

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

**DOCKET NO.: 2007-0728-PST-E TCEQ ID: RN101765089 CASE NO.: 2659
RESPONDENT NAME: FKD ENTERPRISES INC. DBA LUCKY SEVEN FOOD MART**

| | | |
|---|---|--|
| ORDER TYPE: | | |
| <input type="checkbox"/> 1660 AGREED ORDER | <input type="checkbox"/> FINDINGS AGREED ORDER | <input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING |
| <input checked="" 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 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: 5925 South Flores Street, San Antonio, Bexar 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 3, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Anna Cox, Litigation Division, MC 175, (512) 239-0974 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 TCEQ Enforcement Coordinator: Ms. Elvia Maske, Waste Enforcement Section, MC 149, (512) 239-0789 TCEQ Regional Contact: Mr. Joel Anderson, San Antonio Regional Office, MC R-13, (210) 403-4010 Respondent: Mr. Firoj M. Charania, President, 3114 Waters View Drive, Sugar Land, Texas 77478; 5204 West Military Drive, Apartment #A101, San Antonio, Texas 78242 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:</p> <p><input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input checked="" type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: N/A</p> <p>Date of Investigation Relating to this Case: February 8, 2007</p> <p>Date of NOE Relating to this Case: February 22, 2007</p> <p>Background Facts: The EDPRP was filed and mailed on July 9, 2007. An EDFARP was filed and mailed on July 17, 2007. An EDSARP was filed and mailed on May 6, 2008. The EDTARP was filed on August 22, 2008, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDTARP on August 25, 2008, as evidenced by the signature on the card. The Respondent has not filed an answer or requested a hearing.</p> <p>Current Compliance Status: The Respondent no longer owns or operates the facility.</p> <p>PST:</p> <p>1. Failed to monitor the UST system at a frequency of at least once every month (not to exceed 35 days between each monitoring) in a manner which would detect a release [30 TEX. ADMIN. CODE § 334.50(b)(1)(A)].</p> <p>2. Failed to maintain records pertaining to the UST system and to provide those records to Commission personnel upon request [30 TEX. ADMIN. CODE § 334.10(b)].</p> <p>3. Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel [30 TEX. ADMIN. CODE § 334.48(c) and TCEQ Agreed Order Docket No. 2002-1035-PST-E, Section IV, Paragraphs 2.a.i. and 2.b.].</p> <p>4. Failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years [30 TEX. ADMIN. CODE § 334.49(c)(4)].</p> | <p>Total Assessed: \$14,300</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$14,300</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> | <p>Corrective Action(s) Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures:</p> <ol style="list-style-type: none"> 1. Implemented vapor monitoring as a release detection method for all USTs at the Facility on August 1, 2006. 2. Successfully conducted the required triennial testing of the corrosion protection system on August 7, 2006. 3. Began maintaining all UST records on February 13, 2007. 4. Stopped operating the Facility on June 28, 2007. |



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision April 26, 2007

| | | | | | |
|--------------|----------|------------|-----------|-------------|---------|
| DATES | Assigned | 6-Mar-2007 | | | |
| | PCW | 8-May-2007 | Screening | 26-Apr-2007 | EPA Due |

| | | | | | |
|--|--|--------------------|-------|--|--|
| RESPONDENT/FACILITY INFORMATION | | | | | |
| Respondent | FKD Enterprises Inc. dba Lucky Seven Food Mart | | | | |
| Reg. Ent. Ref. No. | RN101765089 | | | | |
| Facility/Site Region | 13-San Antonio | Major/Minor Source | Minor | | |

| | | | | | |
|-------------------------|------------------------|-------------------|-------------------|----------|--|
| CASE INFORMATION | | | | | |
| Enf./Case ID No. | 2659 | No. of Violations | 4 | | |
| Docket No. | 2007-0728-PST-E | Order Type | Findings | | |
| Media Program(s) | Petroleum Storage Tank | Enf. Coordinator | Elvia Maske | | |
| Multi-Media | | EC's Team | EnforcementTeam 6 | | |
| Admin. Penalty \$ | Limit Minimum | \$0 | Maximum | \$10,000 | |

Penalty Calculation Section

| | | |
|---|-------------------|-----------------|
| TOTAL BASE PENALTY (Sum of violation base penalties) | Subtotal 1 | \$11,000 |
|---|-------------------|-----------------|

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

| | | | |
|---------------------------|-----------------|--------------------------------|----------------|
| Compliance History | 30% Enhancement | Subtotals 2, 3, & 7 | \$3,300 |
|---------------------------|-----------------|--------------------------------|----------------|

Notes: Enhancement for one 1660-styled order and for Poor Performer Classification.

| | | | | |
|--------------------|----|----------------|-------------------|------------|
| Culpability | No | 0% Enhancement | Subtotal 4 | \$0 |
|--------------------|----|----------------|-------------------|------------|

Notes: The respondent does not meet the culpability criteria.

| | | | |
|------------------------------------|--------------|-------------------|------------|
| Good Faith Effort to Comply | 0% Reduction | Subtotal 5 | \$0 |
|------------------------------------|--------------|-------------------|------------|

Before NOV NOV to EDP RP/Settlement Offer

| | | |
|---------------|---|---------------|
| Extraordinary | | |
| Ordinary | | |
| N/A | X | (mark with x) |

Notes: The respondent does not meet the good faith criteria.

| | | |
|-----------------------|-------------------|------------|
| 0% Enhancement | Subtotal 6 | \$0 |
|-----------------------|-------------------|------------|

| | | |
|----------------------------|---------|-----------------------------------|
| Total EB Amounts | \$3,770 | *Capped at the Total EB \$ Amount |
| Approx. Cost of Compliance | \$2,900 | |

| | | |
|-----------------------------|-----------------------|-----------------|
| SUM OF SUBTOTALS 1-7 | Final Subtotal | \$14,300 |
|-----------------------------|-----------------------|-----------------|

| | | |
|---|-------------------|------------|
| OTHER FACTORS AS JUSTICE MAY REQUIRE | Adjustment | \$0 |
|---|-------------------|------------|

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

| | |
|-----------------------------|-----------------|
| Final Penalty Amount | \$14,300 |
|-----------------------------|-----------------|

| | | |
|-----------------------------------|-------------------------------|-----------------|
| STATUTORY LIMIT ADJUSTMENT | Final Assessed Penalty | \$14,300 |
|-----------------------------------|-------------------------------|-----------------|

| | | | |
|-----------------|--------------|-------------------|------------|
| DEFERRAL | 0% Reduction | Adjustment | \$0 |
|-----------------|--------------|-------------------|------------|

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

Notes

No deferral is recommended for Findings Orders.

| | |
|------------------------|-----------------|
| PAYABLE PENALTY | \$14,300 |
|------------------------|-----------------|

Screening Date 26-Apr-2007

Docket No. 2007-0728-PST-E

PCW

Respondent FKD Enterprises Inc. dba Lucky Seven Food Mart

Policy Revision 2 (September 2002)

Case ID No. 2659

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN101765089

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) | 1 | 20% |
| | 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) 20%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Poor Performer

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance History Notes

Enhancement for one 1660-styled order and for Poor Performer Classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 30%

Screening Date 26-Apr-2007

Docket No. 2007-0728-PST-E

PCW

Respondent FKD Enterprises Inc. dba Lucky Seven Food Mart

Policy Revision 2 (September 2002)

Case ID No. 2659

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN101765089

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 334.50(b)(1)(A)

Violation Description

Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Specifically, during the investigation, it was found that the facility did not monitor for releases during the months of June 2006 and July 2006.

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

Failure to monitor USTs for releases can result in the exposure of a significant amount of contaminants which may exceed levels that are protective of human health and the environment.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

61 Number of violation days

| | |
|--------------|---|
| daily | |
| monthly | |
| quarterly | x |
| semiannual | |
| annual | |
| single event | |

mark only one with an x

Violation Base Penalty \$2,500

One quarterly event is recommended from the violation beginning date of June 1, 2006 to the compliance date of August 1, 2006.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$105

Violation Final Penalty Total \$3,250

This violation Final Assessed Penalty (adjusted for limits) \$3,250

Economic Benefit Worksheet

Respondent FKD Enterprises Inc. dba Lucky Seven Food Mart
Case ID No. 2659
Reg. Ent. Reference No. RN101765089
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 |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| No commas or \$ | | | | | | | |

Delayed Costs

| | | | | | | | |
|--------------------------|--|--|--|-----|-----|-----|-----|
| Equipment | | | | 0.0 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |
| Engineering/construction | | | | 0.0 | \$0 | \$0 | \$0 |
| Land | | | | 0.0 | \$0 | n/a | \$0 |
| Record Keeping System | | | | 0.0 | \$0 | n/a | \$0 |
| Training/Sampling | | | | 0.0 | \$0 | n/a | \$0 |
| Remediation/Disposal | | | | 0.0 | \$0 | n/a | \$0 |
| Permit Costs | | | | 0.0 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | n/a | \$0 |

Notes for DELAYED costs

Avoided Costs

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

| | | | | | | | |
|-------------------------------|-------|------------|------------|-----|-----|-------|-------|
| Disposal | | | | 0.0 | \$0 | \$0 | \$0 |
| Personnel | | | | 0.0 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling | \$600 | 1-Jun-2006 | 1-Aug-2006 | 0.2 | \$5 | \$100 | \$105 |
| Supplies/equipment | | | | 0.0 | \$0 | \$0 | \$0 |
| Financial Assurance [2] | | | | 0.0 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3] | | | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Estimated cost to monitor USTs using vapor monitoring method. Date required is the beginning date of the documented non-compliance and the final date is the ending date of the non-compliance.

Approx. Cost of Compliance

\$600

TOTAL

\$105

Screening Date 26-Apr-2007

Docket No. 2007-0728-PST-E

PCW

Respondent FKD Enterprises Inc. dba Lucky Seven Food Mart

Policy Revision 2 (September 2002)

Case ID No. 2659

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN101765089

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.10(b)

Violation Description Failed to maintain records pertaining to the UST system and to provide those records to Commission personnel upon request as documented during the investigation on February 8, 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

Failure to comply with 100% of the rule requirement.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

5 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 the documentation of the violation during the February 8, 2007 investigation.

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$1,300

This violation Final Assessed Penalty (adjusted for limits) \$1,300

Economic Benefit Worksheet

Respondent: FKD Enterprises Inc. dba Lucky Seven Food Mart
Case ID No.: 2659
Reg. Ent. Reference No.: RN101765089
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 |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|

Delayed Costs

| | | | | | | | |
|--------------------------|-------|------------|-------------|-----|-----|-----|-----|
| Equipment | | | | 0.0 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |
| Engineering/construction | | | | 0.0 | \$0 | \$0 | \$0 |
| Land | | | | 0.0 | \$0 | n/a | \$0 |
| Record Keeping System | \$300 | 8-Feb-2007 | 13-Feb-2007 | 0.0 | \$0 | n/a | \$0 |
| Training/Sampling | | | | 0.0 | \$0 | n/a | \$0 |
| Remediation/Disposal | | | | 0.0 | \$0 | n/a | \$0 |
| Permit Costs | | | | 0.0 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | n/a | \$0 |

Notes for DELAYED costs

Estimated cost to maintain a record keeping system at the Facility. Date required is the investigation date and the final date is the date of compliance.

Avoided Costs

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

| | | | | | | | |
|-------------------------------|--|--|--|-----|-----|-----|-----|
| Disposal | | | | 0.0 | \$0 | \$0 | \$0 |
| Personnel | | | | 0.0 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling | | | | 0.0 | \$0 | \$0 | \$0 |
| Supplies/equipment | | | | 0.0 | \$0 | \$0 | \$0 |
| Financial Assurance [2] | | | | 0.0 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3] | | | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Approx. Cost of Compliance

\$300

TOTAL

\$0

Screening Date 26-Apr-2007

Docket No. 2007-0728-PST-E

PCW

Respondent FKD Enterprises Inc. dba Lucky Seven Food Mart

Policy Revision 2 (September 2002)

Case ID No. 2659

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN101765089

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.48(c) and TCEQ Agreed Order Docket No. 2002-1035-PST-E, Ordering Provision Nos. 2.a.i. and 2.b.

Violation Description

Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel.

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

Failure to conduct inventory control at a retail facility can result in the exposure of a significant amount of contaminants which may exceed levels that are protective of human health and the environment.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 2

668 Number of violation days

mark only one with an x

| | |
|--------------|---|
| daily | |
| monthly | |
| quarterly | |
| semiannual | |
| annual | x |
| single event | |

Violation Base Penalty \$5,000

Two annual events are recommended from the effective date of the Agreed Order (June 27, 2005) to the date of screening (April 26, 2007).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2,572

Violation Final Penalty Total \$6,500

This violation Final Assessed Penalty (adjusted for limits) \$6,500

Economic Benefit Worksheet

Respondent: FKD Enterprises Inc. dba Lucky Seven Food Mart
Case ID No.: 2659
Reg. Ent. Reference No.: RN101765089
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 |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|

No commas or \$

Delayed Costs

| | | | | | | | |
|--------------------------|--|--|--|-----|-----|-----|-----|
| Equipment | | | | 0.0 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |
| Engineering/construction | | | | 0.0 | \$0 | \$0 | \$0 |
| Land | | | | 0.0 | \$0 | n/a | \$0 |
| Record Keeping System | | | | 0.0 | \$0 | n/a | \$0 |
| Training/Sampling | | | | 0.0 | \$0 | n/a | \$0 |
| Remediation/Disposat | | | | 0.0 | \$0 | n/a | \$0 |
| Permit Costs | | | | 0.0 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | n/a | \$0 |

Notes for DELAYED costs

Avoided Costs

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

| | | | | | | | |
|-------------------------------|---------|-------------|------------|-----|-------|---------|---------|
| Disposal | | | | 0.0 | \$0 | \$0 | \$0 |
| Personnel | \$1,000 | 27-Jun-2005 | 8-Dec-2007 | 2.4 | \$122 | \$2,449 | \$2,572 |
| Inspection/Reporting/Sampling | | | | 0.0 | \$0 | \$0 | \$0 |
| Supplies/equipment | | | | 0.0 | \$0 | \$0 | \$0 |
| Financial Assurance [2] | | | | 0.0 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3] | | | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Avoided cost for failure to conduct effective inventory control. Date required is the effective date of the agreed order and the final date is the projected date of compliance.

Approx. Cost of Compliance \$1,000

TOTAL: \$2,572

Screening Date 26-Apr-2007

Docket No. 2007-0728-PST-E

PCW

Respondent FGD Enterprises Inc. dba Lucky Seven Food Mart

Policy Revision 2 (September 2002)

Case ID No. 2659

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN101765089

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code § 334.49(c)(4)

Violation Description

Failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years. Specifically, the triennial testing was not conducted by the test due date of August 31, 2005.

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 significant amounts of pollutants which may exceed levels that are protective of human health and environmental receptors.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

341 Number of violation days

| | | |
|-------------------------|--------------|---|
| mark only one with an x | daily | |
| | monthly | |
| | quarterly | |
| | semiannual | |
| | annual | |
| | single event | x |

Violation Base Penalty \$2,500

One single event is recommended based on documentation of the violation during the February 8, 2007 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,093

Violation Final Penalty Total \$3,250

This violation Final Assessed Penalty (adjusted for limits) \$3,250

Economic Benefit Worksheet

Respondent: FKD Enterprises Inc. dba Lucky Seven Food Mart
Case ID No.: 2659
Reg. Ent. Reference No.: RN101765089
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 |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| No commas or \$ | | | | | | | |

Delayed Costs

| | | | | | | | |
|--------------------------|--|--|--|-----|-----|-----|-----|
| Equipment | | | | 0.0 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |
| Engineering/construction | | | | 0.0 | \$0 | \$0 | \$0 |
| Land | | | | 0.0 | \$0 | n/a | \$0 |
| Record Keeping System | | | | 0.0 | \$0 | n/a | \$0 |
| Training/Sampling | | | | 0.0 | \$0 | n/a | \$0 |
| Remediation/Disposal | | | | 0.0 | \$0 | n/a | \$0 |
| Permit Costs | | | | 0.0 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | n/a | \$0 |

Notes for DELAYED costs

Avoided Costs

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

| | | | | | | | |
|-------------------------------|---------|-------------|------------|-----|------|---------|---------|
| Disposal | | | | 0.0 | \$0 | \$0 | \$0 |
| Personnel | | | | 0.0 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling | | | | 0.0 | \$0 | \$0 | \$0 |
| Supplies/equipment | | | | 0.0 | \$0 | \$0 | \$0 |
| Financial Assurance [2] | | | | 0.0 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3] | | | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | \$1,000 | 31-Aug-2005 | 7-Aug-2006 | 1.9 | \$93 | \$1,000 | \$1,093 |

Notes for AVOIDED costs

Avoided cost for completing the triennial test. The date required is the test due date and the final date is the date of compliance.

Approx. Cost of Compliance

\$1,000

TOTAL

\$1,093

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
FKD ENTERPRISES INC. DBA
LUCKY SEVEN FOOD MART;
RN101765089**

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER
DOCKET NO. 2007-0728-PST-E**

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Third Amended Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty. The respondent made the subject of this Order is FKD Enterprises Inc. dba Lucky Seven Food Mart ("FKD").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. FKD owns and operates a convenience store with retail sales of gasoline, located at 5925 South Flores Street, San Antonio, Bexar County, Texas (the "Facility").
2. FKD'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 USTs at the Facility contain regulated substances as defined in the Commission's rules.
3. On February 8, 2007, an investigator from the TCEQ San Antonio Regional Office documented that FKD:
 - a. Failed to monitor the UST system at a frequency of at least once every month (not to exceed 35 days between each monitoring) in a manner which would detect a release. The Facility did not monitor for releases during the months of June 2006 and July 2006;

- b. Failed to maintain records pertaining to the UST system and to provide those records to Commission personnel upon request;
 - c. Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel; and
 - d. Failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years. Specifically, triennial testing was not conducted by the test due date of August 31, 2005.
4. FKD received notice of the violation on or about February 27, 2007.
5. The Executive Director recognizes that FKD has implemented the following corrective measures at the Facility in response to this enforcement action:
 - a. Implemented vapor monitoring as a release detection method for all USTs at the Facility on August 1, 2006;
 - b. Successfully conducted the required triennial testing of the corrosion protection system on August 7, 2006; and
 - c. Began maintaining all UST records on February 13, 2007.
 - d. Stopped operating the Facility as of June 28, 2007.
6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of FKD Enterprises Inc. dba Lucky Seven Food Mart" (the "EDPRP") in the TCEQ Chief Clerk's office on July 9, 2007.
7. By letter dated July 9, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served FKD with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unable to forward." The first class mail has not been returned.
8. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of FKD

- Enterprises Inc. dba Lucky Seven Food Mart” (the “EDFARP”) in the TCEQ Chief Clerk’s office on July 17, 2007.
9. By letter dated July 17, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served FKD with notice of the EDFARP. The United States Postal Service returned the wrapper sent by certified mail as “unable to forward.” The first class mail has not been returned.
 10. The Executive Director filed the “Executive Director’s Second Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of FKD Enterprises Inc. dba Lucky Seven Food Mart” (the “EDSARP”) in the TCEQ Chief Clerk’s office on May 6, 2008.
 11. By letter dated May 6, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served FKD with notice of the EDSARP. According to the return receipt “green card”, FKD received the EDSARP on June 23, 2008, as evidenced by the signature on the card.
 12. The Executive Director filed the “Executive Director’s Third Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of FKD Enterprises Inc. dba Lucky Seven Food Mart” (the “EDTARP”) in the TCEQ Chief Clerk’s office on August 22, 2008.
 13. By letter dated August 22, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served FKD with notice of the EDTARP. According to the return receipt “green card”, FKD received notice of the EDTARP on August 25, 2008, as evidenced by the signature on the card. The first class mail has not been returned, indicating that FKD received notice of the EDTARP.
 14. More than 20 days have elapsed since FKD received notice of the EDSARP or the EDTARP, provided by the Executive Director. FKD failed to file an answer to either the EDSARP or the EDTARP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, FKD is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, and the rules of the Commission.

2. As evidenced by Finding of Fact No. 3.a., FKD violated 30 TEX. ADMIN. CODE § 334.50(b)(1)(A), by failing to monitor the UST system at a frequency of at least once every month (not to exceed 35 days between each monitoring) in a manner which would detect a release. The Facility did not monitor for releases during the months of June 2006 and July 2006.
3. As evidenced by Finding of Fact No. 3.b., FKD violated 30 TEX. ADMIN. CODE § 334.10(b), by failing to maintain records pertaining to the UST system and to provide those records to Commission personnel upon request.
4. As evidenced by Finding of Fact No. 3.c., FKD violated 30 TEX. ADMIN. CODE § 334.48(c) and TCEQ Agreed Order Docket No. 2002-1035-PST-E, Section IV, Paragraphs 2.a.i. and 2.b., by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel.
5. As evidenced by Finding of Fact No. 3.d., FKD violated 30 TEX. ADMIN. CODE § 334.49(c)(4), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years. Specifically, triennial testing was not conducted by the test due date of August 31, 2005.
6. As evidenced by Finding of Fact Nos. 12 and 13, the Executive Director has timely served FKD with proper notice of the EDTARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
7. As evidenced by Finding of Fact No. 14, FKD has failed to file a timely answer to the EDFARP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against FKD and assess the penalty recommended by the Executive Director.
8. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against FKD for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
9. An administrative penalty in the amount of fourteen thousand three hundred dollars (\$14,300.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

10. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. FKD is assessed an administrative penalty in the amount of fourteen thousand three hundred dollars (\$14,300.00) for violations of TEX. WATER CODE chs. 7 and 26 and rules of the TCEQ. The payment of this administrative penalty and FKD's compliance with all the terms and conditions set forth in this Order completely resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: FKD Enterprises Inc. dba Lucky Seven Food Mart; Docket No. 2007-0728-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. All relief not expressly granted in this Order is denied.
3. The provisions of this Order shall apply to and be binding upon FKD.
4. If FKD fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, FKD's failure to comply is not a violation of this Order. FKD shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. FKD shall notify the Executive Director within seven days after FKD 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 Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated

showing of good cause. All requests for extensions by FKD shall be made in writing to the Executive Director. Extensions are not effective until FKD receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to FKD if the Executive Director determines that FKD has not complied with one or more of the terms or conditions in this Order.
7. This Order shall terminate five years from its effective date or when FKD demonstrates to the satisfaction of the Executive Director that it has corrected all of the violations noted herein.
8. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order is the date this decision was rendered, pursuant to TEX. GOV'T CODE § 2001.144(a)(3).

FKD Enterprises Inc. dba Lucky Seven Food Mart
Docket No. 2007-0728-PST-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF ANNA M. COX

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Anna M. Cox. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of FKD Enterprises Inc. dba Lucky Seven Food Mart” (the “EDPRP”) was filed with the Office of the Chief Clerk on July 9, 2007.

The EDPRP was mailed to FKD at its last known address on July 9, 2007, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unable to forward.” The first class mail has not been returned.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of FKD Enterprises Inc. dba Lucky Seven Food Mart” (the “EDFARP”) was filed with the Office of the Chief Clerk on July 17, 2007.

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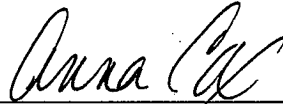
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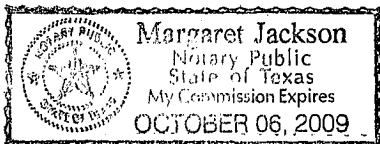
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Anna M. Cox, Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Anna M. Cox, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 12 day of September, 2008.



Notary Signature