

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER** Page 1 of 2  
**DOCKET NO.:** 2008-1603-PST-E **TCEQ ID:** RN101811917 **CASE NO.:** 36627  
**RESPONDENT NAME:** Cal Development, Inc. dba Scott Texaco

<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 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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Scott Texaco, 7140 Scott Street, Houston, Harris County</p> <p><b>TYPE OF OPERATION:</b> Convenience store with retail sales of gasoline</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 March 30, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Ms. Brianna Carlson, Enforcement Division, Enforcement Team 6, MC R-15, (956) 430-6021; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387  <b>Respondent:</b> Mr. Paul Dunphey, President, Cal Development, Inc., 3505 Daphne Street, Houston, Texas 77021  <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>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <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> September 5, 2008</p> <p><b>Date of NOV/NOE Relating to this Case:</b> September 22, 2008 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>WASTE</b></p> <p>1) Failure to provide proper release detection for the pressurized piping associated with the underground storage tanks ("USTs"). Specifically, the Respondent did not conduct the annual piping tightness test [30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a)].</p> <p>2) Failure to test the line leak detectors at least once per year for performance and operational reliability [30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a)].</p> <p>3) Failure to verify proper operation of Stage II equipment at least once every 12 months [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p>	<p><b>Total Assessed:</b> \$12,646</p> <p><b>Total Deferred:</b> \$2,529  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid (Due) to General Revenue:</b> \$457 (remaining \$9,660 due in 23 monthly payments of \$420 each)</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Station:</p> <p>a) Conducted the required annual piping tightness and line leak detector tests on October 1, 2008 with passing results; and</p> <p>b) Successfully conducted the annual testing of the Stage II equipment on September 5, 2008.</p>

Additional ID No(s): PST 19599



## Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

DATES	Assigned	29-Sep-2008	Screening	2-Oct-2008	EPA Due	
	PCW	2-Oct-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Cal Development, Inc. dba Scott Texaco		
Reg. Ent. Ref. No.	RN101811917		
Facility/Site Region	12-Houston	Major/Minor Source	Major

<b>CASE INFORMATION</b>			
Enf./Case ID No.	36627	No. of Violations	2
Docket No.	2008-1603-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Brianna Carlson
		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** \$10,000

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

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

**Compliance History** **Subtotals 2, 3, & 7** \$2,200

Notes: Enhancement for one 1660 order and one NOV with dissimilar violations.

**Culpability** **Subtotal 4** \$0

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5** \$1,750

**Economic Benefit** **Subtotal 6** \$0

Total EB Amounts	\$2,196
Approx. Cost of Compliance	\$2,000

0.0% Enhancement\*  
\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** \$10,450

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **Adjustment** \$2,196

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with violation nos. 1 and 2.

**Final Penalty Amount** \$12,646

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** \$12,646

**DEFERRAL** **Adjustment** -\$2,529

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

Notes: Deferral offered for expedited settlement.

**PAYABLE PENALTY** **\$10,117**

**Screening Date** 2-Oct-2008

**Docket No.** 2008-1603-PST-E

**PCW**

**Respondent** Cal Development, Inc. dba Scott Texaco

Policy Revision 2 (September 2002)

**Case ID No.** 36627

PCW Revision June 12, 2008

**Reg. Ent. Reference No.** RN101811917

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** Brianna Carlson

**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	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 22%

>> **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 1660 order and one NOV with dissimilar violations.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 22%

<b>Screening Date</b> 2-Oct-2008	<b>Docket No.</b> 2008-1603-PST-E	<b>PCW</b>
<b>Respondent</b> Cal Development, Inc. dba Scott Texaco	<small>Policy Revision 2 (September 2002)</small>	
<b>Case ID No.</b> 36627	<small>PCW Revision June 12, 2008</small>	
<b>Reg. Ent. Reference No.</b> RN101811917		
<b>Media [Statute]</b> Petroleum Storage Tank		
<b>Enf. Coordinator</b> Brianna Carlson		
<b>Violation Number</b>	1	
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 334.50 (b)(2) and (b)(2)(A)(i)(III) and Tex. Water Code § 26.3475(a)	
<b>Violation Description</b>	Failed to provide proper release detection for the pressurized piping associated with the USTs. Specifically, the Respondent did not conduct the annual piping tightness test. Failed to test the line leak detectors at least once per year for performance and operational reliability.	
<b>Base Penalty</b>		\$10,000

**>> Environmental, Property and Human Health Matrix**

<b>OR</b>	<b>Harm</b>				
	<b>Release</b>	Major	Moderate		Minor
	<b>Actual</b>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
<b>Potential</b>	x	<input type="checkbox"/>	<input type="checkbox"/>	<b>Percent</b> <input type="text" value="50%"/>	

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Percent</b> <input type="text" value="0%"/>

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

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

<small>mark only one with an x</small>	daily	<input type="checkbox"/>
	monthly	<input type="checkbox"/>
	quarterly	<input type="checkbox"/>
	semiannual	<input type="checkbox"/>
	annual	X
	single event	<input type="checkbox"/>

**Violation Base Penalty**

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

**Good Faith Efforts to Comply**  Reduction

	<b>10.0% Reduction</b>	
	<small>Before NOV</small>	<small>NOV to EDPRP/Settlement Offer</small>
	Extraordinary	<input type="checkbox"/>
Ordinary	x	
N/A	<small>(mark with x)</small>	

**Notes** The Respondent came into compliance on October 1, 2008 after the NOE dated September 22, 2008.

**Violation Subtotal**

**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** Cal Development, Inc. dba Scott Texaco  
**Case ID No.** 36627  
**Reg. Ent. Reference No.** RN101811917  
**Media** Petroleum Storage Tank  
**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
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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				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

**Avoided Costs**

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$1,000	5-Sep-2007	1-Oct-2008	1.99	\$100	\$1,000	\$1,100
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to conduct annual piping tightness and line leak detector tests. The Date Required is one year prior to the investigation date. The Final Date is the compliance date.

Approx. Cost of Compliance \$1,000

TOTAL \$1,100

<b>Screening Date</b> 2-Oct-2008	<b>Docket No.</b> 2008-1603-PST-E	<b>PCW</b>		
<b>Respondent</b> Cal Development, Inc. dba Scott Texaco		<i>Policy Revision 2 (September 2002)</i>		
<b>Case ID No.</b> 36627		<i>PCW Revision June 12, 2008</i>		
<b>Reg. Ent. Reference No.</b> RN101811917				
<b>Media [Statute]</b> Petroleum Storage Tank				
<b>Enf. Coordinator</b> Brianna Carlson				
<b>Violation Number</b> <input type="text" value="2"/>				
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 115.245(2) and Tex. Health &amp; Safety Code § 382.085(b)"/>			
<b>Violation Description</b>	<input type="text" value="Failed to verify proper operation of Stage II equipment at least once every 12 months."/>			
	<b>Base Penalty</b>	<input type="text" value="\$10,000"/>		
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
<b>OR</b>	<b>Harm</b>			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>
		<b>Percent</b>	<input type="text" value="50%"/>	
<b>&gt;&gt; Programmatic Matrix</b>				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
		<b>Percent</b>	<input type="text" value="0%"/>	
<b>Matrix Notes</b>	<input type="text" value="Human health or the environment could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation."/>			
	<b>Adjustment</b>	<input type="text" value="\$5,000"/>		
		<b>Adjustment</b>	<input type="text" value="\$5,000"/>	
<b>Violation Events</b>				
	Number of Violation Events	<input type="text" value="1"/>	Number of violation days	<input type="text" value="365"/>
	<i>mark only one with an x</i>	daily	<input type="text"/>	<b>Violation Base Penalty</b> <input type="text" value="\$5,000"/>
		monthly	<input type="text"/>	
		quarterly	<input type="text"/>	
		semiannual	<input type="text"/>	
		annual	<input type="text" value="X"/>	
		single event	<input type="text"/>	
	<input type="text" value="One annual event is recommended for the 12-month period preceding the September 5, 2008 investigation."/>			
<b>Good Faith Efforts to Comply</b>				
	<b>25.0% Reduction</b>	<input type="text" value="\$1,250"/>		
		Before NOV	NOV to EDPRP/Settlement Offer	
	Extraordinary	<input type="text"/>	<input type="text"/>	
	Ordinary	<input type="text" value="x"/>	<input type="text"/>	
	N/A	<input type="text"/>	(mark with x)	
	<b>Notes</b>	<input type="text" value="The Respondent came into compliance on September 5, 2008 prior to the NOE dated September 22, 2008."/>		
	<b>Violation Subtotal</b>	<input type="text" value="\$3,750"/>		
<b>Economic Benefit (EB) for this violation</b>				
<b>Statutory Limit Test</b>				
	Estimated EB Amount	<input type="text" value="\$1,096"/>	Violation Final Penalty Total	<input type="text" value="\$5,869"/>
			<b>This violation Final Assessed Penalty (adjusted for limits)</b>	<input type="text" value="\$5,869"/>

## Economic Benefit Worksheet

**Respondent** Cal Development, Inc. dba Scott Texaco  
**Case ID No.** 36627  
**Reg. Ent. Reference No.** RN101811917  
**Media** Petroleum Storage Tank  
**Violation No.** 2

<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
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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				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

**Avoided Costs**

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$1,000	5-Sep-2007	5-Sep-2008	1.92	\$96	\$1,000	\$1,096
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost for annual testing of the Stage II equipment. The Date Required is one year prior to the investigation date. The Final Date is the compliance date.

Approx. Cost of Compliance \$1,000

TOTAL \$1,096

# Compliance History Report

Customer/Respondent/Owner-Operator: CN601107907 Cal Development, Inc. Classification: AVERAGE Rating: 6.80  
Regulated Entity: RN101811917 SCOTT TEXACO Classification: AVERAGE Site Rating: 10.60  
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 19599  
REGISTRATION  
Location: 7140 SCOTT ST, HOUSTON, TX, 77021 Rating Date: 9/1/2008 Repeat Violator: NO  
TCEQ Region: REGION 12 - HOUSTON  
Date Compliance History Prepared: November 17, 2008  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: September 30, 2003 to September 30, 2008  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Briana Carlson Phone: 956-425-6010

## 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? Cal Development, Inc.
4. If Yes, who was/were the prior owner(s)? EMIOLA, RAHEEM
5. When did the change(s) in ownership occur? 3/15/2006

## 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: 08/29/2005

ADMINORDER 2004-1564-PST-E

Classification: Moderate

Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)

30 TAC Chapter 37, SubChapter I 37.815(b)

Description: A mechanism was received, but it did not provide coverage on the file review date, and not all tanks were covered.

- 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	08/19/2004	(288282)
2	11/22/2005	(436131)
3	03/26/2006	(458625)
4	02/15/2007	(539875)
5	09/22/2008	(702293)

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

Date: 11/17/2005 (436131)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)

30 TAC Chapter 37, SubChapter I 37.815(b)

Description: A mechanism was received, but it did not provide coverage on the file review date, and not all tanks were covered.

Self Report? NO

Classification: Major

Citation: 2A TWC Chapter 7, SubChapter A 7.101

Ordering Provision 2. ORDER

Description: Failed to comply with the Ordering Provisions Commission Order Docket No. 2004-1564-PST-E.

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  
CAL DEVELOPMENT, INC. DBA  
SCOTT TEXACO  
RN101811917

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BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**AGREED ORDER**  
**DOCKET NO. 2008-1603-PST-E**

**I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Cal Development, Inc. dba Scott Texaco ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a convenience store with retail sales of gasoline at 7140 Scott Street in Houston, Harris County, Texas (the "Station").
2. The Respondent's two underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about September 27, 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 Twelve Thousand Six Hundred Forty-Six Dollars (\$12,646) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Four Hundred Fifty-Seven Dollars (\$457) of the administrative penalty and Two Thousand Five Hundred Twenty-Nine Dollars (\$2,529) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all 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 Nine Thousand Six Hundred Sixty Dollars (\$9,660) of the administrative penalty shall be payable in 23 monthly payments of Four Hundred Twenty Dollars (\$420) 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 has implemented the following corrective measures at the Station:
  - a. Conducted the required annual piping tightness and line leak detector tests on October 1, 2008 with passing results; and
  - b. Successfully conducted the annual testing of the Stage II equipment on September 5, 2008.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Station, the Respondent is alleged to have:

1. Failed to provide proper release detection for the pressurized piping associated with the USTs, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a), as documented during an investigation conducted on September 5, 2008. Specifically, the Respondent did not conduct the annual piping tightness test.
2. Failed to test the line leak detectors at least once per year for performance and operational reliability, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a), as documented during an investigation conducted on September 5, 2008.
3. Failed to verify proper operation of Stage II equipment at least once every 12 months, in violation of 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on September 5, 2008.

## 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: Cal Development, Inc. dba Scott Texaco, Docket No. 2008-1603-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.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

John S. Sullivan  
For the Executive Director

2/27/2009  
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.

Paul R. Dupitay  
Signature

1/12/09  
Date

Paul R. Dupitay  
Name (Printed or typed)

Pres  
Title

Authorized Representative of  
Cal Development, Inc. dba Scott Texaco

**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.

