

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-1880-PST-E TCEQ ID: RN101849693 CASE NO.: 31624

RESPONDENT NAME: AIRTEX INVESTMENTS, INC. DBA TIME MART 10

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 checked="" 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: 8520 Telephone Road, Harris 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 January 4, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 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: Ms. Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623 Respondent: Mr. Adnan Khan, President, Airtex Investments, Inc. dba Time Mart 10, 2665 Reed Road, Houston, Texas 77051 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>Dates of Investigation Relating to this Case: June 14, 2006</p> <p>Date of NOE Relating to this Case: August 31, 2006</p> <p>Background Facts:</p> <p>The EDPRP was filed on April 26, 2007. The Respondent received notice of the EDPRP on May 2, 2007, as evidenced by a signed USPS certified mail return receipt via the "green card". The Respondent failed to answer the EDPRP.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>PST:</p> <p>1. Failed to conduct effective manual or automatic inventory control procedures for all USTs at the Facility used in the retail sale of petroleum substances used as a motor fuel [30 TEX. ADMIN CODE § 334.48(c)].</p> <p>2. Failed to monitor the USTs in a manner to detect a release at a frequency of at least once every month, and failed to perform an automatic test for substance loss that can detect a release which equals or exceeds a rate of 0.2 gallons per hour from the UST system [30 TEX. ADMIN CODE §§ 334.50(b)(1)(A) and (d)(4)(A)(ii)(II) and TEX. WATER CODE § 26.3475(c)(1)].</p>	<p>Total Assessed: \$6,450</p> <p>Total Deferred: \$0</p> <p>SEP Conditional Offset: \$0</p> <p>Total Due to General Revenue: \$6,450</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 checked="" 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 Provisions:</p> <p>Respondent's Delivery Certificate is revoked immediately.</p> <p>Respondent shall:</p> <ol style="list-style-type: none"> 1. Immediately: <ol style="list-style-type: none"> a. Cease dispensing fuel from the USTs; b. Cease receiving deliveries of regulated substances into the USTs; c. Padlock the dispensers; d. Empty the USTs of all regulated substances; and e. Temporarily remove the UST system from service. 2. Within 10 days, surrender its UST delivery certificate. 3. Within 15 days, submit a detailed written report documenting the steps it has taken to comply with Ordering Provisions 1 and 2, above. 4. The Respondent's UST systems shall remain out of service until such time as the Respondent demonstrates to the satisfaction Executive Director that it has corrected the violations noted. <p>Technical Requirements:</p> <ol style="list-style-type: none"> 1. Prior to resuming service of the USTs, the Respondent shall: <ol style="list-style-type: none"> a. Begin conducting effective manual or automatic inventory control procedures for all USTs, and b. Implement a release detection method. 2. Within 10 days of resuming service, Respondent shall submit written certification to demonstrate compliance with Technical Requirements 1.a. and 1.b., above. 3. Upon obtaining a new delivery certificate, the Respondent shall post the delivery certificate in a location where the document is clearly visible at all times.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 19, 2005

DATES	Assigned	05-Sep-2006	Screening	14-Sep-2006	EPA Due	
	PCW	24-Oct-2006				

RESPONDENT/FACILITY INFORMATION	
Respondent	Airtex Investments, Inc. dba Time Mart 10
Reg. Ent. Ref. No.	RN101849693
Facility/Site Region	12-Houston
Major/Minor Source	Minor Source

CASE INFORMATION			
Enf./Case ID No.	31624	No. of Violations	2
Docket No.	2006-1880-PST-E	Order Type	Findings
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Elvia Maske
Multi-Media		EC's Team	Order Compliance Team
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** \$5,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 29% Enhancement **Subtotals 2, 3, & 7** \$1,450

Notes Enhancement for two prior NOV's without same or similar violations and for one default order.

Culpability No 0% Enhancement **Subtotal 4** \$0

Notes Respondent does not meet culpability criteria.

Good Faith Effort to Comply 0% Reduction **Subtotal 5** \$0

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

Notes Respondent does not meet good faith effort criteria.

Economic Benefit 0% Enhancement* **Subtotal 6** \$0

Total EB Amounts	\$877	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$2,000	

SUM OF SUBTOTALS 1-7 **Final Subtotal** \$6,450

OTHER FACTORS AS JUSTICE MAY REQUIRE 0% **Adjustment** \$0

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

Notes

Final Penalty Amount \$6,450

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$6,450

DEFERRAL 0% Reduction **Adjustment** \$0

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

Notes No deferral as this is a Findings Order.

PAYABLE PENALTY **\$6,450**

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Screening Date 14-Sep-2006

Docket No. 2006-1880-PST-E

PCW

Respondent Airtex Investments, Inc. dba Time Mart 10

Policy Revision 2 (September 2002)

Case ID No. 31624

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101849693

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 (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	2	4%
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	1	25%
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 (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 (<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%
<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)

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

Adjustment Percentage (Subtotal 3)

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

Adjustment Percentage (Subtotal 7)

>> **Compliance History Summary**

Compliance History Notes

Enhancement for two prior NOVs without same or similar violations and for one default order.

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

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Screening Date 14-Sep-2006

Docket No. 2006-1880-PST-E

PCW

Respondent Airtex Investments, Inc. dba Time Mart 10

Policy Revision 2 (September 2002)

Case ID No. 31624

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101849693

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Base Penalty

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

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

>> **Programmatic Matrix**

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

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

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

Violation Base Penalty

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

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Economic Benefit Worksheet

Respondent Airtex Investments, Inc. dba Time Mart 10
Case ID No. 31624
Reg. Ent. Reference No. RN101849693
Media [Statute] 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
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	14-Jun-2006	01-Apr-2007	0.8	\$40	\$797	\$837
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
 Estimated cost to conduct inventory control. Date required is the date of the investigation and the final date is the projected compliance date.

Approx. Cost of Compliance **\$1,000** **TOTAL \$837**

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Screening Date 14-Sep-2006

Docket No. 2006-1880-PST-E

PCW

Respondent Airtex Investments, Inc. dba Time Mart 10

Policy Revision 2 (September 2002)

Case ID No. 31624

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101849693

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number

2

Primary Rule Cite(s)

30 Tex. Admin. Code § 334.50(b)(1)(A) and 334.50(d)(4)(A)(ii)(II)

Secondary Rule Cite(s)

Tex. Water Code § 26.3475(c)(1)

Violation Description

Failed to monitor the USTs in a manner to detect a release at a frequency of at least once every month. Failure to perform an automatic test for substance loss that can detect a release which equals or exceeds a rate of 0.2 gallons per hour from the UST system. Specifically, the automatic tank gauging equipment was not performing the required monthly leak test.

Base Penalty

\$10,000

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

Harm

OR

Release	Major	Moderate	Minor
Actual			
Potential	X		

Percent 25%

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor

Percent

Matrix Notes

Failure to monitor USTs for releases at a frequency of at least once every month not to exceed 35 days between each monitoring 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

Base Penalty Subtotal

\$2,500

Violation Events

Number of Violation Events 1

mark only one use a small x	daily	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty

\$2,500

One quarterly event is recommended from the date of the June 14, 2006 investigation to the date of screening (September 14, 2006).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$40

Violation Final Penalty Total

\$3,225

This violation-Final Assessed Penalty (adjusted for limits)

\$3,225

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Economic Benefit Worksheet

Respondent Airtex Investments, Inc. dba Time Mart 10
Case ID No. 31624
Reg. Ent. Reference No. RN101849693
Media [Statute] Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Onetime	EB
						Costs	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)	\$1,000	14-Jun-2006	01-Apr-2007	0.8	\$40	n/a	\$40

Notes for DELAYED costs: Estimated cost to provide release detection for the USTs. The date required is the date of the investigation and the final date is the expected date of compliance.

Avoided Costs		ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)					
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs:

Approx. Cost of Compliance

TOTAL

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
AIRTEX INVESTMENTS, INC. DBA	§	ENVIRONMENTAL QUALITY
TIME MART 10;	§	
RN101849693	§	

DEFAULT AND SHUTDOWN ORDER

DOCKET NO. 2006-1880-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary 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 Commission also considered the Executive Director's Motion requesting entry of an Order requiring the respondent, Airtex Investments, Inc. dba Time Mart 10 ("Airtex"), to shutdown or remove from service the Underground Storage Tanks ("USTs") at the Time Mart 10 facility, located at 8520 Telephone Road, Houston, Harris County, Texas.

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

FINDINGS OF FACT

1. Airtex owns and operates a convenience store with retail sales of gasoline, located at 8520 Telephone Road, Houston, Harris County, Texas (the "Facility").
2. The USTs at the Facility contain regulated substances as defined in the Commission's rules. The USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. On June 14, 2006, an investigator from the TCEQ Houston Office documented that Airtex:

- a. Failed to conduct effective manual or automatic inventory control procedures for all USTs at the Facility used in the retail sale of petroleum substances used as a motor fuel; and
 - b. Failed to monitor the USTs in a manner to detect a release at a frequency of at least once every month, and failed to perform an automatic test for substance loss that can detect a release which equals or exceeds a rate of 0.2 gallons per hour from the UST system. Specifically, the automatic tank gauging equipment was not performing the required monthly leak test.
4. By letter dated August 31, 2006, the TCEQ Houston Regional Office provided Airtex with notice of the violations and the TCEQ's authority to shut down and remove from service UST systems not in compliance with release detection, spill and/or overfill prevention, and corrosion protection regulations if the violations were not corrected.
 5. Airtex received notice of the violations on or about September 5, 2006.
 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 Airtex Investments, Inc. dba Time Mart 10" (the "EDPRP") in the TCEQ Chief Clerk's office on April 26, 2007.
 7. By letter dated April 26, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Airtex with notice of the EDPRP. According to the return receipt "green card," Airtex received notice of the EDPRP on May 2, 2007, as evidenced by the signature on the card.
 8. More than 20 days have elapsed since Airtex received notice of the EDPRP, provided by the Executive Director. Airtex failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.
 9. As of the date of entry of this Order, Airtex has not corrected the violations noted during the June 14, 2006, investigation.
 10. The UST systems at the Facility do not have release detection as required by 30 TEX. ADMIN. CODE § 334.50 and may be releasing petroleum products to the environment without the

knowledge of the tank owner or operator. Therefore, conditions at the Facility constitute an imminent peril to public health, safety, and welfare.

CONCLUSIONS OF LAW

1. Airtex's USTs are 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 Number 3.a., Airtex violated 30 TEX. ADMIN. CODE § 334.48(c) by failing to conduct effective manual or automatic inventory control procedures for all USTs at the Facility used in the retail sale of petroleum substances used as a motor fuel.
3. As evidenced by Finding of Fact Number 3.b., Airtex violated 30 TEX. ADMIN. CODE §§ 334.50(b)(1)(A) and (d)(4)(A)(ii)(II), and TEX. WATER CODE § 26.3475(c)(1), by failing to monitor the USTs in a manner to detect a release at a frequency of at least once every month, and failed to perform an automatic test for substance loss that can detect a release which equals or exceeds a rate of 0.2 gallons per hour from the UST system.
4. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director has timely served Airtex with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
5. As evidenced by Finding of Fact No. 8, Airtex has failed to file a timely answer to the EDPRP, 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 Airtex and assess the penalty recommended by the Executive Director.
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Airtex 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.
7. An administrative penalty in the amount of six thousand four hundred fifty dollars (\$6,450.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

8. As evidenced by Finding of Fact No. 9, Airtex failed to correct documented violations of Commission requirements within 30 days after Airtex received notice of the violations and notice of the Executive Director's intent to shut down the Facility.
9. TEX. WATER CODE § 26.3475(e) authorizes the Commission to order a UST owner or operator to shut down a UST system if, within 30 days after receiving notice of the violations, the owner or operator fails to correct violations of Commission regulatory requirements relating to release detection for tanks and/or piping, spill and overfill protection for tanks, and/or corrosion protection for tanks and piping.
10. 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.
11. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Airtex's UST delivery certificate if the Commission finds that good cause exists.
12. Good cause for revocation of Airtex's UST delivery certificate exists as justified by Findings of Fact Nos. 6, 7, and 8, and Conclusions of Law Nos. 4 and 5.
13. As evidenced by Finding of Fact Number 10, current conditions at the Facility constitute an imminent peril to public health, safety and welfare.

ORDERING PROVISIONS

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

1. Immediately upon the effective date of this Order, Airtex shall take the following steps to shut down operations of the non-compliant UST systems at the Facility:
 - a. Cease dispensing fuel from the USTs;
 - b. Cease receiving deliveries of regulated substances into the USTs;
 - c. Padlock the dispensers;
 - d. Empty the USTs of all regulated substances in accordance with 30 TEX. ADMIN. CODE § 334.54(d); and

- e. Temporarily remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.54.
2. Airtex's UST delivery certificate is revoked immediately upon the effective date of this Order. Airtex may submit an application for a new delivery certificate only after Airtex has complied with all of the requirements of this Order.
3. Within 10 days after the effective date of this Order, Airtex 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. Within 15 days after the effective date of this Order, Airtex shall submit to the Executive Director a detailed written report documenting the steps it has taken to comply with Ordering Provision Nos. 1.a. through 1.e. Airtex shall submit the report to:

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

and

Nicole Bealle, Waste Section Manager
Texas Commission on Environmental Quality
Houston Regional Office
5425 Polk Street, Ste. H
Houston, Texas 77023-1452

5. If Airtex elects to permanently remove from service any UST systems at the Facility, Airtex shall permanently remove those UST systems in accordance with 30 TEX. ADMIN. CODE § 334.55, and shall submit to the Commission a written report documenting compliance with 30 TEX. ADMIN. CODE § 334.55. Airtex shall submit the written report to:

Petroleum Storage Tank Registration Team, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

6. Airtex's UST systems shall remain out of service as directed by Ordering Provision Nos. 1.a. through 1.e. until such time as Airtex demonstrates to the satisfaction of the Executive Director that it has corrected the violations noted in Finding of Fact Nos. 3.a. and 3.b. and Conclusion of Law Nos. 2 and 3 as listed herein.
7. Airtex is assessed an administrative penalty in the amount of six thousand four hundred fifty dollars (\$6,450.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Airtex'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: Airtex Investments, Inc. dba Time Mart 10; Docket No. 2006-1880-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

8. Prior to resuming service of the USTs, Airtex shall undertake the following technical requirements:
 - a. Begin conducting effective manual or automatic inventory control procedures for all USTs, in accordance with 30 TEX. ADMIN. CODE § 334.48(c); and
 - b. ~~Implement a release detection method, in accordance with 30 TEX. ADMIN. CODE § 334.50.~~
9. Within 10 days of resuming service of the USTs, Airtex 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 Nos. 8.a. and b. 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

Nicole Bealle, Waste Section Manager
Texas Commission on Environmental Quality
Houston Regional Office
5425 Polk Street, Ste. H
Houston, Texas 77023-1452

10. Upon obtaining a new delivery certificate, Airtex shall post the delivery certificate in a location where the document is clearly visible at all times, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii).
11. All relief not expressly granted in this Order is denied.
12. The provisions of this Order shall apply to and be binding upon Airtex, and Airtex is ordered to give notice of this Order to personnel who maintain day to day control of the UST systems at the Facility.

13. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Airtex if the Executive Director determines that Airtex is noncompliant with or in violation of any of the terms and conditions set forth in this Order.
14. This Order shall terminate five years from its effective date or when Airtex demonstrates to the satisfaction of the Executive Director that it has corrected all of the violations noted herein.
15. 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).

Airtex Investments, Inc. dba Time Mart 10
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF LENA ROBERTS

STATE OF TEXAS §
 §
 §
COUNTY OF TRAVIS §

“My name is Lena Roberts. 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 Airtex Investments, Inc. dba Time Mart 10” (the “EDPRP”) was filed with the Office of the Chief Clerk on April 26, 2007.

The EDPRP was mailed to Airtex at its last known address on April 26, 2007, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Airtex received notice of the EDPRP on May 2, 2007, as evidenced by the signature on the card.

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

By letter dated October 23, 2007, I provided Airtex with notice of the TCEQ’s intent to order the UST systems at the Facility shut down and removed from service if the violations pertaining to release detection were not corrected within 30 days of Airtex’s receipt of the letter.

As of the date of this affidavit, I am not aware of any evidence that indicates that Airtex has corrected the violations noted during the June 14, 2006, investigation.”



Lena Roberts, Attorney
Texas Commission on Environmental Quality

Affidavit of Lena Roberts
Page 2.

Before me, the undersigned authority, on this day personally appeared Lena Roberts, 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 23rd day of October, A.D., 2007.

Margaret Jackson

Notary Signature

