroleum Storage Tank
Violation Number 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Overtime 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	\$300	2-Sep-2003	1-Mar-2004	0.5	\$7	n/a	\$7
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 implement a record keeping system.

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/equip				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 23-Mar-04 Documents\2004-0407-pst-enr\Virginia Enterprises-revised-H-4-qpw
 Docket Number 2004-0407-PST-E

PCW

Respondent Virginia Enterprises Inc. dba Super Food Store

Policy Revision 2 (09/02)

Case ID No. CCEDS Case No. 13988

PCW Revision 2/10/2004

Respondent/Site ID No. Petroleum Storage Tank Facility ID No. 20328; RN102404985

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Cheryl Thompson

Violation Number 4

Primary Rule Cite 30 Tex. Admin. Code § 115.245(2)

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

Violation Description Failed to successfully perform annual Stage II testing within the preceding 12 months and triennial Stage II testing within the preceding 36 months.

Base Penalty \$10,000

» Environmental, Property and Human Health Matrix

Harm

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				10%
Potential		x		

» Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	

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 the environment.

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

Violation Events

Number of Violation Events 1

mark only one; use small x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

Events Notes One single event is recommended based on the September 2, 2003 inspection date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount (\$) \$1

Violation Final Penalty total \$900

This Violation Final Assessed Penalty (adjusted for limits) \$900

Screening Date 23-Mar-04 Documents\2004-0407-pst-ecop-Virginia-revised-11-4-qgw
 Docket Number 2004-0407-PST-E

PCW

Respondent Virginia Enterprises Inc. dba Super Food Store

Policy Revision 2 (09/02)

Case ID No. CCEDS Case No. 13988

PCW Revision 2/10/2004

Respondent/Site ID No. Petroleum Storage Tank Facility ID No. 20328; RN102404985

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Cheryl Thompson

Violation Number

Primary Rule Cite

Secondary Cite(s)

Violation Description

Base Penalty

» Environmental, Property and Human Health Matrix

Harm

OR	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

Percent

» Programmatic Matrix

OR	Falsification	Major	Moderate	Minor
	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>

Percent

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one; use 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

Events Notes

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount (\$)

Violation Final Penalty total

This Violation Final Assessed Penalty (adjusted for limits)

Compliance History

Customer/Respondent/Owner-Operator:	CN601585342	Virginia Enterprises, Inc. dba Super Food Store	Classification: HIGH	Rating
Regulated Entity:	RN102404985	VIRGINIA ENTERPRISES, INC. DBA SUPER FOOD STORE	Classification: HIGH	Site R
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION		20328
Location:	1410 W VIRGINIA ST, BEAUMONT, TX, 77705		Rating Date: September 1, 2003 Repeat	
TCEQ Region:	REGION 10 - BEAUMONT			
Date Compliance History Prepared:	September 18, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	March 25, 1999 to March 25, 2004			

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

Name: Cheryl Thompson Phone: (817) 588-5886

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? Yes
3. If Yes, who is the current owner? LP & Company
Virginia Enterprises, Inc.
dba Super Food Store
4. If Yes, who was/were the prior owner(s)?
5. When did the change(s) in ownership occur? 1-Mar-04

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	06/04/1999	(51462)
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N/A

2	12/08/1999	(51459)
3	10/24/2003	(247930)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- 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
VIRGINIA ENTERPRISES, INC.
DBA SUPER FOOD STORE;
RN102404985

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2004-0407-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 Virginia Enterprises, Inc. dba Super Food Store ("Virginia Enterprises") 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 Virginia Enterprises, represented by Jennifer Fleck of the law firm of Ted. A. Cox , P.C., appear before the Commission and together stipulate that:

1. At the time of the alleged violations, Virginia Enterprises owned and operated a convenience store with retail sales of gasoline located at 1410 W. Virginia Street, Beaumont, Jefferson County, Texas (the "Station").
 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. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 382, and TCEQ rules. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
 3. The Commission and Virginia Enterprises agree that the Commission has jurisdiction to enter this Agreed Order, and that Virginia Enterprises is subject to the Commission's jurisdiction.
 4. Virginia Enterprises received notice of the violations alleged in Section II ("Allegations") on or about October 29, 2003.
 5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Virginia Enterprises of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
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6. An administrative penalty in the amount of seven thousand two hundred dollars (\$7,200.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Virginia Enterprises has paid three thousand seven hundred eighty dollars (\$3,780.00) of the administrative penalty. The remaining amount of three thousand four hundred twenty dollars (\$3,420.00) of the administrative penalty shall be payable in fifteen (15) payments of two hundred twenty-eight dollars (\$228.00) each. The next payment shall be paid within 30 days after the effective date of this Agreed Order. If Virginia Enterprises 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, the failure of Virginia Enterprises to meet the payment schedule of this Agreed Order constitutes the failure by Virginia Enterprises 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 Virginia Enterprises 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 Virginia Enterprises ceased owning and operating the Station on March 1, 2004.
10. The Executive Director further recognizes that Virginia Enterprises implemented the following corrective measures at the Station in response to this enforcement action:
 - a. On September 4, 2003, began maintaining a record of the results of the daily inspections for Stage II equipment conducted at the Station.
 - b. On September 16, 2003, successfully performed a line leak detector test and a piping tightness test; and
 - c. On September 26, 2003, successfully performed the annual and triennial testing of the Stage II system.
 - d. On October 1, 2003, successfully trained a Stage II facility representative.
11. 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 Virginia Enterprises has not complied with one or more of the terms or conditions in this Agreed Order.

12. 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.
13. 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

Virginia Enterprises is alleged to have violated:

1. 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a) by failing to test the line leak detectors at least once per year for performance and operational reliability, as documented on September 2, 2003.
2. 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(ii)(I) and TEX. WATER CODE § 26.3475(a) by failing to perform a piping tightness test for the pressurized line at least once per year on the UST system, as documented on September 2, 2003.
3. 30 TEX. ADMIN. CODE § 334.50(b)(1)(A), and TEX. WATER CODE § 26.3475(c)(1) by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), as documented on September 2, 2003.
4. 30 TEX. ADMIN. CODE §§ 334.50(d)(1)(B)(ii) and 334.48(c) by failing to reconcile inventory control records on a monthly basis which are sufficiently accurate to detect a release which equals or exceeds the sum 1% of flow through plus 130 gallons, as documented on September 2, 2003.
5. 30 TEX. ADMIN. CODE §§ 334.50(d)(1)(B)(iii)(I) and 334.48(c) by failing to conduct inventory volume measurements for regulated substance inputs, withdrawals, and amount still remaining in the tanks on a daily basis, as documented on September 2, 2003.
6. 30 TEX. ADMIN. CODE § 115.246(1) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to maintain a copy of the California Air Resource Board (CARB) Executive Order for the Stage II recovery system, as documented on September 2, 2003.
7. 30 TEX. ADMIN. CODE § 115.246(3) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to maintain a record of maintenance conducted on any part of the Stage II equipment, as documented on September 2, 2003.

8. 30 TEX. ADMIN. CODE § 115.246(6) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to maintain a record of the results of the daily inspections of Stage II equipment conducted at the Station, as documented on September 2, 2003.
9. 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to successfully perform annual Stage II testing within the preceding 12 months and triennial Stage II testing within the preceding 36 months, as documented on September 2, 2003.
10. 30 TEX. ADMIN. CODE § 115.248(1) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to train a Stage II facility representative and failing to make each current employee aware of the purpose and correct operation of the Stage II equipment, as documented on September 2, 2003.

III. DENIALS

Virginia Enterprises generally denies each allegation in Section II (“Allegations”).

IV. ORDER

1. It is, therefore, ordered by the TCEQ that Virginia Enterprises pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Virginia Enterprises 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 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: Virginia Enterprises, Inc. dba Super Food Store, Docket No. 2004-0407-PST-E” to:

Financial Administration Division, Revenues Section
Attention: Cashier’s Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon Virginia Enterprises.
3. This Agreed Order, issued by the Commission, shall not be admissible against Virginia Enterprises in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the

Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Virginia Enterprises, or three days after the date on which the Commission mails notice of the Order to Virginia Enterprises, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Attn: Jeffery

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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

[Handwritten Signature]

4/14/2008

For the Executive Director

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, 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 to my compliance history;
- Greater scrutiny of my 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 on any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking civil relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

[Handwritten Signature]
Signature

4-21-08
Date

Herzog Jiva
Name (Printed or typed)

President
Title

Authorized representative of
Virginia Enterprises, Inc. a Super Food Store