

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2007-0728-PST-E TCEQ ID: RN101765089 CASE NO.: 2659
RESPONDENT NAME: FKD ENTERPRISES INC. DBA LUCKY SEVEN FOOD MART

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" 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: 5925 South Flores Street, San Antonio, Bexar 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 December 3, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Anna Cox, Litigation Division, MC 175, (512) 239-0974 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Ms. Elvia Maske, Waste Enforcement Section, MC 149, (512) 239-0789 TCEQ Regional Contact: Mr. Henry Karnei Jr., San Antonio Regional Office, MC R-13, (210) 403-4010 Respondent: Mr. Firoj M. Charania, Registered Agent, 5925 South Flores Street, San Antonio, Texas 78214 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:</p> <p><input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input checked="" type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: N/A</p> <p>Dates of Investigation Relating to this Case: February 8, 2007</p> <p>Date of NOE Relating to this Case: February 27, 2007</p> <p>Background Facts: The EDRP was filed on July 9, 2007. An EDFARP was filed on July 17, 2007. The Respondent was served. The Respondent has not filed an answer.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>PST</p> <ol style="list-style-type: none"> Failed to monitor the UST system at a frequency of at least once every month (not to exceed 35 days between each monitoring) in a manner which would detect a release [30 TEX. ADMIN. CODE § 334.50(b)(1)(A)]. Failed to maintain records pertaining to the UST system and to provide those records to Commission personnel upon request [30 TEX. ADMIN. CODE § 334.10(b)]. Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel [30 TEX. ADMIN. CODE § 334.48(c) and TCEQ Agreed Order Docket No. 2002-1035-PST-E, Section IV, Paragraphs 2.a.i. and 2.b.]. Failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years [30 TEX. ADMIN. CODE § 334.49(c)(4)]. 	<p>Total Assessed: \$14,300</p> <p>Total Deferred: \$0</p> <p>SEP Conditional Offset: \$0</p> <p>Total Due to General Revenue: \$14,300</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" 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 Action(s) Taken: The Executive Director recognizes that the Respondent has implemented the following corrective measures:</p> <ol style="list-style-type: none"> Implemented vapor monitoring as a release detection method for all USTs at the Facility on August 1, 2006. Successfully conducted the required triennial testing of the corrosion protection system on August 7, 2006. Began maintaining all UST records on February 13, 2007. <p>Ordering Provisions:</p> <ol style="list-style-type: none"> The Respondent's UST delivery certificate is revoked immediately upon the effective date of this Order. The Respondent may submit an application for a new delivery certificate only after they have complied with all of the requirements of this Order. Within 10 days, send in UST delivery certificate. <p>Technical Requirements:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Immediately, begin conducting effective manual or automatic inventory control procedures for all USTs at the Facility. Within 10 days, submit written certification demonstrate compliance with Technical Requirement above.



Penalty Calculation Worksheet (PCW)

TCEQ

DATES	Assigned	6-Mar-2007	Screening	26-Apr-2007	EPA Due	
	PCW	8-May-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	FKD Enterprises Inc. dba Lucky Seven Food Mart
Reg. Ent. Ref. No.	RN101765089
Facility/Site Region	13-San Antonio
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	2659	No. of Violations	4
Docket No.	2007-0728-PST-E	Order Type	Findings
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Elvia Maske
Multi-Media		EC's Team	EnforcementTeam 6
Admin. Penalty \$	Limit Minimum \$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$11,000
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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	30% Enhancement	Subtotals 2, 3, & 7	\$3,300
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Notes: Enhancement for one 1660-styled order and for Poor 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	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes: The respondent does not meet the good faith criteria.

Total EB Amounts	\$3,770	Subtotal 6	\$0
Approx. Cost of Compliance	\$2,900	*Capped at the Total EB \$ Amount	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$14,300
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OTHER FACTORS AS JUSTICE MAY REQUIRE		Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

Final Penalty Amount	\$14,300
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$14,300
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DEFERRAL	0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$14,300
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Screening Date 26-Apr-2007

Docket No. 2007-0728-PST-E

PCW

Respondent FKD Enterprises Inc. dba Lucky Seven Food Mart

Policy Revision 2 (September 2002)

Case ID No. 2659

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN101765089

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

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)	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 judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

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

Adjustment Percentage (Subtotal 2) 20%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Poor Performer

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance History Notes

Enhancement for one 1660-styled order and for Poor Performer Classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 30%

Screening Date 26-Apr-2007

Docket No. 2007-0728-PST-E

PCW

Respondent FKD Enterprises Inc. dba Lucky Seven Food Mart

Policy Revision 2 (September 2002)

Case ID No. 2659

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN101765089

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 334.50(b)(1)(A)

Violation Description

Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Specifically, during the investigation, it was found that the facility did not monitor for releases during the months of June 2006 and July 2006.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Failure to monitor USTs for releases can result in the exposure of a significant amount of contaminants which may exceed levels that are protective of human health and the environment.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

61 Number of violation days

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,500

One quarterly event is recommended from the violation beginning date of June 1, 2006 to the compliance date of August 1, 2006.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$105

Violation Final Penalty Total \$3,250

This violation Final Assessed Penalty (adjusted for limits) \$3,250

Economic Benefit Worksheet

Respondent FKD Enterprises Inc. dba Lucky Seven Food Mart
Case ID No. 2659
Reg. Ent. Reference No. RN101765089
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling	\$600	1-Jun-2006	1-Aug-2006	0.2	\$5	\$100	\$105
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

Estimated cost to monitor USTs using vapor monitoring method. Date required is the beginning date of the documented non-compliance and the final date is the ending date of the non-compliance.

Approx. Cost of Compliance \$600

TOTAL \$105

Screening Date 26-Apr-2007

Docket No. 2007-0728-PST-E

PCW

Respondent FGD Enterprises Inc. dba Lucky Seven Food Mart

Policy Revision 2 (September 2002)

Case ID No. 2659

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN101765089

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.10(b)

Violation Description Failed to maintain records pertaining to the UST system and to provide those records to Commission personnel upon request as documented during the investigation on February 8, 2007.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

		Harm			Percent
		Major	Moderate	Minor	
Release	Actual				0%
	Potential				

>> Programmatic Matrix

		Major	Moderate	Minor	Percent
Falsification		x			

Matrix Notes

Failure to comply with 100% of the rule requirement.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 5

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$1,000

One single event is recommended based on the documentation of the violation during the February 8, 2007 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$1,300

This violation Final Assessed Penalty (adjusted for limits) \$1,300

Economic Benefit Worksheet

Respondent FKD Enterprises Inc. dba Lucky Seven Food Mart

Case ID No. 2659

Reg. Ent. Reference No. RN101765089

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
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No commas or \$

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	8-Feb-2007	13-Feb-2007	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 maintain a record keeping system at the Facility. 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)

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$300

TOTAL

\$0

Screening Date 26-Apr-2007

Docket No. 2007-0728-PST-E

PCW

Respondent FKD Enterprises Inc. dba Lucky Seven Food Mart

Policy Revision 2 (September 2002)

Case ID No. 2659

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN101765089

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.48(c) and TCEQ Agreed Order Docket No. 2002-1035-PST-E, Ordering Provision Nos. 2.a.i. and 2.b.

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

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Failure to conduct inventory control at a retail facility can result in the exposure of a significant amount of contaminants which may exceed levels that are protective of human health and the environment.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 2 Number of violation days 668

daily	
monthly	
quarterly	
semiannual	
annual	x
single event	

Violation Base Penalty \$5,000

Two annual events are recommended from the effective date of the Agreed Order (June 27, 2005) to the date of screening (April 26, 2007).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2,572

Violation Final Penalty Total \$6,500

This violation Final Assessed Penalty (adjusted for limits) \$6,500

Economic Benefit Worksheet

Respondent FKD Enterprises Inc. dba Lucky Seven Food Mart
Case ID No. 2659
Reg. Ent. Reference No. RN101765089
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
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)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel	\$1,000	27-Jun-2005	8-Dec-2007	2.4	\$122	\$2,449	\$2,572
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

Avoided cost for failure to conduct effective inventory control. Date required is the effective date of the agreed order and the final date is the projected date of compliance.

Approx. Cost of Compliance

\$1,000

TOTAL

\$2,572

Screening Date 26-Apr-2007

Docket No. 2007-0728-PST-E

PCW

Respondent FKD Enterprises Inc. dba Lucky Seven Food Mart

Policy Revision 2 (September 2002)

Case ID No. 2659

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN101765089

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 334.49(c)(4)

Violation Description

Failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years. Specifically, the triennial testing was not conducted by the test due date of August 31, 2005.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment could be exposed to significant amounts of pollutants which may exceed levels that are protective of human health and environmental receptors.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

341 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$2,500

One single event is recommended based on documentation of the violation during the February 8, 2007 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,093

Violation Final Penalty Total \$3,250

This violation Final Assessed Penalty (adjusted for limits) \$3,250

Economic Benefit Worksheet

Respondent FKD Enterprises Inc. dba Lucky Seven Food Mart

Case ID No. 2659

Reg. Ent. Reference No. RN101765089

Media Petroleum Storage Tank

Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)	\$1,000	31-Aug-2005	7-Aug-2006	1.9	\$93	\$1,000	\$1,093

Notes for AVOIDED costs

Avoided cost for completing the triennial test. The date required is the test due date and the final date is the date of compliance.

Approx. Cost of Compliance

\$1,000

TOTAL

\$1,093

Compliance History

Customer/Respondent/Owner-Operator:	CN600952915 FKD Enterprises Inc.	Classification: POOR	Rating: 90.00
Regulated Entity:	RN101765089 LUCKY SEVEN FOOD MART	Classification: POOR	Site Rating: 90.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	44882
Location:	5925 S FLORES ST, SAN ANTONIO, TX, 78214		Rating Date: 9/1/2006 Repeat Violator: NO
TCEQ Region:	REGION 13 - SAN ANTONIO		
Date Compliance History Prepared:	May 08, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	May 08, 2002 to May 08, 2007		

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

Name: Elvia Maske Phone: (512) 239-0789

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

- | | |
|---|----------------------------|
| Effective Date: 06/27/2005 | ADMINORDER 2002-1035-PST-E |
| Classification: Moderate | |
| Citation: 2C TWC Chapter 20, SubChapter A 26.3475[G]
30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A) | |
| Description: Failure to monitor for releases from the UST system at least once per month, not to exceed 35 days. | |
| Classification: Moderate | |
| Citation: 30 TAC Chapter 334, SubChapter C 334.48(c) | |
| Description: Failure to conduct effective inventory control and reconciliation on all USTs. | |
| Classification: Moderate | |
| Citation: 2C TWC Chapter 20, SubChapter A 26.3475[G]
30 TAC Chapter 334, SubChapter C 334.49(c)(2)(C)
30 TAC Chapter 334, SubChapter C 334.49(c)(4)(C) | |
| Description: Failure to regularly inspect the cathodic protection system at least once every sixty days to ensure proper operation of the rectifier and other system components and failure to have the cathodic protection system inspected and tested once every three years by a corrosion specialist. | |
| Classification: Moderate | |
| Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)(1)(B) | |
| Description: Failure to maintain records pertaining to the UST system at the Facility and to provide those records to TNRCC personnel upon request. | |

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 02/26/2007 (541782)

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 § BEFORE THE
ENFORCEMENT ACTION §
CONCERNING § TEXAS COMMISSION ON
FKD ENTERPRISES INC. DBA LUCKY §
SEVEN FOOD MART; § ENVIRONMENTAL QUALITY
RN101765089 §

DEFAULT ORDER
DOCKET NO. 2007-0728-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's First Amended Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty, corrective action of the respondent, and revocation of the respondent's fuel delivery certificate. The respondent made the subject of this Order is FKD Enterprises Inc. dba Lucky Seven Food Mart ("FKD").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. FKD owns and operates a convenience store with retail sales of gasoline, located at 5925 South Flores Street, San Antonio, Bexar County, Texas (the "Facility").
2. FKD's two underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. The USTs at the Facility contain regulated substances as defined in the Commission's rules.
3. On February 8, 2007, an investigator from the TCEQ San Antonio Regional Office documented that FKD:
 - a. Failed to monitor the UST system at a frequency of at least once every month (not to exceed 35 days between each monitoring) in a manner which would detect a release. The Facility did not monitor for releases during the months of June 2006 and July 2006;

- b. Failed to maintain records pertaining to the UST system and to provide those records to Commission personnel upon request;
 - c. Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel; and
 - d. Failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years. Specifically, triennial testing was not conducted by the test due date of August 31, 2005.
4. FKD received notice of the violation on or about February 27, 2007.
5. The Executive Director recognizes that FKD has implemented the following corrective measures at the Facility in response to this enforcement action:
 - a. Implemented vapor monitoring as a release detection method for all USTs at the Facility on August 1, 2006;
 - b. Successfully conducted the required triennial testing of the corrosion protection system on August 7, 2006; and
 - c. Began maintaining all UST records on February 13, 2007.
6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of FKD Enterprises Inc. dba Lucky Seven Food Mart" (the "EDPRP") in the TCEQ Chief Clerk's office on July 9, 2007.
7. By letter dated July 9, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served FKD with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that FKD received notice of the EDPRP.
8. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of FKD Enterprises Inc. dba Lucky Seven Food Mart" (the "EDFARP") in the TCEQ Chief Clerk's office on July 17, 2007.

9. By letter dated July 17, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served FKD with notice of the EDFARP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that FKD received notice of the EDPRP.
10. More than 20 days have elapsed since FKD received notice of the EDPRP and the EDFARP, provided by the Executive Director. FKD failed to file an answer to either the EDPRP or the EDFARP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, FKD is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., FKD violated 30 TEX. ADMIN. CODE § 334.50(b)(1)(A), by failing to monitor the UST system at a frequency of at least once every month (not to exceed 35 days between each monitoring) in a manner which would detect a release. The Facility did not monitor for releases during the months of June 2006 and July 2006.
3. As evidenced by Finding of Fact No. 3.b., FKD violated 30 TEX. ADMIN. CODE § 334.10(b), by failing to maintain records pertaining to the UST system and to provide those records to Commission personnel upon request.
4. As evidenced by Finding of Fact No. 3.c., FKD violated 30 TEX. ADMIN. CODE § 334.48(c) and TCEQ Agreed Order Docket No. 2002-1035-PST-E, Section IV, Paragraphs 2.a.i. and 2.b., by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel.
5. As evidenced by Finding of Fact No. 3.d., FKD violated 30 TEX. ADMIN. CODE § 334.49(c)(4), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years. Specifically, triennial testing was not conducted by the test due date of August 31, 2005.
6. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director has timely served FKD with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).

7. As evidenced by Finding of Fact Nos. 8 and 9, the Executive Director has timely served FKD with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
8. As evidenced by Finding of Fact No. 10, FKD has failed to file a timely answer to the EDFARP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against FKD and assess the penalty recommended by the Executive Director.
9. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against FKD for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
10. An administrative penalty in the amount of fourteen thousand three hundred dollars (\$14,300.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
11. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.
12. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke FKD's UST delivery certificate if the Commission finds that good cause exists.
13. Good cause for revocation of FKD's UST delivery certificate exists as justified by Findings of Fact Nos. 3, 6, 7, 8, 9, and 10 and Conclusions of Law Nos. 2 through 8.

ORDERING PROVISIONS

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. FKD is assessed an administrative penalty in the amount of fourteen thousand three hundred dollars (\$14,300.00) for violations of TEX. WATER CODE chs. 7 and 26 and rules of the TCEQ. The payment of this administrative penalty and FKD's compliance with all the terms and conditions set forth in this Order completely resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made

out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: FKD Enterprises Inc. dba Lucky Seven Food Mart; Docket No. 2007-0728-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. FKD's UST delivery certificate is revoked immediately upon the effective date of this Order. FKD may submit an application for a new delivery certificate only after FKD has complied with all of the requirements of this Order.
3. Within 10 days after the effective date of this Order, FKD shall send its UST delivery certificate to:

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

4. FKD shall undertake the following technical requirements:
 - a. Immediately upon the effective date of the Commission Order, FKD shall begin conducting effective manual or automatic inventory control procedures for all USTs at the Facility in accordance with 30 TEX. ADMIN. CODE § 334.48:
 - b. Within 10 days after the effective date of this Order, FKD shall 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. 4.a. The written 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

and

Henry Karnei Jr., Waste Section Manager
Texas Commission on Environmental Quality
San Antonio Regional Office
14250 Judson Road
San Antonio, Texas 78233-4480

5. All relief not expressly granted in this Order is denied.
6. The provisions of this Order shall apply to and be binding upon FKD, and FKD is ordered to give notice of this Order to personnel who maintain day to day control of the UST systems at the Facility.
7. If FKD fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, FKD's failure to comply is not a violation of this Order. FKD shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. FKD shall notify the Executive Director within seven days after FKD becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
8. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by FKD shall be made in writing to the Executive Director. Extensions are not effective until FKD receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

9. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to FKD if the Executive Director determines that FKD has not complied with one or more of the terms or conditions in this Order.
10. This Order shall terminate five years from its effective date or when FKD demonstrates to the satisfaction of the Executive Director that it has corrected all of the violations noted herein.
11. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order is the date this decision was rendered, pursuant to TEX. GOV'T CODE § 2001.144(a)(3).

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF ANNA M. COX

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Anna M. Cox. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of FKD Enterprises Inc. dba Lucky Seven Food Mart” (the “EDPRP”) was filed with the Office of the Chief Clerk on July 9, 2007.

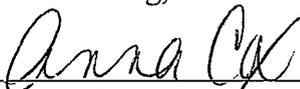
The EDPRP was mailed to FKD at its last known address on July 9, 2007, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating the respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

More than 20 days have elapsed since FKD received notice of the EDPRP. FKD failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

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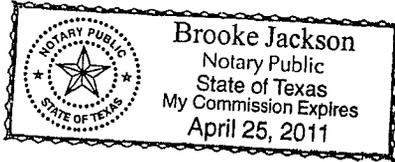
More than 20 days have elapsed since FKD received notice of the EDFARP. FKD failed to file an answer to the EDFARP, failed to request a hearing, and failed to schedule a settlement conference.”



Anna M. Cox, Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Anna M. Cox, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 7th day of September, A.D., 2007.




Notary Signature