

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-0488-PST-E **TCEQ ID:** RN102272408 **CASE NO.:** 35586

RESPONDENT NAME: 1403, INC dba On The Move 9

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: On The Move 9, 1403 South Lamar Boulevard, Austin, Travis 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 November 3, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Judy Kluge, Enforcement Division, Enforcement Team 6, MC R-04, (817) 588-5825; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Lee Margolis, Vice President, 1403, INC, 1403 South Lamar Boulevard, Austin, Texas 78704-5712 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: January 10, 2008</p> <p>Date of NOV/NOE Relating to this Case: March 6, 2008 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>1) Failure to comply with control requirements for emission limitation, as detected by sight, sound, or smell, that exist anywhere in the liquid transfer or vapor balance system. Specifically, the super unleaded fill cap was missing a gasket and the vapor port cap was missing [30 TEX. ADMIN. CODE § 115.222(3) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2) Failure to provide an amended registration for any change or additional information regarding the underground storage tanks ("USTs") within 30 days from the date of the occurrence of the change or addition. Specifically, registration was not updated to reflect that one of the USTs was being utilized to store and sell diesel fuel [30 TEX. ADMIN. CODE § 334.7(d)(3)].</p> <p>3) Failure to conduct reconciliation of detailed inventory control records at least once each month sufficiently accurate to detect a release as small as the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons [30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1)].</p>	<p>Total Assessed: \$8,000</p> <p>Total Deferred: \$1,600 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$205 (remaining \$6,195 due in 35 monthly payments of \$177 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 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 at the Station:</p> <p>a. As of January 28, 2008, the Respondent began properly maintaining the vapor balance system including installation of the gasket and vapor port cap on the super unleaded;</p> <p>b. As of January 23, 2008, the Respondent submitted an amended registration to indicate the current contents of the UST system; and</p> <p>c. As of March 31, 2008, the Respondent began conducting monthly reconciliation of the inventory control records.</p>

Additional ID No(s): PST No. 72599



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision March 8, 2008

TCEQ

DATES	Assigned	10-Mar-2008	PCW	28-May-2008	Screening	19-Mar-2008	EPA Due	
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RESPONDENT/FACILITY INFORMATION	
Respondent	1403, INC dba On The Move 9
Reg. Ent. Ref. No.	RN102272408
Facility/Site Region	11-Austin
Major/Minor Source	Major

CASE INFORMATION				
Enf./Case ID No.	35586	No. of Violations	3	
Docket No.	2008-0488-PST-E	Order Type	1660	
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Judy Kluge	
Multi-Media		EC's Team	Enforcement Team 6	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$10,000
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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	-\$1,000
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Notes: Reduction for High Performer classification.

Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply	10% Reduction	Subtotal 5	\$1,000
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		X
N/A		(mark with x)

Notes: The Respondent came into compliance on March 31, 2008.

Total EB Amounts	\$7	0% Enhancement*	Subtotal 6	\$0
Approx. Cost of Compliance	\$1,100	*Capped at the Total EB \$ Amount		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$8,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$8,000
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$8,000
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DEFERRAL	20% Reduction	Adjustment	-\$1,600
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY	\$6,400
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Screening Date 19-Mar-2008 **Docket No.** 2008-0488-PST-E
Respondent 1403, INC dba On The Move 9
Case ID No. 35586
Reg. Ent. Reference No. RN102272408
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Judy Kluge

PCW

Policy Revision 2 (September 2002)
 PCW Revision March 8, 2008

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%
<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)**

Adjustment Percentage (Subtotal 3) 0%

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

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	19-Mar-2008	Docket No.	2008-0488-PST-E	FGW
Respondent	1403, INC dba On The Move 9			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	35586			<i>PCW Revision March 8, 2008</i>
Reg. Ent. Reference No.	RN102272408			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Judy Kluge			
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 115.222(3) and Tex. Health & Safety Code § 382.085(b)			
Violation Description	Failed to comply with control requirements for emission limitation, as detected by sight, sound, or smell, that exist anywhere in the liquid transfer or vapor balance system. Specifically, the super unleaded fill cap was missing a gasket and the vapor port cap was missing.			
Base Penalty	\$10,000			

>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Percent <input type="text" value="25%"/>
Potential	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		

>> Programmatic Matrix

		Falsification			
		Major	Moderate	Minor	
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Percent <input type="text" value="0%"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

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

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="checkbox"/>
monthly	<input type="checkbox"/>
quarterly	<input checked="" type="checkbox"/>
semiannual	<input type="checkbox"/>
annual	<input type="checkbox"/>
single event	<input type="checkbox"/>

Violation Base Penalty

One quarterly event is recommended based on documentation of the violation during the January 10, 2008 investigation to the January 28, 2008 compliance 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)

Economic Benefit Worksheet

Respondent: 1403, INC dba On The Move 9
Case ID No.: 35586
Reg. Ent. Reference No.: RN102272408
Media: Petroleum Storage Tank
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	<small>No commas or \$</small>					

Delayed Costs

Equipment	\$500	10-Jan-2008	28-Jan-2008	0.0	\$0	\$2	\$2
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 a gasket and vapor port cap. The date required is the investigation date and the final date is the 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

\$2

Screening Date 19-Mar-2008 **Docket No.** 2008-0488-PST-E **PCW**
Respondent 1403, INC dba On The Move 9 *Policy Revision 2 (September 2002)*
Case ID No. 35586 *PCW Revision March 8, 2008*
Reg. Ent. Reference No. RN102272408
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Judy Kluge
Violation Number
Rule Cite(s)
Violation Description
Base Penalty

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="25%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an 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="text" value="x"/>

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: 1403, INC dba On The Move 9

Case ID No: 35586

Reg. Ent. Reference No: RN102272408

Media: 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
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				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	10-Jan-2008	23-Jan-2008	0.0	\$0	N/A	\$0

Notes for DELAYED costs

Estimated cost to submit an amended UST registration form to the TCEQ. The date required is the investigation date and the final date is the 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

\$0

Screening Date 19-Mar-2008

Docket No. 2008-0488-PST-E

PCW

Respondent 1403, INC dba On The Move 9

Policy Revision 2 (September 2002)

Case ID No. 35586

PCW Revision March 8, 2008

Reg. Ent. Reference No. RN102272408

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 334.50(d)(1)(B)(ii) and Tex. Water Code § 26.3475(c)(1)

Violation Description

Failed to conduct reconciliation of detailed inventory control records at least once each month sufficiently accurate to detect a release as small as the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 50%

>> 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 \$5,000

\$5,000

Violation Events

Number of Violation Events 1

69 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$5,000

One quarterly event is recommended based on documentation of the violation during the January 10, 2008 investigation to the March 19, 2008 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$6

Violation Final Penalty Total \$4,000

This violation Final Assessed Penalty (adjusted for limits) \$4,000

Economic Benefit Worksheet

Respondent: 1403, INC dba On The Move 9

Case ID No.: 35586

Reg. Ent. Reference No.: RN102272408

Media: Petroleum Storage Tank

Violation No.: 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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	\$0	\$0
Record Keeping System				0.0	\$0	\$0	\$0
Training/Sampling				0.0	\$0	\$0	\$0
Remediation/Disposal				0.0	\$0	\$0	\$0
Permit Costs				0.0	\$0	\$0	\$0
Other (as needed)	\$500	10-Jan-2008	31-Mar-2008	0.2	\$6	\$0	\$6

Notes for DELAYED costs

The estimated cost to conduct reconciliation of detailed inventory control records for the USTs. The date required is the investigation date and the final date is the 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

\$6

Compliance History

Customer/Respondent/Owner-Operator:	CN602934127 1403, INC	Classification: HIGH	Rating: 0.00
Regulated Entity:	RN102272408 ON THE MOVE 9	Classification: HIGH	Site Rating: 0.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		72599
Location:	1403 S LAMAR BLVD, AUSTIN, TX, 78704	Rating Date: 9/1/2007 Repeat Violator: NO	
TCEQ Region:	REGION 11 - AUSTIN		
Date Compliance History Prepared:	March 25, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	March 25, 2003 to March 25, 2008		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Philip DeFrancesco	Phone:	(817) 588-5933

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? | <u>1403, INC</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>Racetrac Petroleum, Inc.</u> |
| 5. When did the change(s) in ownership occur? | <u>09/05/2005</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	10/23/2006	(516401)
2	03/06/2008	(614115)
 - 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
1403, INC DBA ON THE MOVE 9
RN102272408

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2008-0488-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 1403, INC dba On the Move 9 ("the Respondent") 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 the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a convenience store with retail sales of gasoline at 1403 South Lamar Boulevard in Austin, Travis County, Texas (the "Station").
2. The Respondent'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 the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about March 11, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Eight Thousand Dollars (\$8,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent

has paid Two Hundred Five Dollars (\$205) of the administrative penalty and One Thousand Six Hundred Dollars (\$1,600) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Six Thousand One Hundred Ninety-Five Dollars (\$6,195) of the administrative penalty shall be payable in 35 monthly payments of One Hundred Seventy-Seven Dollars (\$177) 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 the Respondent 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 the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent 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 the Respondent 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 the Respondent has implemented the following corrective measures at the Station:
 - a. As of January 28, 2008, the Respondent began properly maintaining the vapor balance system including installation of the gasket and vapor port cap on the super unleaded;
 - b. As of January 23, 2008, the Respondent submitted an amended registration to indicate the current contents of the UST system; and
 - c. As of March 31, 2008, the Respondent began conducting monthly reconciliation of the inventory control records.
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 the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Station, the Respondent is alleged to have:

1. Failed to comply with control requirements for emission limitation, as detected by sight, sound, or smell, that exist anywhere in the liquid transfer or vapor balance system, in violation of 30 TEX. ADMIN. CODE § 115.222(3) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on January 10, 2008. Specifically, the super unleaded fill cap was missing a gasket and the vapor port cap was missing.
2. Failed to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3), as documented during an investigation conducted on January 10, 2008. Specifically, registration was not updated to reflect that one of the USTs was being utilized to store and sell diesel fuel.
3. Failed to conduct reconciliation of detailed inventory control records at least once each month sufficiently accurate to detect a release as small as the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on January 10, 2008.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent'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: 1403, INC dba On The Move 9, Docket No. 2008-0488-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

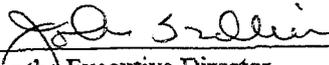
2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Station operations referenced in this Agreed Order.

3. If the Respondent 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, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
4. 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 the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent 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.
6. 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.
7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, 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

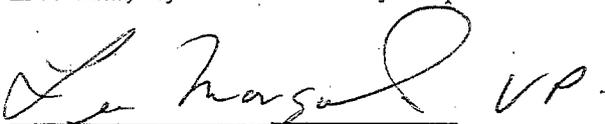
10/2/2008
Date

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 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 failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

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

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


Signature

8/15/08
Date

Lu Margolis VP.
Name (Printed or typed)
Authorized Representative of
1403, INC dba On The Move 9

VP
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

