

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

**DOCKET NO.: 2006-2257-PST-E TCEQ ID: RN102275096 CASE NO.: 32107
RESPONDENT NAME: FPN ENTERPRISES, INC. DBA KUYKENDAHL VALERO**

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: 4740 Spring Cypress Road, Spring, 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: One complaint has been received. There is no record of additional pending enforcement actions regarding this facility. The complaint alleged that there was water in the gasoline.</p> <p>INTERESTED PARTIES: The complainant has not indicated a desire to protest this enforcement action or speak at agenda. 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 May 26, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Mr. Benjamin O. Thompson, Litigation Division, MC 175, (512) 239-1297 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Mr. Wallace Myers, Waste Enforcement Section, MC 128, (512) 239-6580 TCEQ Regional Contact: Ms. Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623 Respondent: Mr. Mohammad Patel, President, FPN Enterprises, Inc. 9337 B Katy Freeway, Suite 109, Houston, Texas 77024-1515 Respondent's Attorney: Not represented by counsel.</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: August 23, 2006</p> <p>Date of Investigation Relating to this Case: October 2, 2006</p> <p>Date of NOE Relating to this Case: December 12, 2006</p> <p>Background Facts: The case was referred to the Litigation Division on April 3, 2007. An EDPRP was filed on May 14, 2007. An agreement was reached on December 13, 2007. The Executive Director received an Agreed Order signed by the Respondent.</p> <p>PST</p> <p>1. Failed to ensure that all USTs are monitored 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 provide proper release detection for the pressurized piping associated with the UST system; failed to have line leak detectors tested at least once per year for performance and operational reliability; and failed to conduct proper inventory control procedures for all USTs at the facility [TEX. ADMIN. CODE § 334.50(b)(1)(A), (b)(2), (b)(2)(A)(i)(III), and (d)(1)(B) and TEX. WATER CODE § 26.3475(a) and (c)(1)].</p> <p>2. Failed to renew a delivery certificate by timely and proper submission of a completed UST Registration and Self-Certification form to the agency at least 30 days before the expiration date of the delivery certificate [30 TEX. ADMIN. CODE § 334.8(c)(5)(B)(ii)].</p> <p>3. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)].</p>	<p>Total Assessed: \$4,400</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Settlement: <input type="checkbox"/> Financial Inability to Pay</p> <p>Total Paid to General Revenue: \$4,400</p> <p>The Respondent has paid the administrative penalty in full.</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>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <ol style="list-style-type: none"> 1. Submitted a completed UST Registration and Self-Certification to the TCEQ. 2. Conducted testing of the line leak detectors for performance and operational reliability. 3. Began conducting inventory control procedures. 4. Implemented a release detection method for the USTs and the piping associated with the USTs.



Penalty Calculation Worksheet (PCW)

TCEQ

DATES	Assigned	19-Dec-2006	Screening	21-Dec-2006	EPA Due	
	PCW	4-Apr-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	FPN Enterprises, Inc. dba Kuykendahl Valero
Reg. Ent. Ref. No.	RN102275096
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	32107	No. of Violations	3
Docket No.	2006-2257-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Philip DeFrancesco
Multi-Media		EC's Team	EnforcementTeam 7
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 10% 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 EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

Total EB Amounts \$1,154 **Approx. Cost of Compliance** \$2,100 **0% Enhancement*** *Subtotal 6*
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 *Final Subtotal*

OTHER FACTORS AS JUSTICE MAY REQUIRE *Adjustment*

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

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty*

DEFERRAL 0% 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 21-Dec-2006

Docket No. 2006-2257-PST-E

PCW

Respondent FPN Enterprises, Inc. dba Kuykendahl Valero

Policy Revision 2 (September 2002)

Case ID No. 32107

PCW Revision November 17, 2006

Reg. Ent. Reference No. RN102275096

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Philip DeFrancesco

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	2	10%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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 (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<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) 10%

>> 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

Enhancement for two prior written NOVs with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 10%

Screening Date 21-Dec-2006

Docket No. 2006-2257-PST-E

PCW

Respondent FPN Enterprises, Inc. dba Kuykendahl Valero

Policy Revision 2 (September 2002)

Case ID No. 32107

PCW Revision November 17, 2006

Reg. Ent. Reference No. RN102275096

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Philip DeFrancesco

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A), (b)(2), (b)(2)(A)(i)(III), and (d)(1)(B), and Tex. Water Code 26.3475(a) and (c)(1)

Violation Description

Failed to ensure that all USTs are monitored 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). Specifically, the automatic tank gauge was not put into test mode at least once per month. Failed to provide proper release detection for the pressurized piping associated with the UST system. Specifically, the annual piping tightness tests had not been conducted. Failed to have line leak detectors tested at least once per year for performance and operational reliability. Specifically, the line leak detectors had not been performance tested annually. Failed to conduct proper inventory control procedures for all USTs at the facility.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 81 Number of violation days

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

Violation Base Penalty \$2,500

One quarterly event is recommended based on documentation of the violation during the October 2, 2006 investigation date to the December 21, 2006 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,145

Violation Final Penalty Total \$2,750

This violation Final Assessed Penalty (adjusted for limits) \$2,750

Economic Benefit Worksheet

Respondent: FPN Enterprises, Inc. dba Kuykendahl Valero
Case ID No.: 32107
Reg. Ent. Reference No.: RN102275096
Media: Petroleum Storage Tank
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$1,000	2-Oct-2006	27-Sep-2007	1.0	\$49	n/a	\$49

Notes for DELAYED costs

Estimated cost to provide release detection for the USTs and to conduct inventory control procedures. The 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)	\$1,000	2-Oct-2005	2-Oct-2006	1.9	\$96	\$1,000	\$1,096

Notes for AVOIDED costs

Estimated cost of conducting annual line leak detector and piping tightness tests. The date required is one year prior to the investigation date and the final date is the investigation date.

Approx. Cost of Compliance

\$2,000

TOTAL:

\$1,145

Screening Date 21-Dec-2006

Docket No. 2006-2257-PST-E

PCW

Respondent FPN Enterprises, Inc. dba Kuykendahl Valero

Policy Revision 2 (September 2002)

Case ID No. 32107

PCW Revision November 17, 2006

Reg. Ent. Reference No. RN102275096

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Philip DeFrancesco

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(B)(ii)

Violation Description

Failed to renew a delivery certificate by timely and proper submission of a completed UST registration and self-certification form to the agency at least 30 days before the expiration date of the delivery certificate. Specifically, the delivery certificate expired on February 28, 2006.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
	x			10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 296

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

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the October 2, 2006 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$8

Violation Final Penalty Total \$1,100

This violation Final Assessed Penalty (adjusted for limits) \$1,100

Economic Benefit Worksheet

Respondent: FPN Enterprises, Inc. dba Kuykendahl Valero

Case ID No.: 32107

Reg. Ent. Reference No.: RN102275096

Media: Petroleum Storage Tank

Violation No.: 2

Percent Interest	Years of Depreciation
5.0	15

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

No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$100	29-Jan-2006	27-Sep-2007	1.7	\$8	n/a	\$8

Notes for DELAYED costs

Estimated cost to renew a delivery certificate by submitting a properly completed UST registration and self-certification form. The date required is 30 days before the expiration date of the delivery certificate. 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

\$100

TOTAL

\$8

Screening Date 21-Dec-2006

Docket No. 2006-2257-PST-E

PCW

Respondent FPN Enterprises, Inc. dba Kuykendahl Valero

Policy Revision 2 (September 2002)

Case ID No. 32107

PCW Revision November 17, 2006

Reg. Ent. Reference No. RN102275096

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Philip DeFrancesco

Violation Number 3

Rule/Cite(s)

30 Tex. Admin. Code § 334.8(c)(5)(A)(i) and Tex. Water Code § 26.3467(a)

Violation Description

Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, one fuel delivery was accepted without a valid delivery certificate.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			x

Percent 5%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$500

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$550

This violation Final Assessed Penalty (adjusted for limits) \$550

Economic Benefit Worksheet

Respondent FPN Enterprises, Inc. dba Kuykendahl Valero

Case ID No. 32107

Reg. Ent. Reference No. RN102275096

Media Petroleum Storage Tank

Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

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

Notes for DELAYED costs

Economic benefit included in Violation No. 2.

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

\$0

TOTAL

\$0

Compliance History

Customer/Respondent/Owner-Operator:	CN602935298 F P N Enterprises, Inc.	Classification: AVERAGE	Rating: 4.00
Regulated Entity:	RN102275096 KUYKENDAHL VALERO	Classification: AVERAGE	Site Rating: 4.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	72815
Location:	4740 SPRING CYPRESS RD, SPRING, TX, 77379	Rating Date: September 01 06	Repeat Violator: NO
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	December 20, 2006		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	December 20, 2001 to December 20, 2006		

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

Name: Philip DeFrancesco Phone: (817) 588-5933

Site Compliance History Components

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

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
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.)
- | | | |
|---|------------|----------|
| 1 | 11/29/2006 | (515394) |
| 2 | 11/16/2005 | (435337) |
| 3 | 12/30/2005 | (449909) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | |
|------------------|--|--------------------------|
| Date: 11/16/2005 | (435337) | |
| Self Report? NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.246(7)(A) | |
| Description: | 30 Tex. Admin. Code Section 115.246 (7)(A) - Failure to maintain records on-site at facilities ordinarily manned during business hours, and made immediately available for review upon request by authorized representatives of the Texas Natural Resource Conservation Commission (TNRCC), the U.S. Environmental Protection Ag | |
| Self Report? NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(A)(ii) | |
| Description: | 30 TAC Chapter 334.8(c)(5)(A)(ii)-Failure to ensure that a valid, current TCEQ delivery certificate (or TCEQ temporary delivery authorization) is posted at the facility. The posting must be in a location where the document is clearly visible at all times. | |
| Date: 12/30/2005 | (449909) | |
| Self Report? NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.246(7)(A) | |
| Description: | 30 Tex. Admin. Code Section 115.246 (7)(A) - Failure to maintain records on-site at facilities ordinarily manned during business hours, and made immediately available for review upon request by authorized representatives of the Texas Natural Resource Conservation Commission (TNRCC), the U.S. Environmental | |

Protection Ag

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(A)(ii)

Description: 30 TAC Chapter 334.8(c)(5)(A)(ii)-Failure to ensure that a valid, current TCEQ delivery certificate (or TCEQ temporary delivery authorization) is posted at the facility. The posting must be in a location where the document is clearly visible at all times.

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
FPN ENTERPRISES, INC. DBA
KUYKENDAHL VALERO,
RN102275096

§
§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2006-2257-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 FPN Enterprises, Inc. dba Kuykendahl Valero ("FPN") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and FPN, appear before the Commission and together stipulate that:

1. FPN owns and operates a convenience store with retail sales of gasoline located at 4740 Spring Cypress Road, Spring, Harris 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 FPN agree that the Commission has jurisdiction to enter this Agreed Order, and that FPN is subject to the Commission's jurisdiction.
4. FPN received notice of the violations alleged in Section II ("Allegations") on or about December 17, 2006.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by FPN of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of four thousand four hundred dollars (\$4,400.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). FPN has paid four thousand four hundred dollars (\$4,400.00) of the administrative penalty.
7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and FPN 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 FPN has implemented the following corrective measures at the Facility in response to this enforcement action:
 - a. On October 31, 2006, FPN submitted a completed UST registration and self-certification to the TCEQ;
 - b. On November 27, 2006, FPN conducted testing of the line leak detectors for performance and operational reliability;
 - c. On March 1, 2007, FPN began conducting inventory control procedures in accordance with 30 Tex. Admin. Code § 334.50; and
 - d. On March 5, 2007, FPN implemented a release detection method for the USTs and the piping associated with the USTs.
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 FPN 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

FPN is alleged to have violated:

1. 30 TEX. ADMIN. CODE § 334.50(b)(1)(A), (b)(2), (b)(2)(A)(i)(III), and (d)(1)(B) and TEX. WATER CODE § 26.3475(a) and (c)(1), by failing to ensure that all USTs are monitored 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; failing to provide proper release detection for the pressurized piping associated with the UST system; failing to have line leak detectors tested at least once per year for performance and operational reliability; and failing to conduct proper inventory control procedures for all USTs at the facility, as documented during an investigation conducted on October 2, 2006.
2. 30 TEX. ADMIN. CODE § 334.8(c)(5)(B)(ii) by failing to renew a delivery certificate by timely and proper submission of a completed UST registration and self-certification form to the agency at least 30 days before the expiration date of the delivery certificate, as documented during an inspection on October 2, 2006. Specifically, the delivery certificate expired on February 28, 2006.
3. 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a) by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs, as documented during an inspection on October 2, 2006. Specifically, one fuel delivery was accepted without a valid delivery certificate.

III. DENIALS

FPN generally denies each allegation in Section II ("Allegations").

IV. ORDER

1. It is, therefore, ordered by the TCEQ that FPN pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and FPN'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: FPN Enterprises, Inc. dba Kuykendahl Valero, Docket No. 2006-2257-PST-E" to:

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

2. The provisions of this Agreed Order shall apply to and be binding upon FPN. FPN 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.
3. This Agreed Order, issued by the Commission, shall not be admissible against FPN 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.
4. 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.
5. 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 FPN, or three days after the date on which the Commission mails notice of the Order to FPN, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

FPN Enterprises, Inc. dba Kuykendahl Valero
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

7/14/08

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 my failure to timely pay the penalty amount, may result in:

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

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

Signature

MOHAMMAD PATEL

Name (Printed or typed)

Authorized representative of

FPN Enterprises, Inc. dba Kuykendahl Valero

Date

7/14/08

Title

President