

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2008-1327-PST-E TCEQ ID: RN102791191 CASE NO.: 36411**

**RESPONDENT NAME: TCS #1 MANAGEMENT COMPANY, L.L.C. DBA TEXAS COUNTRY STORE 1**

<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

**SITE WHERE VIOLATION(S) OCCURRED:** 3701 North 16<sup>th</sup> Street, Orange, Orange County

**TYPE OF OPERATION:** Convenience store with retail sales of gasoline

**SMALL BUSINESS:**  Yes  No

**OTHER SIGNIFICANT MATTERS:** There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** No one other than the ED and the Respondent expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired August 24, 2009. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Mr. Phillip M. Goodwin, P.G., Litigation Division, MC 175, (512) 239-0675  
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

**TCEQ Enforcement Coordinator:** Mr. Rajesh Acharya, Waste Enforcement Section, MC 128, (512) 239-0577

**TCEQ Regional Contact:** Mr. Derek Eades, Beaumont Regional Office, MC R-10, (409) 898-3838

**Respondent:** Mr. Shujat Swati, c/o Mr. Brian McGee, TCS #1 Management Co., L.L.P., 8146 9th Avenue, Port Arthur, Texas 77642

**Respondent's Attorney:** Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> June 12, 2008</p> <p><b>Date of NOE Relating to this Case:</b> August 6, 2008</p> <p><b>Background Facts:</b> This case was referred to the Litigation Division on December 18, 2008. The agreed order was signed on June 12, 2009.</p> <p><b>Current Compliance Status:</b> Not yet in compliance.</p> <p><b>PST:</b> Failed to conduct initial abatement measures and site check of contaminated soil in the excavated zone resulting from a prior confirmed release. [30 TEX. ADMIN. CODE §§ 334.74(2)(A) and 334.77(a)(3) and (a)(4)].</p>	<p><b>Total Assessed:</b> \$7,650</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid to General Revenue:</b> \$7,650</p> <p>The Respondent paid the administrative penalty in full.</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 checked="" 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>Ordering Provisions:</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. Within 30 days, mitigate explosive hazards, conduct site check, initial abatement activities, and implement appropriate corrective measures by performing a soil vapor survey, the results of which shall be submitted to the TCEQ. Any abatement and/or remediation measures required by the TCEQ following review of the results shall also be performed.</li> <li>2. Within 45 days, submit written certification demonstrating compliance.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

**TCEQ**

<b>DATES</b>	Assigned	11-Aug-2008			
	PCW	17-Dec-2008	Screening	14-Aug-2008	EPA Due

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	TCS #1 MANAGEMENT COMPANY, L.L.C. dba Texas Country Store 1
Reg. Ent. Ref. No.	RN102791191
Facility/Site Region	10-Beaumont
Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	36411	No. of Violations	1
Docket No.	2008-1327-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Rajesh Acharya
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$7,500</b>
<b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>		
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>		
<b>Compliance History</b>	2.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b> \$150
Notes	Enhancement due to one NOV without same or similar violation.	
<b>Culpability</b>	No 0.0% Enhancement	<b>Subtotal 4</b> \$0
Notes	The Respondent does not meet the culpability criteria.	
<b>Good Faith Effort to Comply Total Adjustments</b>		<b>Subtotal 5</b> \$0
<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b> \$0
Total EB Amounts	\$229	
Approx. Cost of Compliance	\$5,000	
	*Capped at the Total EB \$ Amount	
<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$7,650</b>
<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b> \$0
<small>Reduces or enhances the Final Subtotal by the indicated percentage.</small>		
Notes		
	<b>Final Penalty Amount</b>	<b>\$7,650</b>
<b>STATUTORY LIMIT ADJUSTMENT</b>		<b>Final Assessed Penalty</b> \$7,650
<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b> \$0
<small>Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)</small>		
Notes	Deferral not offered for non-expedited settlement.	
<b>PAYABLE PENALTY</b>		<b>\$7,650</b>

Screening Date 14-Aug-2008

Docket No. 2008-1327-PST-E

PCW

Respondent TCS #1 MANAGEMENT COMPANY, L.L.C. dba Texas C

Policy Revision 2 (September 2002)

Case ID No. 36411

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN102791191

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

## Compliance History Worksheet

## &gt;&gt; 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%
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) 2%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance History Notes

Enhancement due to one NOV without same or similar violation.

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

<b>Screening Date</b> 14-Aug-2008	<b>Docket No.</b> 2008-1327-PST-E	<b>PCW</b>		
<b>Respondent</b> TCS #1 MANAGEMENT COMPANY, L.L.C. dba Texas Country Stc	<i>Policy Revision 2 (September 2002)</i>			
<b>Case ID No.</b> 36411	<i>PCW Revision June 12, 2008</i>			
<b>Reg. Ent. Reference No.</b> RN102791191				
<b>Media [Statute]</b> Petroleum Storage Tank				
<b>Enf. Coordinator</b> Rajesh Acharya				
<b>Violation Number</b> <input type="text" value="1"/>				
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code §§ 334.74(2)(A), 334.77(a)(3) and (a)(4)"/>			
<b>Violation Description</b>	<input type="text" value="Failed to conduct initial abatement measures and site check of contaminated soil in the excavated zone resulting from a prior confirmed release. Specifically, an explosion/fire had occurred at the Facility. Visible signs of the fire damage were noted within the excavation pit, along with strong hydrocarbon odors emitting from the excavation pit. Also, the TCEQ investigator observed product leaching from the floor and walls of the excavation area."/>			
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>		
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
<b>OR</b>	<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor
	<b>Actual</b>	<input type="text"/>	x	<input type="text"/>
	<b>Potential</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>
		<b>Percent</b>	<input type="text" value="25%"/>	
<b>&gt;&gt; Programmatic Matrix</b>				
	<b>Falsification</b>	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 has been exposed to significant amounts of pollutants which do 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="\$7,500"/>		
		<input type="text" value="\$2,500"/>		
<b>Violation Events</b>				
<b>Number of Violation Events</b>	<input type="text" value="3"/>	<input type="text" value="63"/>	<b>Number of violation days</b>	
<small>mark only one with an x</small>	daily	<input type="text"/>	<b>Violation Base Penalty</b>	
	monthly	x		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input type="text"/>		
<input type="text" value="Three monthly events are recommended based on documentation of the violation during the June 12, 2008 investigation to the August 14, 2008 screening date."/>			<input type="text" value="\$7,500"/>	
<b>Good Faith Efforts to Comply</b>		<input type="text" value="0.0%"/> Reduction	<input type="text" value="\$0"/>	
	Before NOV	NOV to EDRP/Settlement Offer		
Extraordinary	<input type="text"/>	<input type="text"/>		
Ordinary	<input type="text"/>	<input type="text"/>		
N/A	x	(mark with x)		
<b>Notes</b>	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>			
<b>Violation Subtotal</b>		<input type="text" value="\$7,500"/>		
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>		
<b>Estimated EB Amount</b>	<input type="text" value="\$229"/>	<b>Violation Final Penalty Total</b>	<input type="text" value="\$7,650"/>	
<b>This violation Final Assessed Penalty (adjusted for limits)</b>		<input type="text" value="\$7,650"/>		

### Economic Benefit Worksheet

**Respondent** TCS #1 MANAGEMENT COMPANY, L.L.C. dba Texas Country Store 1

**Case ID No.** 36411

**Reg. Ent. Reference No.** RN102791191

**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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**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)	\$5,000	12-Jun-2008	12-May-2009	0.92	\$229	n/a	\$229

Notes for DELAYED costs

Estimated costs to mitigate explosion hazards and properly remediate the excavation pit. Date Required is the investigation date: Final Date is the estimated date of compliance.

**Avoided Costs**

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

Disposal				0.00	\$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

\$5,000

TOTAL

\$229

# Compliance History

Customer/Respondent/Owner-Operator:	CN603350620	TCS #1 MANAGEMENT COMPANY, L.L.C.	Classification: AVERAGE	Rating: 2.00
Regulated Entity:	RN102791191	Texas Country Store 1	Classification: AVERAGE	Site Rating: 2.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	54144
Location:	3701 N 16TH ST, ORANGE, TX, 77632		Rating Date: September 01 07	Repeat Violator: NO
TCEQ Region:	REGION 10 - BEAUMONT			
Date Compliance History Prepared:	August 19, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	August 19, 2003 to August 19, 2008			

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

Name: Rajesh Acharya Phone: (512) 239-0577

### 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?   | <u>TCS #1 MANAGEMENT COMPANY, L.L.C.</u>     |
|  | Swati Enterprises, Inc.                      |
| 4. If Yes, who was/were the prior owner(s)?  | <u>Mike White Enterprises of Texas, L.P.</u> |
|  | <u>10/31/2006</u>                            |
| 5. When did the change(s) in ownership occur?  | <u>05/01/2008</u>                            |

### 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 07/13/2007 (566340)
  - 2 07/01/2008 (654901)
  - 3 08/06/2008 (686534)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
  - Date: 07/13/2007 (566340)
  - Self Report? NO Classification: Moderate
  - Citation: 30 TAC Chapter 115, SubChapter C 115.248(1)
  - Description: Failure to conduct Stage II training for employees.
  - Self Report? NO Classification: Moderate
  - Citation: 30 TAC Chapter 115, SubChapter C 115.242(1)(C)
  - Description: Failure to install an onboard refueling vapor recovery (ORVR) compatible 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.
- J. N/A  
Early compliance.  
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING TCS #1  
MANAGEMENT COMPANY,  
L.L.C. DBA TEXAS COUNTRY  
STORE 1, RN102791191

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BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2008-1327-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 TCS #1 MANAGEMENT COMPANY, L.L.C. dba Texas Country Store 1 ("TCS") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and TCS appear before the Commission and together stipulate that:

1. TCS owns and operates a convenience store with retail sales of gasoline at 3701 North 16<sup>th</sup> Street in Orange, Orange 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 TCS agree that the Commission has jurisdiction to enter this Agreed Order, and that TCS is subject to the Commission's jurisdiction.
4. TCS received notice of the violations alleged in Section II ("Allegations") on or about August 11, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by TCS of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of seven thousand six hundred fifty dollars (\$7,650.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). TCS has paid seven thousand six hundred fifty dollars (\$7,650.00) 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 TCS have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. 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 TCS has not complied with one or more of the terms or conditions in this Agreed Order.
10. 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.
11. 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

TCS is alleged to have violated 30 TEX. ADMIN. CODE §§ 334.74(2)(A) and 334.77(a)(3) and (a)(4) by failing to conduct initial abatement measures and site check of contaminated soil in the excavated zone resulting from a prior confirmed release, as documented on June 12, 2008. Specifically, an explosion/fire had occurred at the Facility. Visible signs of the fire damage were noted within the excavation pit, along with strong hydrocarbon odors emitting from the excavation pit. Also, the TCEQ investigator observed product leaching from the floor and walls of the excavation area.

## III. DENIALS

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

#### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that TCS pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and TCS'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: TCS #1 MANAGEMENT COMPANY, L.L.C. dba Texas Country Store 1, Docket No. 2008-1327-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. TCS shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order, TCS shall mitigate explosive hazards, conduct site check, initial abatement activities, and implement appropriate corrective measures by performing a soil vapor survey, the results of which shall be submitted to the TCEQ Leaking Petroleum Storage Tank (LPST) program. Any abatement and/or remediation measures required by the LPST program following review of the results of the soil vapor survey shall also be performed within the timeframe(s) established by the LPST program in its written direction to perform such measures.
  - b. Within 45 days after the effective date of this Agreed Order, TCS shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant

penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Derek Eades, Waste Section Manager  
Beaumont Regional Office  
Texas Commission on Environmental Quality  
3870 Eastex Freeway  
Beaumont, Texas 77703-1892

3. The provisions of this Agreed Order shall apply to and be binding upon TCS. TCS is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If TCS 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, TCS's failure to comply is not a violation of this Agreed Order. TCS shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. TCS shall notify the Executive Director within seven days after TCS becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by TCS shall be made in writing to the Executive Director. Extensions are not effective until TCS receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against TCS in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this

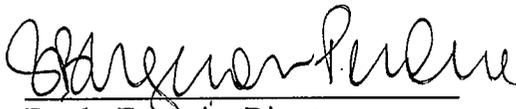
Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to TCS, or three days after the date on which the Commission mails notice of the Order to TCS, 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

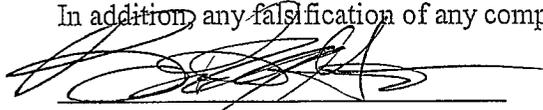
9/16/09  
Date

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 TCS's compliance history;
- Greater scrutiny of any permit applications submitted by TCS;
- 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 TCS;
- Automatic referral to the Attorney General's Office of any future enforcement actions against TCS; and
- TCEQ seeking other relief as authorized by law.
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In addition, any falsification of any compliance documents may result in criminal prosecution.

  
\_\_\_\_\_  
Signature

JUNE 12, 2009  
Date

BRIAN R. MCGEE  
Name (Printed or typed)  
Authorized representative of  
TCS #1 MANAGEMENT COMPANY, L.L.C.  
dba Texas Country Store 1

GENERAL MANAGER  
Title