

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER** Page 1 of 2  
**DOCKET NO.:** 2008-1417-AIR-E **TCEQ ID:** RN102492139 **CASE NO.:** 36486  
**RESPONDENT NAME:** C & R Distributing, Inc.

|   |   |  |
|---|---|--|
| <b>ORDER TYPE:</b>  |   |  |
| <input checked="" type="checkbox"/> 1660 AGREED ORDER   | <input type="checkbox"/> FINDINGS AGREED ORDER              | <input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING       |
| <input type="checkbox"/> FINDINGS DEFAULT ORDER   | <input type="checkbox"/> SHUTDOWN ORDER                     | <input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER |
| <input type="checkbox"/> AMENDED ORDER  | <input type="checkbox"/> EMERGENCY ORDER                    |  |
| <b>CASE TYPE:</b>   |   |  |
| <input checked="" 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 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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> C &amp; R Fuel Control 49, 3615 Admiral Street, El Paso, El Paso County</p> <p><b>TYPE OF OPERATION:</b> Unmanned gasoline dispensing site</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on April 13, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b><br/> <b>TCEQ Attorney/SEP Coordinator:</b> None<br/> <b>TCEQ Enforcement Coordinator:</b> Mr. Kirk Schoppe, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-0489; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387<br/> <b>Respondent:</b> Mr. Johnny Serna, Maintenance Operator, C &amp; R Distributing, Inc., 3615 Admiral Street, El Paso, Texas 79925<br/> Mr. Fernando G. Fierro, General Manager, C &amp; R Distributing, Inc., 3615 Admiral Street, El Paso, Texas 79925<br/> <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p> |   |  |

| VIOLATION SUMMARY CHART:   |   |  |
|--|---|--|
| VIOLATION INFORMATION  | PENALTY CONSIDERATIONS  | CORRECTIVE ACTIONS TAKEN/REQUIRED  |
| <p><b>Type of Investigation:</b><br/> <input type="checkbox"/> Complaint<br/> <input checked="" type="checkbox"/> Routine<br/> <input type="checkbox"/> Enforcement Follow-up<br/> <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> August 6, 2008</p> <p><b>Date of NOV/NOE Relating to this Case:</b> August 29, 2008 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>AIR</b></p> <p>Failure to comply with the maximum Reid Vapor Pressure ("RVP") requirement of 7.0 pounds per square inch absolute ("psia") during the control period of June 1, 2008 through September 16, 2008. Specifically, a regular unleaded gasoline sample taken from Pump No. 4 was found to have an RVP of 7.7 psia [30 TEX. ADMIN. CODE § 115.252(2) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p> | <p><b>Total Assessed:</b> \$1,000</p> <p><b>Total Deferred:</b> \$200<br/> <input checked="" type="checkbox"/> Expedited Settlement<br/> <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$800</p> <p><b>Site Compliance History Classification</b><br/> <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b><br/> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> | <p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. On June 1<sup>st</sup> of the next control period following the effective date of this Agreed Order, conduct RVP sampling of all grades of gasoline at the Site; and</p> <p>b. Within 15 days after sampling, submit sampling results and written certification demonstrating compliance with RVP gasoline requirements.</p> |

Additional ID No(s): EE1274U



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

|              |          |            |           |            |         |  |
|--------------|----------|------------|-----------|------------|---------|--|
| <b>DATES</b> | Assigned | 2-Sep-2008 | Screening | 4-Sep-2008 | EPA Due |  |
|              | PCW      | 4-Sep-2008 |           |            |         |  |

|  |                          |
|--|--------------------------|
| <b>RESPONDENT/FACILITY INFORMATION</b> |                          |
| Respondent                             | C & R Distributing, Inc. |
| Reg. Ent. Ref. No.                     | RN102492139              |
| Facility/Site Region                   | 6-El Paso                |
| Major/Minor Source                     | Minor                    |

|                                 |                 |                       |                    |
|---------------------------------|-----------------|-----------------------|--------------------|
| <b>CASE INFORMATION</b>         |                 |                       |                    |
| Enf./Case ID No.                | 36486           | No. of Violations     | 1                  |
| Docket No.                      | 2008-1417-AIR-E | Order Type            | 1660               |
| Media Program(s)                | Air             | Government/Non-Profit | No                 |
| Multi-Media                     |                 | Enf. Coordinator      | Kirk Schoppe       |
| Admin. Penalty \$ Limit Minimum | \$0             | EC's Team             | Enforcement Team 4 |
| Maximum                         | \$10,000        |                       |                    |

## Penalty Calculation Section

|   |                   |         |
|---|-------------------|---------|
| <b>TOTAL BASE PENALTY (Sum of violation base penalties)</b> | <b>Subtotal 1</b> | \$1,000 |
|---|-------------------|---------|

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

|                           |                  |                                |     |
|---------------------------|------------------|--------------------------------|-----|
| <b>Compliance History</b> | 0.0% Enhancement | <b>Subtotals 2, 3, &amp; 7</b> | \$0 |
|---------------------------|------------------|--------------------------------|-----|

Notes: No change due to average performer classification.

|                    |    |                  |                   |     |
|--------------------|----|------------------|-------------------|-----|
| <b>Culpability</b> | No | 0.0% Enhancement | <b>Subtotal 4</b> | \$0 |
|--------------------|----|------------------|-------------------|-----|

Notes: The Respondent does not meet the culpability criteria.

|  |                   |     |
|--|-------------------|-----|
| <b>Good Faith Effort to Comply Total Adjustments</b> | <b>Subtotal 5</b> | \$0 |
|--|-------------------|-----|

|                            |                   |                                   |     |
|----------------------------|-------------------|-----------------------------------|-----|
| <b>Economic Benefit</b>    | 0.0% Enhancement* | <b>Subtotal 6</b>                 | \$0 |
| Total EB Amounts           | \$4               | *Capped at the Total EB \$ Amount |     |
| Approx. Cost of Compliance | \$100             |                                   |     |

|                             |                       |         |
|-----------------------------|-----------------------|---------|
| <b>SUM OF SUBTOTALS 1-7</b> | <b>Final Subtotal</b> | \$1,000 |
|-----------------------------|-----------------------|---------|

|   |      |                   |     |
|---|------|-------------------|-----|
| <b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b> | 0.0% | <b>Adjustment</b> | \$0 |
|---|------|-------------------|-----|

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

|                             |         |
|-----------------------------|---------|
| <b>Final Penalty Amount</b> | \$1,000 |
|-----------------------------|---------|

|                                   |                               |         |
|-----------------------------------|-------------------------------|---------|
| <b>STATUTORY LIMIT ADJUSTMENT</b> | <b>Final Assessed Penalty</b> | \$1,000 |
|-----------------------------------|-------------------------------|---------|

|                 |                 |                   |        |
|-----------------|-----------------|-------------------|--------|
| <b>DEFERRAL</b> | 20.0% Reduction | <b>Adjustment</b> | -\$200 |
|-----------------|-----------------|-------------------|--------|

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

Notes: Deferral offered for expedited settlement.

|                        |       |
|------------------------|-------|
| <b>PAYABLE PENALTY</b> | \$800 |
|------------------------|-------|

**Screening Date** 4-Sep-2008

**Docket No.** 2008-1417-AIR-E

**PCW**

**Respondent** C & R Distributing, Inc.

Policy Revision 2 (September 2002)

**Case ID No.** 36486

PCW Revision June 12, 2008

**Reg. Ent. Reference No.** RN102492139

**Media [Statute]** Air

**Enf. Coordinator** Kirk Schoppe

**Compliance History Worksheet**

>> **Compliance History Site Enhancement (Subtotal 2)**

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

**Adjustment Percentage (Subtotal 2)** 0%

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

No

**Adjustment Percentage (Subtotal 3)** 0%

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

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%

>> **Compliance History Summary**

**Compliance History Notes**

No change due to average performer classification.

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

|   |  |                               |  |   |                      |                      |                               |                      |                      |  |                      |   |                      |   |   |                  |                      |                      |                      |   |  |  |
|---|--|-------------------------------|--|---|----------------------|----------------------|-------------------------------|----------------------|----------------------|--|----------------------|---|----------------------|---|---|------------------|----------------------|----------------------|----------------------|---|--|--|
| <p><b>Screening Date</b> 4-Sep-2008</p> <p><b>Respondent</b> C &amp; R Distributing, Inc.</p> <p><b>Case ID No.</b> 36486</p> <p><b>Reg. Ent. Reference No.</b> RN102492139</p> <p><b>Media [Statute]</b> Air</p> <p><b>Enf. Coordinator</b> Kirk Schoppe</p> <p><b>Violation Number</b> <input type="text" value="1"/></p> <p><b>Rule Cite(s)</b> <input style="width:100%;" type="text" value="30 Tex. Admin. Code § 115.252(2) and Tex. Health &amp; Safety Code § 382.085(b)"/></p> <p><b>Violation Description</b> <input ("psia")="" 1="" 16,="" 2008.="" 4="" 6,="" 7.0="" 7.7="" a="" absolute="" an="" as="" august="" conducted="" control="" documented="" during="" found="" from="" gasoline="" have="" inch="" investigation="" june="" no.="" of="" on="" per="" period="" pounds="" psia."="" pump="" regular="" requirement="" rvp="" rvp")="" sample="" september="" specifically,="" square="" style="width:100%; height: 60px;" taken="" the="" through="" to="" type="text" unleaded="" value="Failed to comply with the maximum Reid Vapor Pressure (" was=""/></p> | <p align="right"><b>Docket No.</b> 2008-1417-AIR-E</p> <p align="right"><b>PCW</b></p> <p align="right"><small>Policy Revision 2 (September 2002)</small></p> <p align="right"><small>PCW Revision June 12, 2008</small></p>   |                               |  |   |                      |                      |                               |                      |                      |  |                      |   |                      |   |   |                  |                      |                      |                      |   |  |  |
| <b>Base Penalty</b> <input style="width:100%;" type="text" value="\$10,000"/>   |  |                               |  |   |                      |                      |                               |                      |                      |  |                      |   |                      |   |   |                  |                      |                      |                      |   |  |  |
| <b>&gt;&gt; Environmental, Property and Human Health Matrix</b>   |  |                               |  |   |                      |                      |                               |                      |                      |  |                      |   |                      |   |   |                  |                      |                      |                      |   |  |  |
| <p><b>OR</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td align="center" colspan="3"><b>Harm</b></td> <td></td> </tr> <tr> <td><b>Release</b></td> <td align="center">Major</td> <td align="center">Moderate</td> <td align="center">Minor</td> <td></td> </tr> <tr> <td><b>Actual</b></td> <td><input type="text"/></td> <td><input type="text"/></td> <td align="center">x</td> <td rowspan="2"><b>Percent</b> <input style="width:100%;" type="text" value="10%"/></td> </tr> <tr> <td><b>Potential</b></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>  |  | <b>Harm</b>                   |  |   |                      | <b>Release</b>       | Major                         | Moderate             | Minor                |  | <b>Actual</b>        | <input type="text"/>  | <input type="text"/> | x   | <b>Percent</b> <input style="width:100%;" type="text" value="10%"/> | <b>Potential</b> | <input type="text"/> | <input type="text"/> | <input type="text"/> |   |  |  |
|   | <b>Harm</b>  |                               |  |   |                      |                      |                               |                      |                      |  |                      |   |                      |   |   |                  |                      |                      |                      |   |  |  |
| <b>Release</b>  | Major  | Moderate                      | Minor  |   |                      |                      |                               |                      |                      |  |                      |   |                      |   |   |                  |                      |                      |                      |   |  |  |
| <b>Actual</b>   | <input type="text"/>   | <input type="text"/>          | x  | <b>Percent</b> <input style="width:100%;" type="text" value="10%"/> |                      |                      |                               |                      |                      |  |                      |   |                      |   |   |                  |                      |                      |                      |   |  |  |
| <b>Potential</b>  | <input type="text"/>   | <input type="text"/>          | <input type="text"/>   |   |                      |                      |                               |                      |                      |  |                      |   |                      |   |   |                  |                      |                      |                      |   |  |  |
| <b>&gt;&gt; Programmatic Matrix</b>   |  |                               |  |   |                      |                      |                               |                      |                      |  |                      |   |                      |   |   |                  |                      |                      |                      |   |  |  |
| <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td align="center">Major</td> <td align="center">Moderate</td> <td align="center">Minor</td> <td></td> </tr> <tr> <td><b>Falsification</b></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td rowspan="2"><b>Percent</b> <input style="width:100%;" type="text" value="0%"/></td> </tr> <tr> <td><b>Matrix Notes</b></td> <td colspan="3" style="height: 30px;"><input style="width:100%;" type="text" value="Human health or the environment was exposed to insignificant amounts of pollutants which did not exceed levels that are protective of human health or the environment."/></td> </tr> </table>  |  | Major                         | Moderate   | Minor   |                      | <b>Falsification</b> | <input type="text"/>          | <input type="text"/> | <input type="text"/> | <b>Percent</b> <input style="width:100%;" type="text" value="0%"/> | <b>Matrix Notes</b>  | <input style="width:100%;" type="text" value="Human health or the environment was exposed to insignificant amounts of pollutants which did not exceed levels that are protective of human health or the environment."/> |                      |   |   |                  |                      |                      |                      |   |  |  |
|   | Major  | Moderate                      | Minor  |   |                      |                      |                               |                      |                      |  |                      |   |                      |   |   |                  |                      |                      |                      |   |  |  |
| <b>Falsification</b>  | <input type="text"/>   | <input type="text"/>          | <input type="text"/>   | <b>Percent</b> <input style="width:100%;" type="text" value="0%"/>  |                      |                      |                               |                      |                      |  |                      |   |                      |   |   |                  |                      |                      |                      |   |  |  |
| <b>Matrix Notes</b>   | <input style="width:100%;" type="text" value="Human health or the environment was exposed to insignificant amounts of pollutants which did not exceed levels that are protective of human health or the environment."/>  |                               |  |   |                      |                      |                               |                      |                      |  |                      |   |                      |   |   |                  |                      |                      |                      |   |  |  |
| <b>Adjustment</b> <input style="width:100%;" type="text" value="\$9,000"/>  |  |                               |  |   |                      |                      |                               |                      |                      |  |                      |   |                      |   |   |                  |                      |                      |                      |   |  |  |
| <input style="width:100%;" type="text" value="\$1,000"/>  |  |                               |  |   |                      |                      |                               |                      |                      |  |                      |   |                      |   |   |                  |                      |                      |                      |   |  |  |
| <b>Violation Events</b>   |  |                               |  |   |                      |                      |                               |                      |                      |  |                      |   |                      |   |   |                  |                      |                      |                      |   |  |  |
| <p><b>Number of Violation Events</b> <input style="width:100%;" type="text" value="1"/> <input style="width:100%;" type="text" value="29"/> <b>Number of violation days</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td rowspan="6" style="vertical-align: middle;"><small>mark only one with an x</small></td> <td>daily</td> <td><input type="text"/></td> </tr> <tr> <td>monthly</td> <td><input type="text"/></td> </tr> <tr> <td>quarterly</td> <td><input type="text"/></td> </tr> <tr> <td>semiannual</td> <td><input type="text"/></td> </tr> <tr> <td>annual</td> <td><input type="text"/></td> </tr> <tr> <td>single event</td> <td align="center">x</td> </tr> </table>   | <small>mark only one with an x</small>   | daily                         | <input type="text"/>   | monthly   | <input type="text"/> | quarterly            | <input type="text"/>          | semiannual           | <input type="text"/> | annual   | <input type="text"/> | single event  | x                    | <p><b>Violation Base Penalty</b> <input style="width:100%;" type="text" value="\$1,000"/></p> |   |                  |                      |                      |                      |   |  |  |
| <small>mark only one with an x</small>  |  | daily                         | <input type="text"/>   |   |                      |                      |                               |                      |                      |  |                      |   |                      |   |   |                  |                      |                      |                      |   |  |  |
|   |  | monthly                       | <input type="text"/>   |   |                      |                      |                               |                      |                      |  |                      |   |                      |   |   |                  |                      |                      |                      |   |  |  |
|   |  | quarterly                     | <input type="text"/>   |   |                      |                      |                               |                      |                      |  |                      |   |                      |   |   |                  |                      |                      |                      |   |  |  |
|   |  | semiannual                    | <input type="text"/>   |   |                      |                      |                               |                      |                      |  |                      |   |                      |   |   |                  |                      |                      |                      |   |  |  |
|   |  | annual                        | <input type="text"/>   |   |                      |                      |                               |                      |                      |  |                      |   |                      |   |   |                  |                      |                      |                      |   |  |  |
|   | single event   | x                             |  |   |                      |                      |                               |                      |                      |  |                      |   |                      |   |   |                  |                      |                      |                      |   |  |  |
| <p>One single event is recommended.</p>   |  |                               |  |   |                      |                      |                               |                      |                      |  |                      |   |                      |   |   |                  |                      |                      |                      |   |  |  |
| <b>Good Faith Efforts to Comply</b>   |  |                               |  |   |                      |                      |                               |                      |                      |  |                      |   |                      |   |   |                  |                      |                      |                      |   |  |  |
| <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td align="center" colspan="2"><b>0.0% Reduction</b></td> <td></td> </tr> <tr> <td></td> <td align="center">Before NOV</td> <td align="center">NOV to EDPRP/Settlement Offer</td> <td></td> </tr> <tr> <td><b>Extraordinary</b></td> <td><input type="text"/></td> <td><input type="text"/></td> <td rowspan="3"><b>Violation Subtotal</b> <input style="width:100%;" type="text" value="\$1,000"/></td> </tr> <tr> <td><b>Ordinary</b></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> <tr> <td><b>N/A</b></td> <td align="center">x</td> <td align="center">(mark with x)</td> </tr> <tr> <td><b>Notes</b></td> <td colspan="2" style="height: 30px;"><input style="width:100%;" type="text" value="The Respondent does not meet the good faith criteria for this violation."/></td> </tr> </table>   |  | <b>0.0% Reduction</b>         |  |   |                      | Before NOV           | NOV to EDPRP/Settlement Offer |                      | <b>Extraordinary</b> | <input type="text"/>   | <input type="text"/> | <b>Violation Subtotal</b> <input style="width:100%;" type="text" value="\$1,000"/>  | <b>Ordinary</b>      | <input type="text"/>  | <input type="text"/>  | <b>N/A</b>       | x                    | (mark with x)        | <b>Notes</b>         | <input style="width:100%;" type="text" value="The Respondent does not meet the good faith criteria for this violation."/> |  |  |
|   | <b>0.0% Reduction</b>  |                               |  |   |                      |                      |                               |                      |                      |  |                      |   |                      |   |   |                  |                      |                      |                      |   |  |  |
|   | Before NOV   | NOV to EDPRP/Settlement Offer |  |   |                      |                      |                               |                      |                      |  |                      |   |                      |   |   |                  |                      |                      |                      |   |  |  |
| <b>Extraordinary</b>  | <input type="text"/>   | <input type="text"/>          | <b>Violation Subtotal</b> <input style="width:100%;" type="text" value="\$1,000"/> |   |                      |                      |                               |                      |                      |  |                      |   |                      |   |   |                  |                      |                      |                      |   |  |  |
| <b>Ordinary</b>   | <input type="text"/>   | <input type="text"/>          |  |   |                      |                      |                               |                      |                      |  |                      |   |                      |   |   |                  |                      |                      |                      |   |  |  |
| <b>N/A</b>  | x  | (mark with x)                 |  |   |                      |                      |                               |                      |                      |  |                      |   |                      |   |   |                  |                      |                      |                      |   |  |  |
| <b>Notes</b>  | <input style="width:100%;" type="text" value="The Respondent does not meet the good faith criteria for this violation."/>  |                               |  |   |                      |                      |                               |                      |                      |  |                      |   |                      |   |   |                  |                      |                      |                      |   |  |  |
| <b>Economic Benefit (EB) for this violation</b>   |  |                               |  |   |                      |                      |                               |                      |                      |  |                      |   |                      |   |   |                  |                      |                      |                      |   |  |  |
| <p><b>Estimated EB Amount</b> <input style="width:100%;" type="text" value="\$4"/></p>  | <p><b>Statutory Limit Test</b></p> <p><b>Violation Final Penalty Total</b> <input style="width:100%;" type="text" value="\$1,000"/></p> <p><b>This violation Final Assessed Penalty (adjusted for limits)</b> <input style="width:100%;" type="text" value="\$1,000"/></p> |                               |  |   |                      |                      |                               |                      |                      |  |                      |   |                      |   |   |                  |                      |                      |                      |   |  |  |

## Economic Benefit Worksheet

**Respondent** C & R Distributing, Inc.  
**Case ID No.** 36486  
**Reg. Ent. Reference No.** RN102492139  
**Media** Air  
**Violation No.** 1

|                         |                              |
|-------------------------|------------------------------|
| <b>Percent Interest</b> | <b>Years of Depreciation</b> |
| 5.0                     | 15                           |

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

No commas or \$

**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        | \$100 | 6-Aug-2008 | 1-Jun-2009 | 0.82 | \$4 | n/a | \$4 |
| 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 of implementing procedures designed to ensure the required RVP is maintained. Date required is the date of the investigation. Final date is the date of prospective 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

\$100

TOTAL

\$4

# Compliance History

|   |  |                         |              |
|---|--|-------------------------|--------------|
| Customer/Respondent/Owner-Operator:           | CN600247753 C & R Distributing, Inc.     | Classification: AVERAGE | Rating: 2.71 |
| Regulated Entity:                             | RN102492139 C & R FUEL CONTROL 49        | Classification: HIGH    | Site: 0.00   |
| ID Number(s):                                 | PETROLEUM STORAGE TANK REGISTRATION      | 19714                   |              |
|   | REGISTRATION                             |                         |              |
|   | AIR NEW SOURCE PERMITS                   | ACCOUTN NUMBER          | EE1274U      |
| Location:                                     | 3615 ADMIRAL ST, EL PASO, TX, 79925      |                         |              |
| Rating Date:                                  | 9/1/2008                                 |                         |              |
| Repeat Violator:                              | NO                                       |                         |              |
| TCEQ Region:                                  | REGION 06 – EL PASO                      |                         |              |
| Date Compliance History Prepared:             | September 08, 2008                       |                         |              |
| Agency Decision Requiring Compliance History: | Enforcement                              |                         |              |
| Compliance Period:                            | September 08, 2003 to September 08, 2008 |                         |              |

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
 Name: Kirk Schoppe Phone: (512) 239-0489

## Site Compliance History Components

- |   |     |
|---|-----|
| 1. Has the site been in existence and/or in 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 judgments, and consent decrees of the state of Texas and the federal government. | N/A |
| B. Any criminal convictions of the state of Texas and the federal government.                                       | N/A |
| C. Chronic excessive emissions events.  | N/A |
| D. The approval dates of investigations. (CCEDS Inv. Track. No.)  |     |
| 1      07/26/2004      (277243)   |     |
| 2      06/26/2005      (396585)   |     |
| 3      07/30/2007      (565479)   |     |
| E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)   | N/A |
| F. Environmental audits   | N/A |
| G. Type of environmental management systems (EMSs)  | N/A |
| H. Voluntary on-site compliance assessment dates  | N/A |
| I. Participation in a voluntary pollution reduction program   | N/A |
| J. Early compliance   | N/A |
| K. Sites Outside of Texas   | N/A |



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
C & R DISTRIBUTING, INC.  
RN102492139

§ BEFORE THE  
§  
§ TEXAS COMMISSION ON  
§  
§ ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2008-1417-AIR-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 C & R Distributing, Inc. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. 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 an unmanned gasoline dispensing site at 3615 Admiral Street in El Paso, El Paso County, Texas (the "Site").
2. The Site 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 September 3, 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 One Thousand Dollars (\$1,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Eight Hundred Dollars (\$800) of the administrative penalty and Two Hundred Dollars (\$200) 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 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.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Site, the Respondent is alleged to have failed to comply with the maximum Reid Vapor Pressure ("RVP") requirement of 7.0 pounds per square inch absolute ("psia") during the control period of June 1, 2008 through September 16, 2008, in violation of 30 TEX. ADMIN. CODE § 115.252(2) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on August 6, 2008. Specifically, a regular unleaded gasoline sample taken from Pump No. 4 was found to have an RVP of 7.7 psia.

## 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: C & R Distributing, Inc., Docket No. 2008-1417-AIR-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. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. On June 1<sup>st</sup> of the next control period following the effective date of this Agreed Order, conduct RVP sampling of all grades of gasoline at the Site; and
  - b. Within 15 days after sampling, submit sampling results and written certification demonstrating compliance with RVP gasoline requirements. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

The certification shall be submitted to:

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

with a copy to:

Air Section Manager  
El Paso Regional Office  
Texas Commission on Environmental Quality  
401 East Franklin Avenue, Suite 560  
El Paso, Texas 79901-1206



3. 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 Site operations referenced in this Agreed Order.
4. 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.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by 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.
6. 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.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), 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.



C & R Distributing, Inc.  
DOCKET NO. 2008-1417-AIR-E  
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Srdin  
For the Executive Director

3/12/2009  
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

Fernando S. Fier  
Signature

2-10-09  
Date

FERNANDO G. FIERA  
Name (Printed or typed)  
Authorized Representative of  
C & R Distributing, Inc.

GM.  
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division Revenue Section at the address in Section IV, Paragraph 1 of this Agreed Order.

