

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2007-1326-AIR-E TCEQ ID: RN101656031 CASE NO.: 34437**

**RESPONDENT NAME: ALBERTSON'S LLC dba Albertson's Express 1016**

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> <b>1660 AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS ORDER FOLLOWING SOAH HEARING</b>
<input type="checkbox"/> <b>FINDINGS DEFAULT ORDER</b>	<input type="checkbox"/> <b>SHUTDOWN ORDER</b>	<input type="checkbox"/> <b>IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER</b>
<input type="checkbox"/> <b>AMENDED ORDER</b>	<input type="checkbox"/> <b>EMERGENCY ORDER</b>	
<b>CASE TYPE:</b>		
<input checked="" type="checkbox"/> <b>AIR</b>	<input type="checkbox"/> <b>MULTI-MEDIA (check all that apply)</b>	<input type="checkbox"/> <b>INDUSTRIAL AND HAZARDOUS WASTE</b>
<input type="checkbox"/> <b>PUBLIC WATER SUPPLY</b>	<input type="checkbox"/> <b>PETROLEUM STORAGE TANKS</b>	<input type="checkbox"/> <b>OCCUPATIONAL CERTIFICATION</b>
<input type="checkbox"/> <b>WATER QUALITY</b>	<input type="checkbox"/> <b>SEWAGE SLUDGE</b>	<input type="checkbox"/> <b>UNDERGROUND INJECTION CONTROL</b>
<input type="checkbox"/> <b>MUNICIPAL SOLID WASTE</b>	<input type="checkbox"/> <b>RADIOACTIVE WASTE</b>	<input type="checkbox"/> <b>DRY CLEANER REGISTRATION</b>
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Albertson's Express 1016, 11330 Montwood Drive, El Paso, El Paso County</p> <p><b>TYPE OF OPERATION:</b> Fuel dispensing station</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on December 27, 2007. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Ms. Kimberly Morales, Enforcement Division, Team 5, MC R-12, (713) 422-8938; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171  <b>Respondent:</b> Mr. Bob De Ninno, Environmental Coordinator, ALBERTSON'S LLC dba Albertson's Express 1016, 250 Parkcenter Boulevard, P.O. Box 20, Boise, ID 83726                      Mr. Paul G. Rowen, Senior Vice President and General Counsel, ALBERTSON'S LLC dba Albertson's Express 1016, 250 Parkcenter Boulevard, P.O. Box 20, Boise, ID 83726  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter.</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> June 10, 2007</p> <p><b>Date of NOV/NOE Relating to this Case:</b> July 11, 2007 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation. One violation was documented.</p> <p><b>AIR</b></p> <p>Failure to comply with the 7.0 pounds per square inch absolute ("psia") maximum Reid Vapor Pressure ("RVP") requirement for gasoline transferred during the control period of June 1, 2007 through September 16, 2007 in El Paso County. [30 TEX. ADMIN. CODE § 115.252(2) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p>	<p><b>Total Assessed:</b> \$1,220</p> <p><b>Total Deferred:</b> \$244</p> <p><input checked="" type="checkbox"/> Expedited Settlement</p> <p><input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$976</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, establish and implement a process which will ensure the RVP for gasoline dispensed between June 1<sup>st</sup> and September 16<sup>th</sup> of each year shall not exceed 7.0 psia at the Station; and</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

<b>DATES</b>	<b>Assigned</b>	9-Jul-2007	<b>Screening</b>	15-Aug-2007	<b>EPA Due</b>	
	<b>PCW</b>	31-Aug-2007				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	ALBERTSON'S LLC dba Albertson's Express 1016
<b>Reg. Ent. Ref. No.</b>	RN101656031
<b>Facility/Site Region</b>	6-El Paso
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>				
<b>Enf./Case ID No.</b>	34437	<b>No. of Violations</b>	1	
<b>Docket No.</b>	2007-1326-AIR-E	<b>Order Type</b>	1660	
<b>Media Program(s)</b>	Air	<b>Enf. Coordinator</b>	Kimberly Morales	
<b>Multi-Media</b>		<b>EC's Team</b>	EnforcementTeam 5	
<b>Admin. Penalty \$</b>	<b>Limit Minimum</b>	\$0	<b>Maximum</b>	\$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** **Subtotals 2, 3, & 7**

**Notes**

**Culpability** **Subtotal 4**

**Notes**

**Good Faith Effort to Comply** **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	X	(mark with x)

**Notes**

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

**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** **Adjustment**

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

**Notes**

**PAYABLE PENALTY**

Screening Date 15-Aug-2007

Docket No. 2007-1326-AIR-E

PCW

Respondent ALBERTSON'S LLC dba Albertson's Express 1016

Policy Revision 2 (September 2002)

Case ID No. 34437

PCW Revision, June 26, 2007

Reg. Ent. Reference No. RN101656031

Media [Statute] Air

Enf. Coordinator Kimberly Morales

**Compliance History Worksheet**

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOV's with same or similar violations as those in the current enforcement action (number of NOV's meeting criteria)	0	0%
	Other written NOV's	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments 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)** 22%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

**Adjustment Percentage (Subtotal 3)** 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%

## &gt;&gt; Compliance History Summary

**Compliance History Notes**

Penalty enhancement due to one NOV for unrelated violations and one agreed order containing a denial of liability.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 22%

<b>Screening Date</b> 15-Aug-2007	<b>Docket No.</b> 2007-1326-AIR-E	<b>PCW</b>
<b>Respondent</b> ALBERTSON'S LLC dba Albertson's Express 1016		<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b> 34437		<i>PCW Revision June 26, 2007</i>
<b>Reg. Ent. Reference No.</b> RN101656031		
<b>Media [Statute]</b> Air		
<b>Enf. Coordinator</b> Kimberly Morales		
<b>Violation Number</b>	1	
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 115.252(2) and Tex. Health & Safety Code § 382.085(b)	
<b>Violation Description</b>	Failed to comply with the 7.0 pounds per square inch absolute ("psia") maximum Reid Vapor Pressure ("RVP") requirement for gasoline transferred during the control period of June 1, 2007 through September 16, 2007 in El Paso County. Specifically, premium gasoline samples taken from Pump No. 7 on June 10, 2007 exceeded the 7.0 psia maximum RVP requirement.	
<b>Base Penalty</b>		\$10,000

>> Environmental, Property and Human Health Matrix

OR	<b>Harm</b>				
	<b>Release</b>	Major	Moderate		Minor
	<b>Actual</b>				x
<b>Potential</b>				<b>Percent</b> <input style="width: 50px;" type="text" value="10%"/>	

>> Programmatic Matrix

	Major	Moderate	Minor	
<b>Falsification</b>				
				<b>Percent</b> <input style="width: 50px;" type="text" value="0%"/>

**Matrix Notes**

Human health or the environment has been exposed to insignificant amounts of pollutants which did not exceed levels that are protective of human health or environmental receptors as a result of the violation.

**Adjustment**

\$1,000

Violation Events

Number of Violation Events   Number of violation days

<i>mark only one with an x</i>	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

**Violation Base Penalty**

One single event is recommended.

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b> <input style="width: 100px;" type="text" value="\$4"/>	<b>Violation Final Penalty Total</b> <input style="width: 100px;" type="text" value="\$1,220"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input style="width: 100px;" type="text" value="\$1,220"/>	

### Economic Benefit Worksheet

**Respondent:** ALBERTSON'S LLC dba Albertson's Express 1016  
**Case ID No.:** 34437  
**Reg. Ent. Reference No.:** RN101656031  
**Media:** Air  
**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
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	\$100	10-Jun-2007	4-Apr-2008	0.8	\$4	n/a	\$4
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 of implementing procedures designed to ensure the required RVP is maintained. Date required is the date of the investigation. Final date is the date of prospective compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$4

# Compliance History

Customer/Respondent/Owner-Operator: CN603095720 ALBERTSON'S LLC Classification: AVERAGE Rating: 1.50  
Regulated Entity: RN101656031 ALBERTSON'S EXPRESS 1016 Classification: AVERAGE Site Rating: 1.50  
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 74807  
REGISTRATION  
Location: 11330 MONTWOOD DR, EL PASO, TX, 79936 Rating Date: September 01.06 Repeat Violator: NO  
TCEQ Region: REGION 06 - EL PASO  
Date Compliance History Prepared: August 15, 2007  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: August 01, 2002 to August 01, 2007  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Kimberly Morales Phone: (713) 422-8938

## 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? ALBERTSON'S LLC
4. If Yes, who was/were the prior owner(s)? Richmar Foods, Inc.  
Albertson's, Inc.
5. When did the change(s) in ownership occur?  
03/18/2003  
03/24/2003

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
- Effective Date: 08/30/2004 ADMINORDER 2003-0570-AIR-E  
Classification: Minor
- Citation: 30 TAC Chapter 114, SubChapter D 114.100(a)  
5C THC Chapter 382, SubChapter A 382.085(b)
- Description: Failed to comply with the minimum oxygen content of 2.7% by weight requirement for the dispensing of gasoline in El Paso County during the period of October 1, 2002 to March 31, 2003.
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- |    |            |          |
|----|------------|----------|
| 1  | 08/13/2002 | (3562)   |
| 2  | 12/09/2002 | (6187)   |
| 3  | 12/19/2002 | (18648)  |
| 4  | 01/31/2003 | (22951)  |
| 5  | 07/14/2003 | (141212) |
| 6  | 06/29/2004 | (277944) |
| 7  | 08/12/2004 | (285366) |
| 8  | 12/08/2004 | (342605) |
| 9  | 03/16/2005 | (374090) |
| 10 | 05/03/2005 | (380023) |
| 11 | 07/18/2006 | (484880) |
| 12 | 12/20/2006 | (519542) |
| 13 | 07/05/2007 | (565829) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- Date 03/17/2005 (374090)  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)[G]  
Description: Failure to have all records available for the investigation.

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  
ALBERTSON'S LLC DBA  
ALBERTSON'S EXPRESS 1016  
RN101656031

§  
§  
§  
§  
§  
§

BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2007-1326-AIR-E

I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding ALBERTSON'S LLC dba Albertson's Express 1016 ("ALBERTSON'S") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and ALBERTSON'S appear before the Commission and together stipulate that:

1. ALBERTSON'S owns and operates a fuel dispensing station at 11330 Montwood Drive in El Paso, El Paso County, Texas (the "Station").
2. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and ALBERTSON'S agree that the Commission has jurisdiction to enter this Agreed Order, and that ALBERTSON'S is subject to the Commission's jurisdiction.
4. ALBERTSON'S received notice of the violations alleged in Section II ("Allegations") on or about July 16, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by ALBERTSON'S of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of One Thousand Two Hundred Twenty Dollars (\$1,220) is assessed by the Commission in settlement of the violations alleged in Section II



("Allegations"). ALBERTSON'S has paid Nine Hundred Seventy-Six Dollars (\$976) of the administrative penalty and Two Hundred Forty-Four Dollars (\$244) is deferred contingent upon ALBERTSON'S timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If ALBERTSON'S fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require ALBERTSON'S to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and ALBERTSON'S have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that ALBERTSON'S has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Station, ALBERTSON'S is alleged to have failed to comply with the 7.0 pounds per square inch absolute ("psia") maximum Reid Vapor Pressure ("RVP") requirement for gasoline transferred during the control period of June 1, 2007 through September 16, 2007 in El Paso County, in violation of 30 TEX. ADMIN. CODE § 115.252(2) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on June 10, 2007. Specifically, premium gasoline samples taken from Pump No. 7 on June 10, 2007 exceeded the 7.0 psia maximum RVP requirement.

## III. DENIALS

ALBERTSON'S generally denies each allegation in Section II ("Allegations").



#### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that ALBERTSON'S pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and ALBERTSON'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: ALBERTSON'S LLC dba Albertson's Express 1016, Docket No. 2007-1326-AIR-E" to:

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

2. It is further ordered that ALBERTSON'S shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order, establish and implement a process which will ensure the RVP for gasoline dispensed between June 1<sup>st</sup> and September 16<sup>th</sup> of each year shall not exceed 7.0 psia at the Station; and
  - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:



Environmental Health Manager  
Air Quality Program  
El Paso City-County Health and Environmental District  
222 South Campbell  
El Paso, Texas 79901

3. The provisions of this Agreed Order shall apply to and be binding upon ALBERTSON'S. ALBERTSON'S is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Station operations referenced in this Agreed Order.
4. If ALBERTSON'S 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, ALBERTSON'S failure to comply is not a violation of this Agreed Order. ALBERTSON'S shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. ALBERTSON'S shall notify the Executive Director within seven days after ALBERTSON'S 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 ALBERTSON'S shall be made in writing to the Executive Director. Extensions are not effective until ALBERTSON'S 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 ALBERTSON'S in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to ALBERTSON'S, or three days after the date on which the Commission mails notice of the Order to ALBERTSON'S, 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

\_\_\_\_\_  
Date 12/11/2007

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

\_\_\_\_\_  
Date 02/27/2007

\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
ALBERTSON'S LLC dba Albertson's Express 1016

\_\_\_\_\_  
Title Senior V.P., General Counsel

**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.

