EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1523-PST-E **TCEQ ID:** RN102028792 **CASE NO.:** 36563
RESPONDENT NAME: PROTON REALTY CO. dba C Store 104

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	X PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: C Store 104, 16601 Addison Road, Addison, Dallas County

TYPE OF OPERATION: Convenience store with retail sales of gasoline

SMALL BUSINESS: X **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 has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on January 26, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Ms. Elvia Maske, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-0789; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171
Respondent: Mr. Tom Welch, President/Manager, PROTON REALTY CO., P.O. Box 864826, Plano, Texas 75086
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint X Routine __ Enforcement Follow-up __ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** June 5, 2008 **Date of NOV/NOE Relating to this Case:** June 26, 2008 (NOE) **Background Facts:** This was a routine investigation. **WASTE** 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 on August 31, 2007 [30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)]. 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, the Respondent accepted one fuel delivery without a delivery certificate [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)]. 3) Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resource Board Executive Order, and free of defects that would impair the effectiveness of the system, including a vacuum producing device that is inoperative or defective. Specifically, at the time of the investigation, the Healy system monitor was not functioning [30 TEX. ADMIN. CODE § 115.242(3)(I) and TEX. HEALTH & SAFETY CODE § 382.085(b)].	**Total Assessed:** $5,103 **Total Deferred:** $1,020 X Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $4,083 **Site Compliance History Classification** X **High** __ **Average** __ **Poor** **Person Compliance History Classification** X **High** __ **Average** __ **Poor** **Major Source:** __ Yes X No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** 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 to the agency and obtained a TCEQ delivery certificate on July 12, 2008; b. Submitted documentation demonstrating that the ball valves in the Healy monitor were repaired on July 23, 2008; and c. Submitted the Stage II tests results demonstrating that the annual Stage II tests have been conducted and passed on July 23, 2008.

4) Failure to verify proper operation of the Stage II equipment at least once every 12 months. Specifically, the Stage II annual system compliance testing had not been conducted [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].		

Additional ID No(s).: 42956

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision June 12, 2008*

TCEQ

DATES					
Assigned	23-Aug-2008				
PCW	15-Sep-2008	Screening	29-Aug-2008	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	PROTON REALTY CO. dba C Store 104		
Reg. Ent. Ref. No.	RN102028792		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	36563	No. of Violations	4
Docket No.	2008-1523-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Elvia Maske
		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* $5,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History -10.0% Enhancement — *Subtotals 2, 3, & 7* -$500

Notes: Reduction due to High Performer Classification.

Culpability No 0.0% Enhancement — *Subtotal 4* $0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments — *Subtotal 5* $500

Economic Benefit 0.0% Enhancement* — *Subtotal 6* $0

Total EB Amounts $1,112
Approx. Cost of Compliance $1,600

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $4,000

OTHER FACTORS AS JUSTICE MAY REQUIRE 27.6% — *Adjustment* $1,103

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with Violation No. 4.

Final Penalty Amount $5,103

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $5,103

DEFERRAL 20.0% Reduction — *Adjustment* -$1,020

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY $4,083

Screening Date 29-Aug-2008 **Docket No.** 2008-1523-PST-E **PCW**

Respondent PROTON REALTY CO. dba C Store 104 *Policy Revision 2 (September 2002)*

Case ID No. 36563 *PCW Revision June 12, 2008*

Reg. Ent. Reference No. RN102028792

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

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%

		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) 0%

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

No

Adjustment Percentage (Subtotal 3) 0%

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

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> **Compliance History Summary**

Compliance History Notes

Reduction due to High Performer Classification.

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

Screening Date 29-Aug-2008 **Docket No.** 2008-1523-PST-E **PCW**

Respondent PROTON REALTY CO. dba C Store 104

Policy Revision 2 (September 2002)

Case ID No. 36563

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN102028792

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)

Violation Description 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 August 31, 2007.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 1 | 316 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $1,000

One single event is recommended based on documentation of the violation during the June 5, 2008 investigation.

Good Faith Efforts to Comply

10.0% Reduction $100

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		x
N/A		(mark with x)

Notes: The Respondent achieved compliance on July 12, 2008.

Violation Subtotal $900

Economic Benefit (EB) for this violation

Estimated EB Amount $5

Statutory Limit Test

Violation Final Penalty Total $1,021

This violation Final Assessed Penalty (adjusted for limits) $1,021

Economic Benefit Worksheet

Respondent PROTON REALTY CO. dba C Store 104
Case ID No. 36563
Reg. Ent. Reference No. RN102028792
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)	$100	1-Aug-2007	12-Jul-2008	0.95	$5	n/a	$5

Notes for DELAYED costs: Estimated cost to renew a delivery certificate by submitting a properly completed UST registration and self-certification form. Date Required is 30 days before the expiration date. Final Date is the date of compliance.

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

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

Notes for AVOIDED costs:

Approx. Cost of Compliance: $100

TOTAL: $5

Screening Date 29-Aug-2008 **Docket No.** 2008-1523-PST-E **PCW**

Respondent PROTON REALTY CO. dba C Store 104

Policy Revision 2 (September 2002)

Case ID No. 36563

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN102028792

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 2

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

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

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

Release	Harm: Major	Moderate	Minor
Actual			
Potential			x

OR

Percent 5%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

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

Adjustment $9,500

$500

Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $500

One single event is recommended for accepting one fuel delivery without a delivery certificate.

Good Faith Efforts to Comply

10.0% Reduction $50

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		x
N/A		(mark with x)

Notes: The Respondent achieved compliance on July 12, 2008.

Violation Subtotal $450

Economic Benefit (EB) for this violation

Estimated EB Amount $0

Statutory Limit Test

Violation Final Penalty Total $510

This violation Final Assessed Penalty (adjusted for limits) $510

Economic Benefit Worksheet

Respondent PROTON REALTY CO. dba C Store 104
Case ID No. 36563
Reg. Ent. Reference No. RN102028792
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

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
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 29-Aug-2008 **Docket No.** 2008-1523-PST-E **PCW**

Respondent PROTON REALTY CO. dba C Store 104 *Policy Revision 2 (September 2002)*

Case ID No. 36563 *PCW Revision June 12, 2008*

Reg. Ent. Reference No. RN102028792

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 115.242(3)(I) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to maintain the Stage II vapor recovery system in proper operation condition, as specified by the manufacturer and/or any applicable California Air Resource Board ("CARB") Executive Order, and free of defects that would impair the effectiveness of the system, including a vacuum producing device that is inoperative or defective. Specifically, at the time of the investigation, the Healy system monitor was not functioning.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

Release	Harm: Major	Moderate	Minor
Actual			
Potential		x	

OR

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment 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 $9,000

$1,000

Violation Events

Number of Violation Events 1 — 48 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $1,000

One quarterly event is recommended based on documentation of the violation during the June 5, 2008 investigation date to the July 23, 2008 compliance date.

Good Faith Efforts to Comply

10.0% Reduction $100

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		x
N/A		(mark with x)

Notes: The Respondent achieved compliance on July 23, 2008.

Violation Subtotal $900

Economic Benefit (EB) for this violation

Estimated EB Amount $5

Statutory Limit Test

Violation Final Penalty Total $1,021

This violation Final Assessed Penalty (adjusted for limits) $1,021

Economic Benefit Worksheet

Respondent PROTON REALTY CO. dba C Store 104
Case ID No. 36563
Reg. Ent. Reference No. RN102028792
Media Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment	$500	5-Jun-2008	23-Jul-2008	0.13	$0	$4	$5
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: Estimated cost for repairing the Healy system monitor. Date Required is the investigation date. Final Date is the date of compliance.

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

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

Notes for AVOIDED costs:

Approx. Cost of Compliance: $500

TOTAL: $5

Screening Date 29-Aug-2008 **Docket No.** 2008-1523-PST-E **PCW**

Respondent PROTON REALTY CO. dba C Store 104

Policy Revision 2 (September 2002)

Case ID No. 36563

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN102028792

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 115.245(2) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to verify proper operation of the Stage II equipment at least once every 12 months. Specifically, the Stage II annual system compliance testing had not been conducted.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

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

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events 1 — 365 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	x
single event	

Violation Base Penalty $2,500

One annual event is recommended for the 12-month period preceeding the June 5, 2008 investigation.

Good Faith Efforts to Comply

10.0% Reduction $250

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		x
N/A		(mark with x)

Notes: The Respondent achieved compliance on July 23, 2008.

Violation Subtotal $2,250

Economic Benefit (EB) for this violation

Estimated EB Amount $1,103

Statutory Limit Test

Violation Final Penalty Total $2,552

This violation Final Assessed Penalty (adjusted for limits) $2,552

Economic Benefit Worksheet

Respondent PROTON REALTY CO. dba C Store 104
Case ID No. 36563
Reg. Ent. Reference No. RN102028792
Media Petroleum Storage Tank
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	5-Jun-2007	23-Jul-2008	2.05	$103	$1,000	$1,103
Other (as needed)				0.00	$0	$0	$0
Notes for AVOIDED costs	Estimated cost to conduct the required annual Stage II testing. Date Required is one year prior to the investigation. Final Date is the compliance date.						

Approx. Cost of Compliance: $1,000

TOTAL: $1,103

Compliance History

Customer/Respondent/Owner-Operator:	CN601105679	PROTON REALTY CO.	Classification: HIGH	Rating: 0.00
Regulated Entity:	RN102028792	C Store 104	Classification: HIGH	Site Rating: 0.00

ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	42956
Location:	16601 ADDISON RD, ADDISON, TX, 75001	Rating Date: 9/1/2008	Repeat Violator: NO

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: September 19, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: September 12, 2003 to September 12, 2008

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

Name: Elvia Maske Phone: (512) 239-0789

Site Compliance History Components

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

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

10/14/2003 (250867)

06/25/2008 (682439)

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

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
PROTON REALTY CO. DBA	§	
C STORE 104	§	
RN102028792	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2008-1523-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 PROTON REALTY CO. dba C Store 104 ("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 16601 Addison Road in Addison, Dallas 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 1, 2008.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Five Thousand One Hundred Three Dollars ($5,103) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Four Thousand Eighty-Three Dollars ($4,083) of the administrative penalty and One Thousand Twenty Dollars ($1,020) 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 to the agency and obtained a TCEQ delivery certificate on July 12, 2008;

   b. Submitted documentation demonstrating that the ball valves in the Healy monitor were repaired on July 23, 2008; and

   c. Submitted the Stage II tests results demonstrating that the annual Stage II tests have been conducted and passed on July 23, 2008.

10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.

11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the 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 June 5, 2008. Specifically, the delivery certificate expired on August 31, 2007.

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 June 5, 2008. Specifically, the Respondent accepted one fuel delivery without a delivery certificate.

3. Failed to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resource Board Executive Order, and free of defects that would impair the effectiveness of the system, including a vacuum producing device that is inoperative or defective, in violation of 30 TEX. ADMIN. CODE § 115.242(3)(I) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on June 5, 2008. Specifically, at the time of the investigation, the Healy system monitor was not functioning.

4. 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 June 5, 2008. Specifically, the Stage II annual system compliance testing had not been conducted.

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: PROTON REALTY CO. dba C Store 104, Docket No. 2008-1523-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 agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

John Sullivan
For the Executive Director

1/9/2009
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.

Thomas Welch Jr
Signature

11/11/08
Date

TOM WELCH
Name (Printed or typed)
Authorized Representative of
PROTON REALTY CO. dba C Store 104

MGR.
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.