

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-1894-PST-E TCEQ ID: RN101784478 CASE NO.: 31580

RESPONDENT NAME: AP LIVINGSTON LIMITED PARTNERSHIP DBA TEXACO FOOD MART

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

SITE WHERE VIOLATIONS OCCURRED: 688 Highway 190 West, Onalaska, Polk County

TYPE OF OPERATION: property with inactive underground storage tanks

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on April 20, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019
TCEQ Enforcement Coordinator: Mr. Rajesh Acharya, Waste Enforcement Section, MC 128, (512) 239-0577
TCEQ Regional Contact: Mr. Ronald Hebert, Beaumont Regional Office, MC R-10, (409) 898-3838
Respondent: Mr. R. Jay Anthony, Director, Anthony Properties Management, Inc., General Partner,
 AP Livingston Limited Partnership, 12770 Coit Road, Suite 917, Dallas, Texas 75251
Respondent's Attorney: Ms. Angela M. Stepherson, Attorney, Coats Rose, Two Lincoln Centre,
 5420 LBJ Freeway, Suite 1300, Dallas, Texas 75240

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: September 21, 2006</p> <p>Date of NOE Relating to this Case: October 16, 2006</p> <p>Background Facts: The EDP RP was filed October 25, 2007. The Respondent filed an Answer and the case was referred to SOAH. A Preliminary Hearing was held December 4, 2008. The Respondent signed an Agreed Order on February 17, 2009.</p> <p>Current Compliance Status: The tanks were removed from the ground in May 2007.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to permanently remove form service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; failed to maintain all piping, pump, manways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons [30 TEX. ADMIN. CODE §§ 334.47(a)(2) and 334.54(b)(2)]. Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)]. 	<p>Total Assessed: \$3,675</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 Paid to General Revenue: \$3,675</p> <p>The Respondent has paid the \$3,675 administrative penalty in full.</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 type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent permanently removed the underground storage tanks at the Site as of May 3, 2007.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 19, 2005

DATES	Assigned: 23-Oct-2006	Screening: 30-Oct-2006	EPA Due: <input type="text"/>
	PCW: 19-Sep-2007		

RESPONDENT/FACILITY INFORMATION	
Respondent	AP Livingston Limited Partnership dba Texaco Food Mart
Reg. Ent. Ref. No.	RN101784478
Facility/Site Region	10-Beaumont <input checked="" type="checkbox"/> Major/Minor Source <input type="checkbox"/> Minor Source

CASE INFORMATION			
Enf./Case ID No.	31580	No. of Violations	2
Docket No.	2006-1894-PST-E	Order Type	1660 <input checked="" type="checkbox"/>
Media Program(s)	Petroleum Storage Tank <input checked="" type="checkbox"/>	Enf. Coordinator	Rajesh Acharya
Multi-Media		EC's Team	Enforcement Team 6 <input checked="" type="checkbox"/>
Admin. Penalty \$	Limit Minimum \$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$3,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	5% Enhancement	Subtotals 2, 3, & 7	\$175
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Notes: Enhancement for one previous NOV with same or similar violations.

Culpability	No <input checked="" type="checkbox"/>	0% Enhancement	Subtotal 4	\$0
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Notes: The respondent does not meet the culpability criteria.

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>
Ordinary	<input type="checkbox"/>	<input type="checkbox"/>
N/A	X	(mark with a small x)

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

Economic Benefit	0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$948	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$9,100	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,675
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OTHER FACTORS AS JUSTICE MAY REQUIRE	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

Final Penalty Amount: \$3,675

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,675
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DEFERRAL	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: This is not an expedited case.

PAYABLE PENALTY		\$3,675
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Screening Date 30-Oct-2006

Docket No. 2006-1894-PST-E

PCW

Respondent AP Livingston Limited Partnership dba Texaco Food Mart

Policy Revision 2 (September 2002)

Case ID No. 31580

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101784478

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

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>)	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 (<i>number of judgements 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</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%
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%

Please Enter Yes or No

Adjustment Percentage (Subtotal 2) 5%

>> 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 previous NOV with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 30-Oct-2006

Docket No. 2006-1894-PST-E

PCW

Respondent AP Livingston Limited Partnership dba Texaco Food Mart

Policy Revision 2 (September 2002)

Case ID No. 31580

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101784478

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description
 Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements. Also, the respondent failed to maintain all piping, pump, manways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons. Specifically, the respondent did not lock the fill pipes.

Base Penalty

>> Environmental, Property and Human Health Matrix

		Harm			
Release		Major	Moderate	Minor	
OR	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="25%"/>
	Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

>> Programmatic Matrix

		Major	Moderate	Minor	
	Falsification	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value=""/>

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one use a small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input checked="" type="checkbox"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent: AP Livingston Limited Partnership dba Texaco Food Mart
Case ID No.: 31580
Reg. Ent. Reference No.: RN101784478
Media [Statute]: 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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Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$9,000	29-Dec-2005	29-Jun-2007	1.5	\$45	\$899	\$944
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 Estimated cost to permanently remove three USTs with a combined capacity of 12,000 gallons at \$0.75 per gallon. Date Required is the date when the respondent was required to upgrade the UST system. Final Date is the estimated compliance date.

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 \$9,000

TOTAL: \$944

Screening Date 30-Oct-2006

Docket No. 2006-1894-PST-E

PCW

Respondent AP Livingston Limited Partnership dba Texaco Food Mart

Policy Revision 2 (September 2002)

Case ID No. 31580

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101784478

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

		Harm			
Release		Major	Moderate	Minor	
OR	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

		Falsification	Major	Moderate	Minor	
		<input type="text"/>	<input checked="" type="text" value="X"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10%"/>
Matrix Notes	<input type="text" value="100% of the rule requirement was not met."/>					

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one use a small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="text" value="X"/>

Violation Base Penalty

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent: AP Livingston Limited Partnership dba Texaco Food Mart
Case ID No.: 31580
Reg. Ent. Reference No.: RN101784478
Media [Statute]: 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
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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)	\$100	21-Sep-2006	14-Jul-2007	0.8	\$4	n/a	\$4

Notes for DELAYED costs: Estimated cost to update the UST registration. Date Required is the date of investigation. Final Date is the estimated 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 \$100
TOTAL \$4

Compliance History

Customer/Respondent/Owner-Operator:	CN602960577 AP Livingston Limited Partnership	Classification: AVERAGE	Rating: 5.00
Regulated Entity:	RN101784478 TEXACO FOOD MART	Classification: AVERAGE	Site Rating: 5.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	43007
Location:	688 HIGHWAY 190 W, ONALASKA, TX, 77360	Rating Date: 9/1/2006	Repeat Violator: NO
TCEQ Region:	REGION 10 - BEAUMONT		
Date Compliance History Prepared:	October 30, 2006		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	October 30, 2001 to October 30, 2006		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Rajesh Acharya	Phone:	(512) 239-0577

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? Yes
3. If Yes, who is the current owner? AP Livingston Limited Partnership
4. If Yes, who was/were the prior owner(s)? Sasswe Joel D
5. When did the change(s) in ownership occur? 08/22/2002

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 - 1 02/07/2006 (450749)
 - 2 10/16/2006 (513688)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	02/07/2006 (450749)	
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 334, SubChapter C 334.47(a)(2)	
Description:	Failure to have tanks upgraded to meet all technical standards.	
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 334, SubChapter C 334.54(d)(2)	
Description:	Failure to empty tanks to less than 2.5 centimeters of product.	
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 334, SubChapter C 334.54(b)[G]	
Description:	Failure to assure that, with the exception of vent lines, all piping, pumps, manways, and ancillary equipment shall be capped, plugged, locked, and/or otherwise secured to prevent access, tampering, or vandalism by unauthorized persons.	
Self Report?	NO	Classification: Minor
Citation:	30 TAC Chapter 334, SubChapter A 334.7(d)(3)	
Description:	Failure to amend facility registration information to reflect current status of the facility.	
- F. Environmental audits.
N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
AP LIVINGSTON LIMITED
PARTNERSHIP DBA TEXACO
FOOD MART
RN101784478

§
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§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2006-1894-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding AP Livingston Limited Partnership dba Texaco Food Mart ("AP Livingston") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and AP Livingston, represented by Angela Stepherson of the law firm of Coats Rose, appear before the Commission and together stipulate that:

1. At the time of the alleged violations, AP Livingston owned real estate that had three out of service underground storage tanks located at 688 Highway 190 West in Onalaska, Polk County, Texas (the "Site").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and AP Livingston agree that the Commission has jurisdiction to enter this Agreed Order, and that AP Livingston is subject to the Commission's jurisdiction.
4. AP Livingston received notice of the violations alleged in Section II ("Allegations") on or about October 21, 2006.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by AP Livingston of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of three thousand six hundred seventy-five dollars (\$3,675.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). AP Livingston paid three thousand six hundred seventy-five dollars (\$3,675.00) of the administrative 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 AP Livingston 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 AP Livingston implemented the following corrective measures at the Site in response to this enforcement action: permanently removed the underground storage tanks at the Site, as of May 3, 2007.
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 AP Livingston 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

1. During an investigation conducted on September 21, 2006, a TCEQ Beaumont Regional Office investigator documented that AP Livingston violated:
 - a. 30 TEX. ADMIN. CODE §§ 334.47(a)(2) and 334.54(b)(2) by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements. Also, AP Livingston failed to maintain all piping, pump, manways, tank access points

and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons. Specifically, AP Livingston did not lock the fill pipes.

- b. 30 TEX. ADMIN. CODE § 334.7(d)(3) by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current out of service status of the USTs.

III. DENIALS

AP Livingston generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that AP Livingston pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and AP Livingston'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 considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: AP Livingston Limited Partnership dba Texaco Food Mart, Docket No. 2006-1894-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 AP Livingston. AP Livingston 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.
3. This Agreed Order, issued by the Commission, shall not be admissible against AP Livingston in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

5. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to AP Livingston, or three days after the date on which the Commission mails notice of the Order to AP Livingston, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

C. M. Sweeney
For the Executive Director

3/16/2009
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, 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 my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on AP Livingston's compliance history;
- Greater scrutiny of any permit applications submitted by AP Livingston;
- 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 against AP Livingston;
- Automatic referral to the Attorney General's Office of any future enforcement actions against AP Livingston; and
- TCEQ seeking other relief as authorized by law.
-

In addition, any falsification of any compliance documents may result in criminal prosecution.

[Signature]
Signature

2/17/09
Date

Frank S. Nicholas
Name (Printed or typed)

Vice President
Title

Authorized representative of

AP Livingston Limited Partnership dba Texaco Food Mart