

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

**DOCKET NO.: 2005-0343-PST-E TCEQ ID: RN102959558 CASE NO.: 24621
RESPONDENT NAME: K & M MICHAEL, INC. DBA KILGORE FOOD AND MORE**

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 2512 Highway 259, Kilgore, Gregg 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 April 28, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Mr. Barham A. Richard, Litigation Division, MC 175, (512) 239-0107 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Mr. Terry Murphy, Air Enforcement Section, MC 149, (512) 239-5025 TCEQ Regional Contact: Mr. Michael Brashear, Tyler Regional Office, MC R-5, (903) 535-5176 Respondent: Mr. Michael Siv, Registered Agent, K & M Michael, Inc., dba Kilgore Food and More, 2512 Highway 259 North, Kilgore, Texas 75662 Respondent's Attorney: Mr. Robert S. Driegert, Attorney, 4201 Spring Valley Road, Suite 1102, Dallas, Texas 75244</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: January 6, 2005</p> <p>Date of NOEs Relating to this Case: February 1, 2005</p> <p>Background Facts:</p> <p>An EDPRP was filed on November 4, 2005. The Respondent received notice of the EDPRP on November 10, 2005, as evidenced by the signature on the return receipt "green card." The Respondent filed an answer on November 11, 2005. The case was referred to SOAH on February 22, 2007. A Financial Ability to Pay Analysis was completed on November 20, 2007. Subsequently, an Agreed Order was signed by the Respondent on December 8, 2007.</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 install overfill prevention equipment for the UST system [30 TEX. ADMIN. CODE § 334.51(b)(2)(C) and TEX. WATER CODE § 26.3475(c)].</p> <p>2. Failed to provide corrosion protection for the UST system [30 TEX. ADMIN. CODE § 334.49(a)(4) and TEX. WATER CODE § 26.3475(d)].</p> <p>3. Failed to permanently tag or label each UST fill tube at the Facility with the number used to identify the tank on the registration and self-certification form filed with the Commission [30 TEX. ADMIN. CODE § 334.8(c)(5)(C)].</p>	<p>Total Assessed: \$16,000</p> <p>*Total Deferred: \$12,239</p> <p><input type="checkbox"/> Expedited Settlement <input checked="" type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid/Due to General Revenue: \$121/\$3,640</p> <p>The Respondent has paid \$121 of the administrative penalty. The remaining amount of \$3,640 shall be payable in 35 monthly payments of one hundred four dollars \$104 each.</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>*A financial review of K&M Michael, Inc. dba Kilgore Food and More demonstrated the Respondent is unable to pay part of the administrative penalty.</p>	<p>Corrective Actions Taken</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility in response to this enforcement action:</p> <ol style="list-style-type: none"> 1. Provided corrosion protection for the UST system on March 7, 2005. 2. Permanently tagged or labeled each UST fill tube at the Facility with the number used to identify the tank on the registration and self-certification form filed with the Commission on July 11, 2005. 3. Began reconciling inventory control records in February 2005, performed a line tightness test and a line leak detector test on March 9, 2005, and began performing release detection by means of vapor monitoring on July 7, 2005. 4. Began conducting effective inventory control procedures for the UST system on February 28, 2007. <p>Technical Requirements</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Within 30 days, equip the UST system at the facility with spill and overfill prevention equipment. 2. Within 45 days, submit written, notarized certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with the above Ordering Provision.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>4. Failed to monitor piping for releases by means of a piping tightness test or in a manner at a frequency of at least once every month (not to exceed 35 days between each monitoring), by failing to annually test the line leak detectors, by failing to monitor the tanks for releases in a manner at a frequency of at least once every month (not to exceed 35 days between each monitoring), and by failing to reconcile inventory records on a monthly basis and record the inventory volume measurement each operating day [30 TEX. ADMIN. CODE §§ 334.50(b)(1)(A), 334.50(b)(2)(A)(i)(III), 334.50(b)(2)(A)(ii), 334.50(d)(1)(B)(ii), and 334.50(d)(1)(B)(iii)(I), and TEX. WATER CODE §§ 26.3475(a) and 26.3475(c)(1)].</p> <p>5. Failed to conduct effective manual or automatic inventory control procedures for the UST system [30 TEX. ADMIN. CODE § 334.48(c)].</p>		



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision December 10, 2004

DATES	Assigned 13-Jun-2005	Screening 16-Feb-2005	Priority Due 12-Aug-2005	EPA Due <input type="text"/>
	PCW 03-Nov-2005			

RESPONDENT/FACILITY INFORMATION	
Respondent	K & M Michael, Inc. dba Kilgore Food and More
Reg. Ent. Ref. No.	RN102959558
Additional ID No(s).	Petroleum Storage Tank Facility ID No. 5243
Facility/Site Region	5-Tyler <input checked="" type="checkbox"/> Major/Minor Source Minor Source <input checked="" type="checkbox"/>

CASE INFORMATION			
Enf./Case ID No.	24621	No. of Violations	5
Docket No.	2005-0343-PST-E	Order Type	1660 without deferral <input checked="" type="checkbox"/>
Case Priority	3 <input checked="" type="checkbox"/>	Enf. Coordinator	Sandy VanCleave
Media Program(s)	Petroleum Storage Tank <input checked="" type="checkbox"/>	EC's Team	Enforcement Team 2 <input checked="" type="checkbox"/>
Multi-Media	<input type="checkbox"/>		
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 0% Enhancement **Subtotal 4**

Notes

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

Before NOV NOV to EDRP/Settlement Offer

Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>
Ordinary	<input type="checkbox"/>	<input type="checkbox"/>
N/A	X	(mark with a small x)

Notes

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

Total EB Amounts	<input type="text" value="\$109"/>	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	<input type="text" value="\$1,954"/>	

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 0% Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 16-Feb-2005 Docket No. 2005-0343-PST-E

PCW

Respondent K & M Michael, Inc. dba Kilgore Food and More

Policy Revision 2 (September 2002)

Case ID No. 24621

PCW Revision December 10, 2004

Reg. Ent. Reference No. RN102959558

Additional ID No(s). Petroleum Storage Tank Facility ID No. 5243

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Sandy VanCleave

Site Address 2512 US Highway 259 North, Kilgore, Gregg County

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOV's with same or similar violations as those in the current enforcement action (<i>number of NOV's meeting criteria</i>)	0	0%
	Other written NOV's	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%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

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

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 change due to average performer classification.

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

Screening Date 16-Feb-2005 Docket No. 2005-0343-PST-E

PCW

Respondent K & M Michael, Inc. dba Kilgore Food and More

Policy Revision 2 (September 2002)

Case ID No. 24621

PCW Revision December 10, 2004

Reg. Ent. Reference No. RN102959558

Additional ID No(s). Petroleum Storage Tank Facility ID No. 5243

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Sandy VanCleave

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

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

Matrix Notes

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 checked="" type="checkbox"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

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 K & M Michael, Inc. dba Kilgore Food and More
Case ID No. 24621
Reg. Ent. Reference No. RN102959558
Additional ID No(s). Petroleum Storage Tank Facility ID No. 5243
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	\$250	06-Jan-2005	30-Jun-2006	1.5	\$1	\$25	\$26
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs Estimated cost to install a valve or other appropriate device for overfill prevention. Date required is the investigation date and the final date is the estimated 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 **\$250** **TOTAL** **\$26**

Screening Date 16-Feb-2005 Docket No. 2005-0343-PST-E

PCW

Respondent K & M Michael, Inc. dba Kilgore Food and More

Policy Revision 2 (September 2002)

Case ID No. 24621

PCW Revision December 10, 2004

Reg. Ent. Reference No. RN102959558

Additional ID No(s). Petroleum Storage Tank Facility ID No. 5243

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Sandy VanCleave

Violation Number 2

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

Secondary Rule Cite(s) Tex. Water Code § 26.3475(d)

Violation Description Failed to provide corrosion protection for the UST system.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	X		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent

Matrix Notes

Failure to install a corrosion protection system could result in undetected releases that would expose human health and the environment to significant amounts of pollutants which would exceed levels that are protective of human and environmental receptors.

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 1

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

Violation Base Penalty \$2,500

One quarterly event is recommended from the date of the investigation, January 6, 2005, to the screening date, February 16, 2005.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3

Violation Final Penalty Total \$2,500

This violation Final Assessed Penalty (adjusted for limits) \$2,500

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Economic Benefit Worksheet

Respondent K & M Michael, Inc. dba Kilgore Food and More
 Case ID No. 24621
 Reg. Ent. Reference No. RN102959558
 Additional ID No(s). Petroleum Storage Tank Facility ID No. 5243
 Media [Statute] 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
Delayed Costs							
Equipment	\$250	06-Jan-2005	07-Mar-2005	0.2	\$0	\$3	\$3
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to install a corrosion protection system for the USTs. Date required is the investigation date and the final date is the date of compliance.

Item Description	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 **\$250** TOTAL **\$3**

Screening Date 16-Feb-2005 Docket No. 2005-0343-PST-E PCW
 Respondent K & M Michael, Inc. dba Kilgore Food and More Policy Revision 2 (September 2002)
 Case ID No. 24621 PCW Revision December 10, 2004

Reg. Ent. Reference No. RN102959558
 Additional ID No(s). Petroleum Storage Tank Facility ID No. 5243
 Media [Statute] Petroleum Storage Tank
 Enf. Coordinator Sandy VanCleave

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"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>

Matrix Notes

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

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 K & M Michael, Inc. dba Kilgore Food and More
 Case ID No. 24621
 Reg. Ent. Reference No. RN102959558
 Additional ID No(s). Petroleum Storage Tank Facility ID No. 5243
 Media [Statute] 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
Delayed Costs							
Equipment	\$100	06-Jan-2005	11-Jul-2005	0.5	\$0	\$3	\$4
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to permanently affix a metal label to each UST fill tube. Date required is the investigation date and the final date is the date the Respondent submitted documentation showing that the fill tubes were labeled.

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

Screening Date 16-Feb-2005 Docket No. 2005-0343-PST-E

PCW

Respondent K & M Michael, Inc. dba Kilgore Food and More

Policy Revision 2 (September 2002)

Case ID No. 24621

PCW Revision December 10, 2004

Reg. Ent. Reference No. RN102959558

Additional ID No(s). Petroleum Storage Tank Facility ID No. 5243

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Sandy VanCleave

Violation Number

Primary Rule Cite(s)

30 Tex. Admin. Code § 334.50(b)(2)(A)(ii), (b)(2)(A)(i)(III), (b)(1)(A), (d)(1)(B)(ii) and (d)(1)(B)(iii)(I)

Secondary Rule Cite(s)

Tex. Water Code § 26.3475(a) and (c)(1)

Violation Description

Failed to monitor piping for releases by means of a piping tightness test or in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring), failed to annually test the line leak detectors, failed to monitor the tanks for releases in a manner at a frequency of at least once every month (not to exceed 35 days between each monitoring) and failed to record the inventory volume measurement each operating day.

Base Penalty

>> Environmental, Property and Human Health Matrix

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

Percent

>> Programmatic Matrix

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

Percent

Matrix Notes

Failure to monitor the piping and tanks for releases at a frequency of at least once per month can result in the exposure of a significant amount of contaminants which may exceed levels that are protective to human health and 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 checked="" type="checkbox"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

Two quarterly events are recommended from the date of the investigation, January 6, 2005, to the settlement termination date, June 27, 2005.

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 K & M Michael, Inc. dba Kilgore Food and More
 Case ID No. 24621
 Reg. Ent. Reference No. RN102959558
 Additional ID No(s). Petroleum Storage Tank Facility ID No. 5243
 Media [Statute] 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
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$1,104	06-Jan-2005	07-Jul-2005	0.5	\$2	\$37	\$39
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to monitor the piping and tanks for releases, conduct testing on the pipes and line leak detector and reconcile inventory records on a monthly basis. Date required is the investigation date and the final date is the date the Respondent executed a contract for vapor monitoring as the method of release detection (cost \$65/month). On March 9, 2005, the piping was tested by means of a line tightness test and a line leak detector test was performed (cost \$324) and the Respondent began reconciling inventory control records in February 2005 (cost included in violation No. 5 for this violation)

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 **\$1,104** TOTAL **\$39**

Screening Date 16-Feb-2005 Docket No. 2005-0343-PST-E

PCW

Respondent K & M Michael, Inc. dba Kilgore Food and More

Policy Revision 2 (September 2002)

Case ID No. 24621

PCW Revision December 10, 2004

Reg. Ent. Reference No. RN102959558

Additional ID No(s). Petroleum Storage Tank Facility ID No. 5243

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Sandy VanCleave

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

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

Matrix Notes

Failure to properly conduct effective inventory control procedures could result in an undetected release of a significant amount of petroleum product that would exceed levels protective of human health or environmental receptors.

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 checked="" type="checkbox"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

One quarterly event is recommended from the date of the investigation, January 6, 2005, to the screening date, February 16, 2005.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

docs\2005-0343-PST-E-Kilgore-gcp-REV.wb3
Economic Benefit Worksheet

Respondent K & M Michael, Inc. dba Kilgore Food and More
Case ID No. 24621
Reg. Ent. Reference No. RN102959558
Additional ID No(s). Petroleum Storage Tank Facility ID No. 5243
Media [Statute] Petroleum Storage Tank
Violation No. 5

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	\$250	06-Jan-2005	28-Feb-2005	0.1	\$2	\$36	\$38
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 investigation date and the final date is the date of compliance.

Approx. Cost of Compliance **\$250**

TOTAL \$38

Compliance History

Customer/Respondent/Owner-Operator: CN602936692 K & M Michael, Inc. Classification: AVERAGE Rating: 3.010

Regulated Entity: RN102959558 KILGORE FOOD AND MORE Classification: AVERAGE
BY DEFAULT Site Rating: 3.01

ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 5243
REGISTRATION

Location: 2512 US HIGHWAY 259 N, KILGORE, TX, 75662 Rating Date: 9/1/04 Repeat Violator: NO

TCEQ Region: REGION 05 - TYLER

Date Compliance History Prepared: April 20, 2005

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: April 20, 2000 to April 20, 2005

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Sandy VanCleave Phone: (512) 239-0667

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? Yes
3. If Yes, who is the current owner? K & M Michael, Inc.
4. If Yes, who was/were the prior owner(s)? CHEAM, KAREN
5. When did the change(s) in ownership occur? 06/17/2004

Components (Multimedia) for the Site :

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

N/A

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

N/A

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

N/A

- F. Environmental audits.

N/A

- G. Type of environmental management systems (EMSs).

N/A

- H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
K & M MICHAEL, INC. DBA
KILGORE FOOD AND MORE;
RN102959558

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2005-0343-PST-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 K & M Michael, Inc. dba Kilgore Food and More (“K & M Michael”) under the authority of TEX. WATER CODE chs. 7 and 26 and 30 TEX. ADMIN. CODE chs. 70 and 334. The Executive Director of the TCEQ, represented by the Litigation Division, and K & M Michael appear before the Commission and together stipulate that:

1. K & M Michael owns and operates a convenience store with retail sales of gasoline located at 2512 Highway 259, Kilgore, Gregg County, Texas (the “Facility”).
2. 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. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and K & M Michael agree that the Commission has jurisdiction to enter this Agreed Order, and that K & M Michael is subject to the Commission’s jurisdiction.
4. K & M Michael received notice of the violations alleged in Section II (“Allegations”) on or about February 5, 2005.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by K & M Michael of any violation alleged in Section II (“Allegations”), nor of any statute or rule.
6. An administrative penalty in the amount of sixteen thousand dollars (\$16,000.00) is assessed by the Commission in settlement of the violations alleged in Section II (“Allegations”). The Financial Assurance Section of the Commission’s Financial Administration Division

reviewed the financial documentation submitted by K & M Michael and determined that K & M Michael is unable to pay part of the administrative penalty. Therefore, twelve thousand two hundred thirty-nine dollars (\$12,239.00) of the penalty is deferred contingent upon K & M Michael's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If K & M Michael fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require K & M Michael to pay all or part of the deferred penalty.

K & M Michael has paid one hundred twenty-one dollars (\$121.00) of the undeferred administrative penalty. The remaining amount of three thousand six hundred forty dollars (\$3,640.00) shall be payable in thirty-five (35) monthly payments of one hundred four dollars (\$104.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If K & M Michael fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the acceleration of any remaining balance constitutes the failure by K & M Michael to timely and satisfactorily comply with all the terms of this Agreed Order and the Executive Director may demand payment of any deferred penalty amount.

7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and K & M Michael have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that K & M Michael has implemented the following corrective measures at the Facility in response to this enforcement action:
 - a. Provided corrosion protection for the UST system on March 7, 2005;
 - b. Permanently tagged or labeled each UST fill tube at the Facility with the number used to identify the tank on the registration and self-certification form filed with the Commission on July 11, 2005;
 - c. Began reconciling inventory control records in February 2005, performed a line tightness test and a line leak detector test on March 9, 2005, and began performing release detection by means of vapor monitoring on July 7, 2005; and

- d. Began conducting effective inventory control procedures for the UST system on February 28, 2007.
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 K & M Michael 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

1. K & M Michael is alleged to have violated:
 - a. 30 TEX. ADMIN. CODE § 334.51(b)(2)(C) and TEX. WATER CODE § 26.3475(c) by failing to install overfill prevention equipment for the underground storage tank ("UST") system as documented on January 6, 2005.
 - b. 30 TEX. ADMIN. CODE § 334.49(a)(4) and TEX. WATER CODE § 26.3475(d) by failing to provide corrosion protection for the UST system as documented on January 6, 2005.
 - c. 30 TEX. ADMIN. CODE § 334.8(c)(5)(C) by failing to permanently tag or label each UST fill tube at the Facility with the number used to identify the tank on the registration and self-certification form filed with the Commission as documented on January 6, 2005.
 - d. 30 TEX. ADMIN. CODE § 334.50(b)(1)(A), 334.50(b)(2)(A)(i)(III), 334.50(b)(2)(A)(ii), 334.50(d)(1)(B)(ii), and 334.50(d)(1)(B)(iii)(I), and TEX. WATER CODE §§ 26.3475(a) and 26.3475(c)(1) by failing to monitor piping for releases by means of a piping tightness test or in a manner at a frequency of at least once every month(not to exceed 35 days between each monitoring), by failing to annually test the line leak detectors, by failing to monitor the tanks for releases in a manner at a frequency of at least once every month (not to exceed 35 days between each monitoring), and by failing to reconcile inventory records on a monthly basis and record the inventory volume measurement each operating day as documented on January 6, 2005.
-

- e. 30 TEX. ADMIN. CODE § 334.48(c) by failing to conduct effective manual or automatic inventory control procedures for the UST system as documented on January 6, 2005.

III. DENIALS

K & M Michael generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that K & M Michael pay an administrative penalty as set forth in Section I, Paragraph 6, above. The payment of this administrative penalty and K & M Michael'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 or 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: K & M Michael, Inc. dba Kilgore Food and More, Docket No. 2005-0343-PST" 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. K & M Michael shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, K & M Michael shall equip the UST system at the facility with spill and overfill prevention equipment, in accordance with 30 TEX. ADMIN. CODE § 334.51(b) relating to Spill and Overfill Equipment.
 - b. Within 45 days after the effective date of this Order, K & M Michael shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals

immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

K & M Michael shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. to:

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

and

Mr. Michael Brashear, Waste Section Manager
Texas Commission on Environmental Quality
Tyler Regional Office
2916 Teague Drive
Tyler, Texas 75701-3756

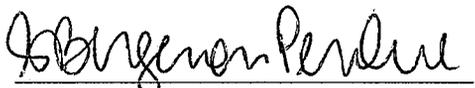
3. The provisions of this Agreed Order shall apply to and be binding upon K & M Michael. K & M Michael is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If K & M Michael fails to comply with any 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, K & M Michael's failure to comply is not a violation of this Agreed Order. K & M Michael shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. K & M Michael shall notify the Executive Director within seven days after K & M Michael 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 K & M Michael shall be made in writing to the Executive Director. Extensions are not effective until K & M Michael 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 K & M Michael 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 K & M Michael, or three days after the date on which the Commission mails notice of the Order to K & M Michael, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

4/29/2008

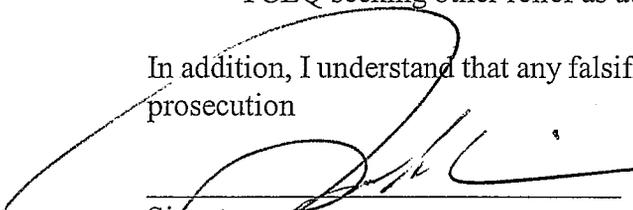
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that 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 K & M Michael, Inc.'s failure to timely pay the penalty amount, may result in:

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

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution



Signature

12-8-2007

Date

MICHAEL SIV

Name (Printed or typed)
Authorized representative of
K & M Michael, Inc. dba Kilgore Food and More

AGENT & OWNER

Title