

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

Page 1 of 3

DOCKET NO.: 2009-1211-PST-E **TCEQ ID:** RN104089305 **CASE NO.:** 38067**RESPONDENT NAME:** TWISTER INVESTMENT, INC. dba 149 Exxon

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: 149 Exxon, 40655 Farm-to-Market Road 149, Magnolia, Montgomery County</p> <p>TYPE OF OPERATION: Convenience store with retail sales of gasoline</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on November 30, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Mike Pace, Enforcement Division, Enforcement Team 6, MC R-04, 817-588-5933; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Shams Momin, President, TWISTER INVESTMENT, INC., 40655 Farm-to-Market Road 149, Magnolia, Texas 77354 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: July 10, 2009</p> <p>Date of NOV/NOE Relating to this Case: July 21, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>1) Failure to timely renew a previously issued underground storage tank ("UST") delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date. Specifically, the delivery certificate expired September 30, 2008 [30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)].</p> <p>2) Failure to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, 20 fuel deliveries were accepted without a valid delivery certificate [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)].</p> <p>3) Failure to conduct monthly inspections of the Stage II vapor recovery system [30 TEX. ADMIN. CODE § 115.244(3) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>4) Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system, including but not limited to absence or disconnection of any component that is part of the approved</p>	<p>Total Assessed: \$7,980</p> <p>Total Deferred: \$1,596 <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: \$6,384</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input 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 Station:</p> <p>a. Submitted a properly completed UST registration and self-certification form and obtained a delivery certificate on July 17, 2009;</p> <p>b. Began conducting monthly inspections of the Stage II vapor recovery system on July 30, 2009;</p> <p>c. Replaced the faceplate on dispenser no. 6 on July 10, 2009; and</p> <p>d. Posted operating instructions on dispenser nos. 1, 5, 7, and 8 on July 10, 2009.</p>

<p>system. Specifically, the faceplate was missing from dispenser no. 6 [30 TEX. ADMIN. CODE § 115.242(3) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>5) Failure to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system. Specifically, operating instructions were not posted on dispenser nos. 1, 5, 7, and 8 [30 TEX. ADMIN. CODE § 115.242(9) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>		
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Additional ID No(s): PST 76170



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision October 30, 2008

DATES	Assigned	28-Jul-2009	Screening	30-Jul-2009	EPA Due	
	PCW	30-Jul-2009				

RESPONDENT/FACILITY INFORMATION			
Respondent	TWISTER INVESTMENT, INC. dba 149 Exxon		
Reg. Ent. Ref. No.	RN104089305		
Facility/Site Region	12-Houston	Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	38067	No. of Violations	4
Docket No.	2009-1211-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Mike Pace
		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)	Subtotal 1	\$10,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1		
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>		

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

Culpability	No	0.0% enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$2,125
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts \$110
Approx. Cost of Compliance \$700
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$7,875
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OTHER FACTORS AS JUSTICE MAY REQUIRE	1.3%	Adjustment	\$105
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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 number 3.

Final Penalty Amount	\$7,980
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$7,980
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DEFERRAL	20.0% Reduction	Adjustment	-\$1,596
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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	\$6,384
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Screening Date 30-Jul-2009

Docket No. 2009-1211-PST-E

PCW

Respondent TWISTER INVESTMENT, INC. dba 149 Exxon

Policy Revision 2 (September 2002)

Case ID No. 38067

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104089305

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Mike Pace

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	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

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

No

Adjustment Percentage (Subtotal 3) 0%

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

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

No adjustment due to compliance history.

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

Screening Date: 30-Jul-2009		Docket No.: 2009-1211-PST-E		PCW	
Respondent: TWISTER INVESTMENT, INC. dba 149 Exxon			<i>Policy Revision 2 (September 2002)</i>		
Case ID No.: 38067			<i>PCW Revision October 30, 2008</i>		
Reg. Ent. Reference No.: RN104089305					
Media [Statute]: Petroleum Storage Tank					
Enf. Coordinator: Mike Pace					
Violation Number:		<input type="text" value="1"/>			
Rule Cite(s):		<input type="text" value="30 Tex. Admin. Code § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)"/>			
Violation Description:		<input type="text" value="Failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date. Specifically, the delivery certificate expired on September 30, 2008."/>			
Base Penalty				<input type="text" value="\$10,000"/>	
>> Environmental, Property and Human Health Matrix					
OR	Harm				
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
				Percent <input type="text" value="0%"/>	
>> Programmatic Matrix					
		Falsification	Major	Moderate	Minor
		<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>
				Percent <input type="text" value="25%"/>	
Matrix Notes		<input type="text" value="100% of the rule requirement was not met."/>			
Adjustment				<input type="text" value="\$7,500"/>	
				<input type="text" value="\$2,500"/>	
Violation Events					
Number of Violation Events:		<input type="text" value="1"/>			
		<input type="text" value="283"/> Number of violation days			
<i>mark only one with an x</i>	daily	<input type="text"/>			
	weekly	<input type="text"/>			
	monthly	<input type="text"/>			
	quarterly	<input type="text"/>			
	semiannual	<input type="text"/>			
	annual	<input type="text"/>			
	single event	<input checked="" type="text" value="x"/>			
				Violation Base Penalty <input type="text" value="\$2,500"/>	
<input type="text" value="One single event is recommended based on documentation of the violation during the July 10, 2009 investigation."/>					
Good Faith Efforts to Comply		25.0% Reduction		<input type="text" value="\$625"/>	
		<small>Before NOV</small>	<small>NOV to EDPRP/Settlement Offer</small>		
Extraordinary		<input type="text"/>	<input type="text"/>		
Ordinary		<input checked="" type="text" value="x"/>	<input type="text"/>		
N/A		<input type="text"/>	<small>(mark with x)</small>		
Notes		<input type="text" value="The Respondent came into compliance on July 17, 2009 prior to the NOV dated July 21, 2009."/>			
Violation Subtotal				<input type="text" value="\$1,875"/>	
Economic Benefit (EB) for this violation		Statutory Limit Test			
Estimated EB Amount		<input type="text" value="\$4"/>		Violation Final Penalty Total <input type="text" value="\$1,900"/>	
This violation Final Assessed Penalty (adjusted for limits)				<input type="text" value="\$1,900"/>	

Economic Benefit Worksheet

Respondent: TWISTER INVESTMENT, INC. dba 149 Exxon
Case ID No.: 38067
Reg. Ent. Reference No.: RN104089305
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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$100	31-Aug-2008	17-Jul-2009	0.88	\$4	n/a	\$4
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

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

Avoided Costs

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

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

\$4

Screening Date: 30-Jul-2009	Docket No.: 2009-1211-PST-E	PCW		
Respondent: TWISTER INVESTMENT, INC. dba 149 Exxon	<small>Policy Revision 2 (September 2002) PCW Revision October 30, 2008</small>			
Case ID No.: 38067				
Reg. Ent. Reference No.: RN104089305				
Media [Statute]: Petroleum Storage Tank				
Enf. Coordinator: Mike Pace				
Violation Number: 2				
Rule Cite(s):	30 Tex. Admn. Code § 334.8(c)(5)(A)(I) and Tex. Water Code § 26.3467(a)			
Violation Description:	Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, 20 fuel deliveries were accepted without a current delivery certificate.			
Base Penalty:		\$10,000		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Potential	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
				Percent: 0%
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
				Percent: 25%
Matrix Notes:	100% of the rule requirement was not met.			
Adjustment:			\$7,500	
			\$2,500	
Violation Events				
Number of Violation Events:		1	Number of violation days:	20
<small>mark only one with an x</small>	daily	<input type="checkbox"/>	Violation Base Penalty:	\$2,500
	weekly	<input type="checkbox"/>		
	monthly	<input type="checkbox"/>		
	quarterly	<input type="checkbox"/>		
	semiannual	<input type="checkbox"/>		
	annual	<input type="checkbox"/>		
	single event	<input checked="" type="checkbox"/>		
One single event is recommended.				
Good Faith Efforts to Comply			25.0% Reduction	\$625
	Before NOV	NOV to EDPRP/Settlement Offer		
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>		
Ordinary	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
N/A	<input type="checkbox"/>	(mark with x)		
Notes:	The Respondent came into compliance on July 17, 2009 prior to the NOE dated July 21, 2009.			
Violation Subtotal:			\$1,875	
Economic Benefit (EB) for this violation			Statutory Limit Test	
Estimated EB Amount:		\$0	Violation Final Penalty Total: \$1,900	
This violation Final Assessed Penalty (adjusted for limits):			\$1,900	

Economic Benefit Worksheet

Respondent: TWISTER INVESTMENT, INC. dba 149 Exxon
Case ID No.: 38067
Reg. Ent. Reference No.: RN104089305
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
<small>No commas or \$</small>							

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 no. 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

Screening Date: 30-Jul-2009 **Docket No.:** 2009-1211-PST-E **PCW**
Respondent: TWISTER INVESTMENT, INC. dba 149 Exxon *Policy Revision 2 (September 2002)*
Case ID No.: 38067 *PCW Revision October 30, 2008*
Reg. Ent. Reference No.: RN104089305
Media [Statute]: Petroleum Storage Tank
Enf. Coordinator: Mike Pace

Violation Number: 3
Rule Cite(s): 30 Tex. Admin. Code § 116.244(3) and Tex. Health & Safety Code § 382.085(b)
Violation Description: Failed to conduct monthly inspections of the Stage II vapor recovery system.

Base Penalty: \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential		X		

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

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

Adjustment: \$7,500

\$2,500

Violation Events

Number of Violation Events: 1 20 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty: \$2,500

One quarterly event is recommended based on documentation of the violation during the July 10, 2009 investigation to the July 30, 2009 compliance date.

Good Faith Efforts to Comply 10.0% Reduction \$250

	Reduction	
	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		X
N/A	(mark with x)	

Notes: The Respondent came into compliance on July 30, 2009 after the NOE dated July 21, 2009.

Violation Subtotal: \$2,250

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount: \$105 **Violation Final Penalty Total:** \$2,280

This violation Final Assessed Penalty (adjusted for limits): \$2,280

Economic Benefit Worksheet

Respondent: TWISTER INVESTMENT, INC. dba 149 Exxon
Case ID No.: 38067
Reg. Ent. Reference No.: RN104089305
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
<small>No commas or \$</small>							

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)

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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]	\$100	10-Jun-2009	30-Jul-2009	1.05	\$5	\$100	\$105
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to conduct the required monthly inspections of the components of the Stage II vapor recovery system. Date required is one month prior to the investigation date and final date is the compliance date.

Approx. Cost of Compliance

\$100

TOTAL

\$105

Screening Date: 30-Jul-2009	Docket No.: 2009-1211-PST-E	PCW			
Respondent: TWISTER INVESTMENT, INC. dba 149 Exxon		<small>Policy Revision 2 (September 2002)</small>			
Case ID No.: 38067		<small>PCW Revision October 30, 2008</small>			
Reg. Ent. Reference No.: RN104089305					
Media [Statute]: Petroleum Storage Tank					
Enf. Coordinator: Mike Pace					
Violation Number:	4				
Rule Cite(s)	30 Tex. Admin. Code § 116.242(3) and (9) and Tex. Health & Safety Code § 382.085(b)				
Violation Description	Failed to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system, including but not limited to absence or disconnection of any component that is part of the approved system. Specifically, the faceplate was missing from dispenser no. 6. Also, failed to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system. Specifically, operating instructions were not posted on dispenser nos. 1, 5, 7, and 8.				
Base Penalty		\$10,000			
>> Environmental, Property and Human Health Matrix					
OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	25%
	Potential	<input type="text"/>	X	<input type="text"/>	
>> Programmatic Matrix					
	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Matrix Notes	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.				
Adjustment:					\$7,500
					\$2,500
Violation Events					
Number of Violation Events		1	Number of violation days		1
<small>mark only one with an x</small>	daily	<input type="text"/>	Violation Base Penalty \$2,500		
	weekly	<input type="text"/>			
	monthly	<input type="text"/>			
	quarterly	X			
	semiannual	<input type="text"/>			
	annual	<input type="text"/>			
single event	<input type="text"/>				
One quarterly event is recommended.					
Good Faith Efforts to Comply					
		25.0% Reduction			\$625
	Before NOV	NOV to EDRP/Settlement Offer			
Extraordinary	<input type="text"/>	<input type="text"/>			
Ordinary	X	<input type="text"/>			
N/A	<input type="text"/>	(mark with x)			
Notes	The Respondent came into compliance on July 10, 2009 prior to the NOE dated July 21, 2009.				
Violation Subtotal					\$1,875
Economic Benefit (EB) for this violation			Statutory Limit Test		
Estimated EB Amount		\$0	Violation Final Penalty Total		\$1,900
This violation Final Assessed Penalty (adjusted for limits)					\$1,900

Economic Benefit Worksheet

Respondent: TWISTER INVESTMENT, INC. dba 149 Exxon
Case ID No: 38067
Reg. Ent. Reference No: RN104089305
Media: Petroleum Storage Tank
Violation No: 4

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment	\$500	10-Jul-2009	10-Jul-2009	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

The estimated cost to repair the Stage II vapor recovery system to proper operating condition. The date required is the investigation date and the final date is the compliance date.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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:	CN803016452 Twister Investment, Inc.	Classification: AVERAGE	Rating: 3.00
Regulated Entity:	RN104089305 149 EXXON	Classification: AVERAGE	Site Rating: 3.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	76170
Location:	40655 FM RD 149, MAGNOLIA, TX, 77354		
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	July 29, 2009		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	July 29, 2004 to July 29, 2009		

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

Name: Mike Pace Phone: 817-588-5933

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? Yes
3. If Yes, who is the current owner/operator?
Twister Investment, Inc.
4. If Yes, who was/were the prior owner(s)/operator(s) ?
Fast Break 110
5. When did the change(s) in owner or operator occur?
03/01/2006
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 07/21/2009 (761841)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A
- J. Early compliance.
N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
TWISTER INVESTMENT, INC. DBA
149 EXXON
RN104089305

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2009-1211-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 TWISTER INVESTMENT, INC. dba 149 Exxon ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and 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 40655 Farm-to-Market Road 149 in Magnolia, Montgomery County, Texas (the "Station").
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. 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 July 26, 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 Seven Thousand Nine Hundred Eighty Dollars (\$7,980) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Six Thousand Three Hundred Eighty-Four Dollars (\$6,384) of the administrative penalty and One Thousand Five Hundred Ninety-Six Dollars (\$1,596) 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 Station:
 - a. Submitted a properly completed UST registration and self-certification form and obtained a delivery certificate on July 17, 2009;
 - b. Began conducting monthly inspections of the Stage II vapor recovery system on July 30, 2009;
 - c. Replaced the faceplate on dispenser no. 6 on July 10, 2009; and
 - d. Posted operating instructions on dispenser nos. 1, 5, 7, and 8 on July 10, 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 timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii), as documented

- during an investigation conducted on July 10, 2009. Specifically, the delivery certificate expired September 30, 2008.
2. Failed to make available to a 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 July 10, 2009. Specifically, 20 fuel deliveries were accepted without a valid delivery certificate.
 3. Failed to conduct monthly inspections of the Stage II vapor recovery system, in violation of 30 TEX. ADMIN. CODE § 115.244(3) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on July 10, 2009.
 4. Failed to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system, including but not limited to absence or disconnection of any component that is part of the approved system, in violation of 30 TEX. ADMIN. CODE § 115.242(3) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on July 10, 2009. Specifically, the faceplate was missing from dispenser no. 6.
 5. Failed to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system, in violation of 30 TEX. ADMIN. CODE § 115.242(9) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on July 10, 2009. Specifically, operating instructions were not posted on dispenser nos. 1, 5, 7, and 8.

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: TWISTER INVESTMENT, INC. dba 149 Exxon, Docket No. 2009-1211-PST-E" to:

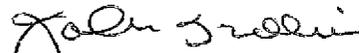
Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

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. 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 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.
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



For the Executive Director

10/30/2009

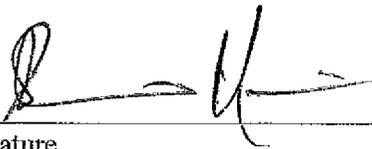
Date

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

09-25-09

Date

STANIS MORIN

Name (Printed or typed)

Authorized Representative of

TWISTER INVESTMENT, INC. dba 149 Exxon

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.

