

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-1655-PST-E TCEQ ID: RN102256088 CASE NO.: 36674
RESPONDENT NAME: ARISTOS, INC. dba Smart Stop

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: Smart Stop, 811 Strickland Drive, Orange, Orange 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: A complaint was received on January 11, 2008, alleging that the petroleum storage tank ("PST") equipment at the facility was not working properly and that the equipment may be leaking and causing a fire hazard. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on March 23, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Wallace Myers, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-6580; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Mehmood Hemani, President, ARISTOS, INC., 811 Strickland Drive, Orange, Texas 77630 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 checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: January 11, 2008</p> <p>Date of Investigation Relating to this Case: June 30, 2008</p> <p>Date of NOV/NOE Relating to this Case: August 18, 2008 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>WASTE</p> <p>Failure to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system, including but not limited to absence or disconnection of any component that is a part of the approved system. Specifically, the Stage I dry break cap was broken. [30 TEX. ADMIN. CODE § 115.242(3)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$2,500</p> <p>Total Deferred: \$500 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$100 (remaining \$1,900 due in 19 monthly payments of \$100 each)</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 replaced the Stage I dry break cap on July 9, 2008.</p>

Additional ID No(s): 71598



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision June 12, 2008

DATES	Assigned	25-Aug-2008	Screening	28-Oct-2008	EPA Due	
	PCW	15-Oct-2008				

RESPONDENT/FACILITY INFORMATION			
Respondent	ARISTOS, INC. dba Smart Stop		
Reg. Ent. Ref. No.	RN102256088		
Facility/Site Region	10-Beaumont	Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	36674	No. of Violations	1
Docket No.	2008-1655-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Wallace Myers
		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 \$2,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 25.0% Enhancement Subtotals 2, 3, & 7 \$625

Notes: Enhancement for one NOV with same or similar violations and for one 1660 order.

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 \$625

Economic Benefit 0.0% Enhancement* Subtotal 6 \$0

Total EB Amounts \$0
Approx. Cost of Compliance \$32
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal \$2,500

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0% Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$2,500

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$2,500

DEFERRAL 20.0% Reduction Adjustment -\$500

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 \$2,000

Screening Date 28-Oct-2008

Docket No. 2008-1655-PST-E

PCW

Respondent ARISTOS, INC. dba Smart Stop

Policy Revision 2 (September 2002)

Case ID No. 36674

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN102256088

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

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 (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	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 (<i>number of judgments or consent decrees meeting criteria</i>)	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 (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	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 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	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) 25%

>> **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

Enhancement for one NOV with same or similar violations and for one 1660 order.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 25%

Screening Date 28-Oct-2008	Docket No. 2008-1655-PST-E	PCW	
Respondent ARISTOS, INC. dba Smart Stop	<small>Policy Revision 2 (September 2002)</small>		
Case ID No. 36674	<small>PCW Revision June 12, 2008</small>		
Reg. Ent. Reference No. RN102256088			
Media [Statute] Petroleum Storage Tank			
Enf. Coordinator Wallace Myers			
Violation Number	1		
Rule Cite(s)	30 Tex. Admin. Code § 115.242(3)(A) and Tex. Health & Safety Code § 382.085(b)		
Violation Description	Failed to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system, including but not limited to absence or disconnection of any component that is a part of the approved system. Specifically, the Stage I dry break cap was broken.		
Base Penalty		\$10,000	
>> Environmental, Property and Human Health Matrix			
OR	Harm		
	Major	Moderate	Minor
	Actual	Potential	
	x		
		Percent	25%
>> Programmatic Matrix			
	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	
		9	Number of violation days
<small>mark only one with an x</small>	daily		
	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 June 30, 2008 investigation to the July 9, 2008 compliance date.			
Good Faith Efforts to Comply		25.0% Reduction	\$625
		<small>Before NOV NOV to EDPRP/Settlement Offer</small>	
Extraordinary			
Ordinary	x		
N/A		<small>(mark with x)</small>	
Notes	The Respondent came into compliance on July 9, 2008.		
Violation Subtotal		\$1,875	
Economic Benefit (EB) for this violation		Statutory Limit Test	
Estimated EB Amount		\$0	Violation Final Penalty Total \$2,500
		This violation Final Assessed Penalty (adjusted for limits) \$2,500	

Economic Benefit Worksheet

Respondent ARISTOS, INC. dba Smart Stop
Case ID No. 36674
Reg. Ent. Reference No. RN102256088
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

Equipment	\$32	30-Jun-2008	9-Jul-2008	0.02	\$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

Estimated cost to replace the dry break cap. The 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				0.00	\$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

\$32

TOTAL

\$0

Compliance History

Customer/Respondent/Owner-Operator:	CN601201544 ARISTOS, INC.	Classification: AVERAGE	Rating: 13.50
Regulated Entity:	RN102256088 SMART STOP	Classification: AVERAGE	Site Rating: 13.50
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	71598
Location:	811 STRICKLAND DR, ORANGE, TX, 77630	Rating Date: 9/1/2007	Repeat Violator: NO
TCEQ Region:	REGION 10 - BEAUMONT		
Date Compliance History Prepared:	August 28, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	August 28, 2003 to August 28, 2008		

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

Name: Wallace Myers Phone: 512-239-6580

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? | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>N/A</u> |
| 5. When did the change(s) in ownership occur? | <u>N/A</u> |

Components (Multimedia) for the Site :

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

Effective Date: 06/26/2006 ADMINORDER 2003-1172-PST-E

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)
30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)

Description: Failure to provide proper release detection for the UST system at the facility.

- 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.)

N/A

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

Date 02/15/2006 (440064)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.244(3)

Description: Failure to conduct monthly inspections of the Stage II vapor recovery system.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.222(1)

Description: Failed Pressure Decay Test (TXP 102.1), due to non vapor tight drop tubes.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(L)

Description: Failure to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system.

- 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

requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of One Thousand Nine Hundred Dollars (\$1,900) of the administrative penalty shall be payable in 19 monthly payments of One Hundred Dollars (\$100) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent replaced the Stage I dry break cap on July 9, 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 failed to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system, including but not limited to absence or disconnection of any component that is a part of the approved system, in violation of 30 TEX. ADMIN. CODE § 115.242(3)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on June 30, 2008. Specifically, the Stage I dry break cap was broken.

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: ARISTOS, INC. dba Smart Stop, Docket No. 2008-1655-PST-E" to:

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

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Station operations referenced in this Agreed Order.
3. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This 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.
7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

ARISTOS, INC. dba Smart Stop
DOCKET NO. 2008-1655-PST-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Berlin
For the Executive Director

2/16/2009
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.

Mehmond
Signature

12/15/08
Date

Mehmond HEMANI
Name (Printed or typed)
Authorized Representative of
ARISTOS, INC. dba Smart Stop

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.

