

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1302-PST-E **TCEQ ID:** RN102372299 **CASE NO.:** 36365

RESPONDENT NAME: PostOak Retailer's Inc. dba Welcome Food Mart

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: Welcome Food Mart, 15902 South Post Oak Road, Houston, 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: A complaint was received April 21, 2008, alleging that the Respondent did not have an up-to-date petroleum storage tank ("PST") registration. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on January 5, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Thomas Greimel, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-5690; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Naresh Chaudhary, President, PostOak Retailer's Inc., 14806 Pool Forge Court, Sugar Land, Texas 77478 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

TEXAS
 COMMISSION
 ON ENVIRONMENTAL
 QUALITY
 2008 DEC 30 AM 9:04
 CHIEF CLERKS OFFICE

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: April 21, 2008</p> <p>Date of Investigation Relating to this Case: May 5, 2008</p> <p>Date of NOV/NOE Relating to this Case: July 15, 2008 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>WASTE</p> <p>1) Failure to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not updated to reflect ownership change on January 10, 2008 [30 TEX. ADMIN. CODE § 334.7(d)(3)].</p> <p>2) Failure to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self certification within 30 days of the ownership change [30 TEX. ADMIN. CODE § 334.8(c)(4)(C) and (c)(5)(B)(ii)].</p> <p>3) Failure to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].</p> <p>4) Failure to make available to the 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 delivery certificate [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)].</p>	<p>Total Assessed: \$7,740</p> <p>Total Deferred: \$1,548 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$6,192</p> <p>Site Compliance History Classification <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input 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> <p>a. Submitted a properly completed UST registration and self-certification form and obtained a TCEQ delivery certificate on May 7, 2008; and</p> <p>b. Demonstrated acceptable financial assurance for the USTs on May 7, 2008.</p> <p>Additional ID No(s): 35405</p>

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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

DATES	Assigned	21-Jul-2008	Screening	1-Aug-2008	EPA Due	
	PCW	7-Aug-2008				

RESPONDENT/FACILITY INFORMATION			
Respondent	PostOak Retailer's Inc. dba Welcome Food Mart		
Reg. Ent. Ref. No.	RN102372299		
Facility/Site Region	12-Houston	Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	36365	No. of Violations	3
Docket No.	2008-1302-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Thomas Greimel
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	<i>Subtotal 1</i>	\$8,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0.0% Enhancement	<i>Subtotals 2, 3, & 7</i>	\$0
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Notes: No adjustment due to compliance history.

Culpability	No	0.0% Enhancement	<i>Subtotal 4</i>	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	<i>Subtotal 5</i>	\$2,125
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Economic Benefit	0.0% Enhancement*	<i>Subtotal 6</i>	\$0
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Total EB Amounts: \$1,366
 Approx. Cost of Compliance: \$1,400
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	<i>Final Subtotal</i>	\$6,375
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OTHER FACTORS AS JUSTICE MAY REQUIRE	16.9%	<i>Adjustment</i>	\$1,365
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with Violation No. 2.

Final Penalty Amount	\$7,740
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STATUTORY LIMIT ADJUSTMENT	<i>Final Assessed Penalty</i>	\$7,740
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DEFERRAL	20.0% Reduction	<i>Adjustment</i>	-\$1,548
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY	\$6,192
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Screening Date 1-Aug-2008

Docket No. 2008-1302-PST-E

PCW

Respondent PostOak Retailer's Inc. dba Welcome Food Mart

Policy Revision 2 (September 2002)

Case ID No. 36365

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN102372299

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

Compliance History Worksheet

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

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

Please Enter Yes or No

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

Adjustment Percentage (Subtotal 2)

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

Adjustment Percentage (Subtotal 3)

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

Adjustment Percentage (Subtotal 7)

>> **Compliance History Summary**

Compliance History Notes

No adjustment due to compliance history.

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

Screening Date 1-Aug-2008 **Docket No.** 2008-1302-PST-E **PCW**
Respondent PostOak Retailer's Inc. dba Welcome Food Mart *Policy Revision 2 (September 2002)*
Case ID No. 36365 *PCW Revision June 12, 2008*
Reg. Ent. Reference No. RN102372299
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Thomas Greimel

Violation Number
Rule Cite(s)
Violation Description
Base Penalty

>> Environmental, Property and Human Health Matrix
OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

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

Matrix Notes
Adjustment

Violation Base Penalty

Violation Events
 Number of Violation Events Number of violation days

mark only one with an 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

Good Faith Efforts to Comply Reduction
 Before NOV NOV to EDPRP/Settlement Offer

Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input checked="" type="checkbox"/>	<input type="text"/>
N/A	<input type="text"/>	(mark with x)

Notes
Violation Subtotal

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 PostOak Retailer's Inc. dba Welcome Food Mart
Case ID No. 36365
Reg. Ent. Reference No. RN102372299
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				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	9-Feb-2008	7-May-2008	0.24	\$1	n/a	\$1

Notes for DELAYED costs

Estimated cost to update the UST registration. Date Required is the 30 days after the ownership change. Final Date is the date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$1

Screening Date 1-Aug-2008 **Docket No.** 2008-1302-PST-E **PCW**
Respondent PostOak Retailer's Inc. dba Welcome Food Mart *Policy Revision 2 (September 2002)*
Case ID No. 36365 *PCW Revision June 12, 2008*

Reg. Ent. Reference No. RN102372299
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Thomas Greimel

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text" value="25%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events **Number of violation days**

mark only one with an 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

Good Faith Efforts to Comply

Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input checked="" type="checkbox"/>	<input type="text"/>
N/A	<input type="text" value="(mark with x)"/>	

Notes

Violation Subtotal

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 PostOak Retailer's Inc. dba Welcome Food Mart
Case ID No. 36365
Reg. Ent. Reference No. RN102372299
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				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]	\$1,300	10-Jan-2008	7-May-2008	1.00	\$65	\$1,300	\$1,365
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to provide financial assurance for the two petroleum USTs. The Date Required is the date the Respondent purchased the Facility. The Final date is the date of compliance.

Approx. Cost of Compliance

\$1,300

TOTAL

\$1,365

Screening Date 1-Aug-2008	Docket No. 2008-1302-PST-E	PCW
Respondent PostOak Retailer's Inc. dba Welcome Food Mart		<i>Policy Revision 2 (September 2002)</i>
Case ID No. 36365		<i>PCW Revision June 12, 2008</i>
Reg. Ent. Reference No. RN102372299		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Thomas Greimel		
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 the 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 delivery certificate.	
	Base Penalty	\$10,000
>> Environmental, Property and Human Health Matrix		
OR	Harm	
	Major Moderate Minor	
Release	Actual	
	Potential	X
	Percent	10%
>> Programmatic Matrix		
	Falsification Major Moderate Minor	
		Percent 0%
Matrix Notes	Human health or the environment 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	\$9,000
		\$1,000
Violation Events		
	Number of Violation Events	1
		1
	Number of violation days	
<i>mark only one with an x</i>	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	X
	Violation Base Penalty	\$1,000
	One single event is recommended for accepting one delivery of fuel.	
Good Faith Efforts to Comply		
	25.0% Reduction	\$250
	Before NOV NOV to EDPRP/Settlement Offer	
Extraordinary		
Ordinary	X	
N/A		(mark with x)
Notes	The Respondent came into compliance on May 7, 2008.	
	Violation Subtotal	\$750
Economic Benefit (EB) for this violation		
Statutory Limit Test		
Estimated EB Amount	\$0	Violation Final Penalty Total \$877
		This violation Final Assessed Penalty (adjusted for limits) \$877

Economic Benefit Worksheet

Respondent PostOak Retailer's Inc. dba Welcome Food Mart
Case ID No. 36365
Reg. Ent. Reference No. RN102372299
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				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Economic benefit included in violation number 1.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

TOTAL

\$0

Compliance History

Customer/Respondent/Owner-Operator: CN603363458 PostOak Retailer's Inc. Classification: Rating:
Regulated Entity: RN102372299 WELCOME FOOD MART Classification: High Site Rating: 0.0
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 35405
REGISTRATION
Location: 15902 S POST OAK RD, HOUSTON, TX, 77053 Rating Date: 9/1/2007 Repeat Violator: NO
TCEQ Region: REGION 12 - HOUSTON
Date Compliance History Prepared: August 10, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: August 10, 2003 to August 10, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Thomas Greimel Phone: (512) 239-5690

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? PostOak Retailer's Inc.
4. If Yes, who was/were the prior owner(s)? Diamond Shamrock Refining
5. When did the change(s) in ownership occur? 1/10/2008

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 04/12/2004 (266469)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
POSTOAK RETAILER'S INC. DBA
WELCOME FOOD MART
RN102372299

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2008-1302-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding PostOak Retailer's Inc. dba Welcome Food Mart ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a convenience store with retail sales of gasoline at 15902 South Post Oak Road in Houston, Harris County, Texas (the "Facility").
2. The Respondent's two underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about July 20, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Seven Thousand Seven Hundred Forty Dollars (\$7,740) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). The Respondent has paid Six Thousand One Hundred Ninety-Two Dollars (\$6,192) of the administrative penalty and One Thousand Five Hundred Forty-Eight Dollars (\$1,548) is deferred contingent upon the Respondent'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 the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred 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 the Respondent 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 the Respondent has implemented the following corrective measures at the Facility:
 - a. Submitted a properly completed UST registration and self-certification form and obtained a TCEQ delivery certificate on May 7, 2008; and
 - b. Demonstrated acceptable financial assurance for the USTs on May 7, 2008.
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 the Respondent 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

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3), as documented during an investigation conducted on May 5, 2008. Specifically, the registration was not updated to reflect ownership change on January 10, 2008.
2. Failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self certification within 30 days of the ownership change, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(4)(C) and (c)(5)(B)(ii), as documented during an investigation conducted on May 5, 2008.

3. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b), as documented during an investigation conducted on May 5, 2008.
4. Failed to make available to the common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a), as documented during an investigation conducted on May 5, 2008. Specifically, one fuel delivery was accepted without a delivery certificate.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent'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 requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: PostOak Retailer's Inc. dba Welcome Food Mart, Docket No. 2008-1302-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 the Respondent. The Respondent 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 the Respondent 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), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, 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

John Srdinar

For the Executive Director

12/15/2008
~~10-24-2008~~ *JS*

Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity 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 failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

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

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

N. Chaudhary

Signature

10.24.2008

Date

NARESH CHAUDHARY

Name (Printed or typed)
Authorized Representative of
PostOak Retailer's Inc. dba Welcome Food Mart

PRESIDENT

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.