

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2005-1696-AIR-E TCEQ ID: RN102777497 CASE NO.: 26837
RESPONDENT NAME: CIRCLE K STORES INC.

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 checked="" 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 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: 1500 George Dieter Drive, El Paso, El Paso County</p> <p>TYPE OF OPERATION: Gasoline service station</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 12, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p style="margin-left: 20px;">TCEQ Attorney: Ms. Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873</p> <p style="margin-left: 20px;">TCEQ Enforcement Coordinator: Ms. Jessica Rhodes, Enforcement Division, MC 149, (512) 239-2879</p> <p style="margin-left: 20px;">TCEQ Regional Contact: Ms. Cheryl Thompson, Air Enforcement Section, MC R-12, (817) 588-5886</p> <p style="margin-left: 20px;">Respondent: Corporation Service Company dba CSC-Lawyers Incorporating Service Company-Registered Agent, Circle K Stores, Inc., 701 Brazos, Suite 1050, Austin, TX 78701; Ms. Theresa Denny, Fuel Distribution Supervisor, Circle K Stores Inc, P.O. Box 52085, Phoenix, AZ, 85072</p> <p style="margin-left: 20px;">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 checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: June 3, 2005</p> <p>Date of NOV/NOE Relating to this Case: August 26, 2005(NOE)</p> <p>Background Facts:</p> <p>Litigation received an Agreed Order on January 13, 2006. The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database.</p> <p>AIR:</p> <p>Allowed the transfer of gasoline which may be used in a motor vehicle in the El Paso area with a Reid Vapor Pressure ("RVP") greater than 7.0 pounds per square inch absolute ("psia") [30 TEX. ADMIN. CODE § 115.252(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$1000</p> <p>Total Deferred: \$0</p> <p>Total Paid/Due to General Revenue: \$800/ \$200</p> <p>The amount of \$800 of the administrative penalty has been paid. The remaining amount of \$200 shall be paid within 30 days after the effective date of this Agreed Order.</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 type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provision(s)</p> <p>The Respondent shall:</p> <p>1) Within 30 days, establish and implement a process which will ensure the RVP for gasoline dispensed between June 1st and September 16th of each year shall not exceed 7.0 psia.</p> <p>2) Within 45 days, submit written certification of compliance as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2a.</p>



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 19, 2005

DATES	Assigned	29-Aug-2005	Screening	06-Sep-2005	EPA Due	
	PCW	14-Dec-2005				

RESPONDENT/FACILITY INFORMATION			
Respondent	Circle K Stores Inc.		
Reg. Ent. Ref. No.	RN102777497		
Facility/Site Region	6-El Paso	Major/Minor Source	Minor Source

CASE INFORMATION			
Enf./Case ID No.	26837	No. of Violations	1
Docket No.	2005-1696-AIR-E	Order Type	1660
Media Program(s)	Air Quality	Enf. Coordinator	Cheryl Thompson
Multi-Media		EC's Team	Enforcement Team 4
Admin. Penalty \$	Limit Minimum \$0	Maximum	\$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 0% Enhancement Subtotals 2, 3, & 7

Notes

Culpability No Subtotal 4

Notes

Good Faith Effort to Comply 0% Reduction Subtotal 5

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with a small x)

Notes

Economic Benefit 0% Enhancement* Subtotal 6

Total EB Amounts	\$158	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$150	

SUM OF SUBTOTALS 1-7 Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment

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

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty

DEFERRAL Reduction Adjustment

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

Notes

PAYABLE PENALTY

Screening Date 06-Sep-2005

Docket No. 2005-1696-AIR-E

PCW

Respondent Circle K Stores Inc.

Policy Revision 2 (September 2002)

Case ID No. 26837

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN102777497

Media [Statute] Air Quality

Enf. Coordinator Cheryl Thompson

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action <i>(number of NOVs meeting criteria)</i>	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government <i>(number of judgements or consent decrees meeting criteria)</i>	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which notices were)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%
Other	<i>Please Enter Yes or No</i>		
	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

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

No

Adjustment Percentage (Subtotal 3) 0%

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

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

No enhancement due to Average Performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 06-Sep-2005

Docket No. 2005-1696-AIR-E

PCW

Respondent Circle K Stores Inc.

Policy Revision 2 (September 2002)

Case ID No. 26837

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN102777497

Media [Statute] Air Quality

Enf. Coordinator Cheryl Thompson

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

The respondent allowed the transfer of gasoline which may be used in a motor vehicle in the El Paso area with a Reid Vapor Pressure (RVP) greater than 7.0 pounds per square inch absolute (psia). Specifically, a sample was taken on June 3, 2005, lab results indicated that the RVP was 7.80 psia.

Base Penalty

>> Environmental, Property and Human Health Matrix

Release	Harm		
	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent

>> Programmatic Matrix

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

Percent

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or the environment.

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

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

Violation Base Penalty

One single event is recommended based on the June 3, 2005 inspection 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 Circle K Stores Inc.
 Case ID No. 26837
 Reg. Ent. Reference No. RN102777497
 Media [Statute] Air Quality
 Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				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)	\$150	03-Jun-2005	16-Sep-2005	1.0	\$8	\$150	\$158

Notes for AVOIDED costs

Costs avoided by dispensing and utilizing gasoline have a RVP greater than 7.0 psia. The Date Required is the date of the inspection. The Final Date is the last day of the control period with RVP requirements.

Approx. Cost of Compliance

TOTAL

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 CIRCLE K
STORES INC.;
RN102777497

§
§
§
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§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2005-1696-AIR-E

I. JURISDICTION AND STIPULATIONS

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

1. Circle K Stores owns and operates a gasoline service station located at 1500 George Dieter Drive, El Paso, El Paso County, Texas (the "Facility").
2. The Facility consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 382 and the TCEQ rules.
4. The Commission and Circle K Stores agree that the Commission has jurisdiction to enter this Agreed Order, and that Circle K Stores is subject to the Commission's jurisdiction.
5. Circle K Stores received notice of the violations alleged in Section II ("Allegations") on or about August 31, 2005.

6. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Circle K Stores of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
7. An administrative penalty in the amount of one thousand dollars (\$1000.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Circle K Stores has paid eight hundred dollars (\$800.00) of the administrative penalty. The remaining amount of two hundred dollars (\$200.00) shall be paid within 30 days after the effective date of this Agreed Order. The failure of Circle K Stores to meet the payment schedule of this Agreed Order constitutes the failure by Circle K Stores to timely and satisfactorily comply with all requirements of this Agreed Order.
8. 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.
9. The Executive Director of the TCEQ and Circle K Stores have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
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 Circle K Stores 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

Circle K Stores is alleged to have violated:

1. 30 TEX. ADMIN. CODE § 115.252(2) and TEX. HEALTH & SAFETY CODE § 382.085(b) by allowing the transfer of gasoline which may be used in a motor vehicle in the El Paso area with a Reid Vapor Pressure ("RVP") greater than 7.0 pounds per square inch absolute ("psia").

III. DENIALS

Circle K Stores generally denies each allegation in Section II ("Allegations").

IV. ORDER

1. It is, therefore, ordered by the TCEQ that Circle K Stores pay an administrative penalty as set forth in Section I, Paragraph 7 above. The payment of this administrative penalty and Circle K Stores's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Circle K Stores Inc., Docket No. 2005-1696-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. Circle K Stores shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, Circle K Stores shall establish and implement a process which will ensure the RVP for gasoline dispensed between June 1st and September 16th of each year shall not exceed 7.0 psia; and
 - b. Within 45 days after the effective date of this Agreed Order, Circle K Stores shall submit written certification of compliance as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2a.

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"; and

- c. Submit the certification required by these Ordering Provisions 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:

Kevin Smith, Air Section Manager
El Paso Regional Office
Texas Commission on Environmental Quality
401 East Franklin Ave., Ste 560
El Paso, Texas 79901-1206

3. The provisions of this Agreed Order shall apply to and be binding upon Circle K Stores. Circle K Stores is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Circle K Stores 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, Circle K Stores's failure to comply is not a violation of this Agreed Order. Circle K Stores shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Circle K Stores shall notify the Executive Director within seven days after Circle K Stores 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 Circle K Stores shall be made in writing to the Executive Director. Extensions are not effective until Circle K Stores 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 Circle K Stores in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's

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

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

Circle K Stores Inc.
DOCKET NO. 2005-1696-AIR-E
Page 5

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

[Handwritten Signature]

For the Executive Director

10/10/07

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, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

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

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

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

[Handwritten Signature]
Signature

1/13/2006
Date

Theresa A Denney
Name (Printed or typed)
Authorized Representative of
Circle K Stores Inc.

Fuel Distribution Supervisor
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.