

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2009-0798-PST-E **TCEQ ID:** RN102477445 **CASE NO.:** 37706

**RESPONDENT NAME:** LCG Enterprise, Inc. dba 3-Amigos Food Mart

<b>ORDER TYPE:</b>		
<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	
<b>CASE TYPE:</b>		
<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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 3-Amigos Food Mart, 3704 Decatur Avenue, Fort Worth, Tarrant County</p> <p><b>TYPE OF OPERATION:</b> Convenience store with retail sales of gasoline</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on September 28, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. Keith Frank, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-1203; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387  <b>Respondent:</b> Mr. Chong Lee, Owner, 3-Amigos Food Mart, 2639 Walnut Hill Lane, Suite 225, Dallas, Texas 75229  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> March 25, 2009</p> <p><b>Date of NOV/NOE Relating to this Case:</b> May 19, 2009 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>WASTE</b></p> <p>1) Failure to verify proper operation of the Stage II equipment at least once every 12 months. Specifically, annual testing of the Stage II equipment was not conducted [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p> <p>2) Failure to ensure that each current employee receives in-house Stage II vapor recovery system training regarding the purpose and correct operation of the Stage II equipment [30 TEX. ADMIN. CODE § 115.248(1) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p>	<p><b>Total Assessed:</b> \$3,794</p> <p><b>Total Deferred:</b> \$758  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid (Due) to General Revenue:</b> \$156 (remaining \$2,880 due in 28 monthly payments of \$100 each and one payment of \$80)</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Station:</p> <p>a. Successfully conducted the required annual testing of the Stage II vapor recovery system on April 15, 2009; and</p> <p>b. Completed the required in-house Stage II awareness training for each current employee on April 1, 2009.</p>

Additional ID No(s): 0



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

<b>DATES</b>	Assigned PCW	26-May-2009	Screening	29-May-2009	EPA Due	
		1-Jun-2009				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	LCG Enterprise, Inc. dba 3-Amigos Food Mart		
Reg. Ent. Ref. No.	RN102477445		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	37706	No. of Violations	2
Docket No.	2009-0798-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Keith Frank
		EC's Team	Enforcement Team 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**  *Subtotals 2, 3, & 7*

Notes

**Culpability**   *Subtotal 4*

Notes

**Good Faith Effort to Comply Total Adjustments** *Subtotal 5*

**Economic Benefit**  *Subtotal 6*

Total EB Amounts   
Approx. Cost of Compliance  \*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.

Notes

*Final Penalty Amount*

**STATUTORY LIMIT ADJUSTMENT** *Final Assessed Penalty*

**DEFERRAL**  Reduction *Adjustment*

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

Notes

**PAYABLE PENALTY**

Screening Date 29-May-2009

Docket No. 2009-0798-PST-E

PCW

Respondent LCG Enterprise, Inc. dba 3-Amigos Food Mart

Policy Revision 2 (September 2002)

Case ID No. 37706

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102477445

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Keith Frank

### 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)	0	0%
	Other written NOVs	1	2%
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 judgments 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)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV without same or similar violations.

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

<b>Screening Date</b> 29-May-2009	<b>Docket No.</b> 2009-0798-PST-E	<b>PCW</b>		
<b>Respondent</b> LCG Enterprise, Inc. dba 3-Amigos Food Mart	<small>Policy Revision 2 (September 2002)</small>			
<b>Case ID No.</b> 37706	<small>PCW Revision October 30, 2008</small>			
<b>Reg. Ent. Reference No.</b> RN102477445				
<b>Media [Statute]</b> Petroleum Storage Tank				
<b>Enf. Coordinator</b> Keith Frank				
<b>Violation Number</b> <input type="text" value="1"/>				
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 116.245(2) and Tex. Health &amp; Safety Code § 382.085(b)"/>			
<b>Violation Description</b>	<input type="text" value="Failed to verify proper operation of the Stage II equipment at least once every 12 months. Specifically, annual testing of the Stage II equipment was not conducted."/>			
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>		
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
<b>OR</b>	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<b>Percent</b>	<input type="text" value="25%"/>	
<b>&gt;&gt; Programmatic Matrix</b>				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
		<b>Percent</b>	<input type="text" value="0%"/>	
<b>Matrix Notes</b>	<input type="text" value="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."/>			
		<b>Adjustment</b>	<input type="text" value="\$7,500"/>	
		<input type="text" value="\$2,500"/>		
<b>Violation Events</b>				
<b>Number of Violation Events</b>	<input type="text" value="1"/>	<input type="text" value="365"/>	<b>Number of violation days</b>	
<small>mark only one with an x</small>	daily	<input type="text"/>		
	weekly	<input type="text"/>		
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input checked="" type="checkbox"/>		
	single event	<input type="text"/>		
		<b>Violation Base Penalty</b>	<input type="text" value="\$2,500"/>	
<input type="text" value="One annual event is recommended for the 12-month period preceding the March 25, 2009 investigation."/>				
<b>Good Faith Efforts to Comply</b>				
		<input type="text" value="25.0%"/> Reduction	<input type="text" value="\$625"/>	
		<small>Before NOV NOV to EDRP/Settlement Offer</small>		
Extraordinary	<input type="text"/>	<input type="text"/>		
Ordinary	<input checked="" type="checkbox"/>	<input type="text"/>		
N/A	<small>(mark with x)</small>			
<b>Notes</b>	<input type="text" value="The Respondent came into compliance on April 15, 2009."/>			
		<b>Violation Subtotal</b>	<input type="text" value="\$1,875"/>	
<b>Economic Benefit (EB) for this violation</b>			<b>Statutory Limit Test</b>	
<b>Estimated EB Amount</b>		<input type="text" value="\$1,099"/>	<b>Violation Final Penalty Total</b>	
			<input type="text" value="\$2,710"/>	
<b>This violation Final Assessed Penalty (adjusted for limits)</b>			<input type="text" value="\$2,710"/>	

## Economic Benefit Worksheet

**Respondent** LCG Enterprise, Inc. dba 3-Amigos Food Mart  
**Case ID No.** 37706  
**Reg. Ent. Reference No.** RN102477445  
**Media** Petroleum Storage Tank  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
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

**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]	\$1,000	25-Mar-2008	15-Apr-2009	1.98	\$99	\$1,000	\$1,099
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost for annual testing to verify proper operation of the Stage II equipment. Date Required is one year prior to the Investigation date. Final Date is the compliance date.

Approx. Cost of Compliance

\$1,000

**TOTAL**

\$1,099

<b>Screening Date</b> 29-May-2009	<b>Docket No.</b> 2009-0798-PST-E	<b>PCW</b>									
<b>Respondent</b> LCG Enterprise, Inc. dba 3-Amigos Food Mart	<small>Policy Revision 2 (September 2002)</small>										
<b>Case ID No.</b> 37706	<small>PCW Revision October 30, 2008</small>										
<b>Reg. Ent. Reference No.</b> RN102477445											
<b>Media [Statute]</b> Petroleum Storage Tank											
<b>Enf. Coordinator</b> Keith Frank											
<b>Violation Number</b> <input type="text" value="2"/>											
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 115.248(1) and Tex. Health &amp; Safety Code § 362.085(b)"/>										
<b>Violation Description</b>	<input type="text" value="Failed to ensure that each current employee receives in-house Stage II vapor recovery system training regarding the purpose and correct operation of the Stage II equipment."/>										
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>									
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>											
<b>Harm</b>											
	Major	Moderate	Minor								
<b>OR</b>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">Actual</td> <td style="width:33%;"><input type="text"/></td> <td style="width:33%;"><input type="text"/></td> <td style="width:33%;"><input type="text"/></td> </tr> <tr> <td style="text-align: center;">Potential</td> <td><input type="text"/></td> <td style="text-align: center;">x</td> <td><input type="text"/></td> </tr> </table>			Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Potential	<input type="text"/>	x	<input type="text"/>
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>								
Potential	<input type="text"/>	x	<input type="text"/>								
		<b>Percent</b>	<input type="text" value="10%"/>								
<b>&gt;&gt; Programmatic Matrix</b>											
	Major	Moderate	Minor								
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">Falsification</td> <td style="width:33%;"><input type="text"/></td> <td style="width:33%;"><input type="text"/></td> <td style="width:33%;"><input type="text"/></td> </tr> </table>				Falsification	<input type="text"/>	<input type="text"/>	<input type="text"/>				
Falsification	<input type="text"/>	<input type="text"/>	<input type="text"/>								
		<b>Percent</b>	<input type="text" value="0%"/>								
<b>Matrix Notes</b>	<input type="text" value="Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation."/>										
		<b>Adjustment</b>	<input type="text" value="\$9,000"/>								
		<input type="text" value="\$1,000"/>									
<b>Violation Events</b>											
Number of Violation Events <input type="text" value="1"/>		Number of violation days <input type="text" value="1"/>									
<small>mark only one with an x</small>	daily	<input type="text"/>	<b>Violation Base Penalty</b> <input type="text" value="\$1,000"/>								
	weekly	<input type="text"/>									
	monthly	<input type="text"/>									
	quarterly	x									
	semiannual	<input type="text"/>									
	annual	<input type="text"/>									
	single event	<input type="text"/>									
<input type="text" value="One quarterly event is recommended based on documentation of the violation during the March 25, 2009 investigation to the April 1, 2009 compliance date."/>											
<b>Good Faith Efforts to Comply</b>		<b>25.0% Reduction</b>	<input type="text" value="\$250"/>								
		<small>Before NOV    NOV to EDRP/Settlement Offer</small>									
Extraordinary	<input type="text"/>	<input type="text"/>									
Ordinary	x	<input type="text"/>									
N/A	<input type="text"/>	<small>(mark with x)</small>									
<b>Notes</b>	<input type="text" value="The Respondent came into compliance on April 1, 2009."/>										
		<b>Violation Subtotal</b>	<input type="text" value="\$750"/>								
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>									
<b>Estimated EB Amount</b>	<input type="text" value="\$0"/>	<b>Violation Final Penalty Total</b>	<input type="text" value="\$1,084"/>								
		<b>This violation Final Assessed Penalty (adjusted for limits)</b>	<input type="text" value="\$1,084"/>								

## Economic Benefit Worksheet

**Respondent** LCG Enterprise, Inc. dba 3-Amigos Food Mart  
**Case ID No.** 37706  
**Reg. Ent. Reference No.** RN102477445  
**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
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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	\$500	25-Mar-2009	1-Apr-2009	0.02	\$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

Estimated cost of training a Stage II Station representative and In-house employee Stage II training. Date Required is the Investigation date. Final Date is the compliance date.

**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

\$500

**TOTAL**

\$0

# Compliance History Report

Customer/Respondent/Owner-Operator:	CN603479007    LCG Enterprise, Inc.	Classification:	Rating:
Regulated Entity:	RN102477445    3-AMIGOS FOOD MART	Classification: AVERAGE	Site Rating: 2.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION 63159		
Location:	3704 DECATUR AVE, FORT WORTH, TX, 76106		
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	June 01, 2009		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	June 01, 2004 to June 01, 2009		

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

Name: Keith Frank Phone: (512) 239-1203

## 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/operator of the site during the compliance period? Yes
3. If Yes, who is the current owner/operator? LCG Enterprise, Inc.
4. If Yes, who was/were the prior owner(s)/operator(s) ? Arles Associates, Inc.
5. When did the change(s) in owner or operator occur? 3-Jul-08
6. Rating Date: 9/1/2008 Repeat Violator: NO

### 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 | 03/11/2005 | (349828) |
| 2 | 05/19/2009 | (740105) |
| 3 | 05/26/2009 | (742638) |

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

Date: 03/11/2005 (349828) CN601275357

Self Report?	NO	Classification:	Moderate
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Citation: 30 TAC Chapter 115, SubChapter C 115.222(1)

Description: 30 TAC 115.222.1 - Failure to ensure the storage container is equipped with a submerged fill pipe as defined in 101.1 of this title (relating to definitions), specifically General Air Quality Rule #94.

Self Report?	NO	Classification:	Moderate
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Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(A)

Description: 30 TAC 115.242(3)(A) - Failure to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness

of the system including but not limited to the absence or disconnection of any component that is part of the approved system.

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  
LCG ENTERPRISE, INC. DBA  
3-AMIGOS FOOD MART  
RN102477445

§  
§  
§  
§  
§  
§

BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

**AGREED ORDER**  
**DOCKET NO. 2009-0798-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 LCG Enterprise, Inc. dba 3-Amigos Food Mart ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. 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 3704 Decatur Avenue in Fort Worth, Tarrant County, Texas (the "Station").
2. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
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 May 24, 2009.
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 Three Thousand Seven Hundred Ninety-Four Dollars (\$3,794) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). The Respondent has paid One Hundred Fifty-Six Dollars (\$156) of the administrative penalty and Seven Hundred Fifty-Eight Dollars (\$758) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Two Thousand Eight Hundred Eighty Dollars (\$2,880) of the administrative penalty shall be payable in 28 monthly payments of One Hundred Dollars (\$100) each and one final payment of Eighty Dollars (\$80). The next 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 the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's 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 failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

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 Station:
  - a. Successfully conducted the required annual testing of the Stage II vapor recovery system on April 15, 2009; and
  - b. Completed the required in-house Stage II awareness training for each current employee on April 1, 2009.
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 Station, the Respondent is alleged to have:

1. Failed to verify proper operation of the Stage II equipment at least once every 12 months, in violation of 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on March 25, 2009. Specifically, annual testing of the Stage II equipment was not conducted.
2. Failed to ensure that each current employee receives in-house Stage II vapor recovery system training regarding the purpose and correct operation of the Stage II equipment, in violation of 30 TEX. ADMIN. CODE § 115.248(1) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on March 25, 2009.

## 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: LCG Enterprise, Inc. dba 3-Amigos Food Mart, Docket No. 2009-0798-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

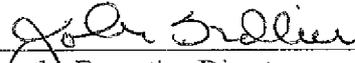
2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Station operations referenced in this Agreed Order.
3. If the Respondent fails to comply with any 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, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

4. 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 the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. 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.
6. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
7. 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

  
For the Executive Director

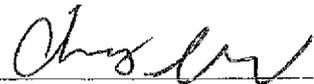
9/18/09  
Date

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.

  
Signature

7-15-09  
Date

CHERYL LEE  
Name (Printed or typed)  
Authorized Representative of  
LCG Enterprise, Inc. dba 3-Amigos Food Mart

owner  
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.

