

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2006-1685-PST-E TCEQ ID: RN103051561 CASE NO.: 31241
RESPONDENT NAME: MELVIN TERRAL DBA T-MART FOOD AND
MATHA TERRAL DBA T-MART FOOD

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 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 VIOLATION(S) OCCURRED: 612 Commerce, Robert Lee, Coke County

TYPE OF OPERATION: Convenience store with out-of-service USTs

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 June 15, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Dinniah M. Chahin, Litigation Division, MC 175, (512) 239-0617
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Mr. Epifanio Villarreal, Water Enforcement Section, MC R-14, (361) 825-3425

TCEQ Regional Contact: Mr. Mark Newman, San Angelo Regional Office, MC R-8, (325) 655-9479

Respondents: Mr. Melvin and Ms. Martha Terral, Owner, dba T-Mart Food, P.O. Box 806, Haskell, Texas 79521

Respondents' Attorney: Not represented by counsel on this enforcement matter.

**RESPONDENT NAME: MELVIN TERRAL DBA T-MART FOOD AND
 MARTHA TERRAL DBA T-MART FOOD
 DOCKET NO.: 2006-1685-PST-E**

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 checked="" type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: July 6, 2006 (investigation) September 21, 2006 (record review)</p> <p>Date of NOE Relating to this Case: July 7, 2006</p> <p>Background Facts: The EDPRP was filed June 6, 2007. The Respondents filed an answer and the case was referred to SOAH. A settlement agreement was reached and the Agreed Order was signed April 16, 2009.</p> <p>Current Compliance Status: Not yet in compliance. This Facility is no longer in operation. The Respondents owe \$2,354.48 in past-due fees and do not have a delivery certificate.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to monitor underground storage tanks ("USTs") for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)]. Failed to provide proper corrosion protection for the UST system [30 TEX. ADMIN. CODE § 334.49(a) and TEX. WATER CODE § 26.3475(d)]. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and 37.815(b)]. Failed to pay outstanding UST fees for TCEQ Financial Account No. 00385510 for fiscal years 1994 through 2006 [30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702]. 	<p>Total Assessed: \$8,000</p> <p>Total Deferred: \$6,800 <input type="checkbox"/> Expedited Order <input checked="" type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid/Due to General Revenue: \$100/\$1,100</p> <p>The Respondents paid \$100 of the underrferred administrative penalty. The remaining amount of \$1,100 of the underrferred administrative penalty shall be payable in 11 monthly payments of \$100 each.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Respondents shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Within 365 days, submit payment for outstanding fees, including any associated penalties and interest. Within 365 days, either: <ol style="list-style-type: none"> Ensure that that the UST system has been protected from corrosion and emptied of all regulated substances, and maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked and/or otherwise secured manner; or Permanently remove the UST system from service. Within 380 days, submit written certification demonstrating compliance.



DATES	Assigned	11-Sep-2006	Screening	15-Sep-2006	EPA Due	
	PCW	30-Apr-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	Melvin and Martha Terral dba T-Mart Food
Reg. Ent. Ref. No.	RN103051561
Facility/Site Region	8-San Angelo <
Major/Minor Source	Minor Source <

CASE INFORMATION			
Enf./Case ID No.	31241	No. of Violations	4
Docket No.	2006-1685-PST-E	Order Type	1660 <
Media Program(s)	Petroleum Storage Tank <	Enf. Coordinator	Shontay Wilcher
Multi-Media		EC's Team	Enforcement Team 7 <
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$8,000
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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	0% Enhancement	Subtotals 2, 3, & 7 \$0

Notes No adjustment for compliance history.

Culpability	No <	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		
Ordinary		
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	\$2,670	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$13,150	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$8,000
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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	\$8,000
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$8,000
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DEFERRAL	0% 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	\$8,000
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Screening Date 15-Sep-2006

Docket No. 2006-1685-PST-E

PCW

Respondent Melvin and Martha Terral dba T-Mart Food

Policy Revision 2 (September 2002)

Case ID No. 31241

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN103051561

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Shontay Wilcher

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)	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)**

N/A

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 adjustment for compliance history.

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

Screening Date 15-Sep-2006

Docket No. 2006-1685-PST-E

PCW

Respondent Melvin and Martha Terral dba T-Mart Food

Policy Revision 2 (September 2002)

Case ID No. 31241

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN103051561

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Shontay Wilcher

Violation Number 1

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A)

Secondary Rule Cite(s) Tex. Water Code § 26.3475(c)(1)

Violation Description Failure to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring).

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

		Harm			
Release		Major	Moderate	Minor	
OR	Actual				Percent 25%
	Potential	X			

>> Programmatic Matrix

		Harm			
Falsification		Major	Moderate	Minor	
					Percent

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 -\$7,500

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 1

mark only one use a small x	daily	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One quarterly event is recommended from the July 6, 2006 investigation date to the September 15, 2006 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$49

Violation Final Penalty Total \$2,500

This violation Final Assessed Penalty (adjusted for limits) \$2,500

Economic Benefit Worksheet

Respondent: Melvin and Martha Terral dba T-Mart Food
Case ID No.: 31241
Reg. Ent. Reference No.: RN103051561
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)				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)	\$1,200	06-Jul-2006	01-May-2007	0.8	\$49	n/a	\$49

Notes for DELAYED costs: Estimated cost to monitor USTs for releases. The Date Required is the date of the investigation and the 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 \$1,200

TOTAL \$49

Screening Date 15-Sep-2006

Docket No. 2006-1685-PST-E

PCW

Respondent Melvin and Martha Terral dba T-Mart Food

Policy Revision 2 (September 2002)

Case ID No. 31241

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN103051561

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Shontay Wilcher

Violation Number 2

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.49(a)

Secondary Rule Cite(s) Tex. Water Code § 26.3475(d)

Violation Description Failed to provide proper corrosion protection for the UST system.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	X			

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent

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 -\$7,500

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 1

mark only one use a small x	daily	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One quarterly event is recommended from the July 6, 2006 investigation date to the September 15, 2006 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$573

Violation Final Penalty Total \$2,500

This violation Final Assessed Penalty (adjusted for limits) \$2,500

Economic Benefit Worksheet

Respondent Melvin and Martha Terral dba T-Mart Food
Case ID No. 31241
Reg. Ent. Reference No. RN103051561
Media [Statute] Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs							
Equipment	\$10,000	06-Jul-2006	01-May-2007	0.8	\$27	\$546	\$573
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to provide corrosion protection for the UST. Date Required is the date of the 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 \$10,000
TOTAL \$573

Screening Date 15-Sep-2006

Docket No. 2006-1685-PST-E

PCW

Respondent Melvin and Martha Terral dba T-Mart Food

Policy Revision 2 (September 2002)

Case ID No. 31241

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN103051561

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Shontay Wilcher

Violation Number 3

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.22(a)

Secondary Rule Cite(s) Tex. Water Code § 5.702

Violation Description Failure to pay outstanding UST fees for TCEQ Financial Account number 0038551U for fiscal years 1994 through 2006, as documented during a record review conducted on September 21, 2006.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				
Potential				

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	

Matrix Notes

Adjustment -\$10,000

Base Penalty Subtotal \$0

Violation Events

Number of Violation Events

mark only one use a small x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$0

No additional administrative penalty was calculated for this violation as penalties and interest will be assessed on the next fee billing.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$0

This violation Final Assessed Penalty (adjusted for limits) \$0

Economic Benefit Worksheet

Respondent Melvin and Martha Terral dba T-Mart Food

Case ID No. 31241

Reg. Ent. Reference No. RN103051561

Media [Statute] Petroleum Storage Tank

Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	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)				0.0	\$0	n/a	\$0
Notes for DELAYED costs				N/A			

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				N/A			

Approx. Cost of Compliance \$0

TOTAL \$0

Screening Date 15-Sep-2006

Docket No. 2006-1685-PST-E

PCW

Respondent Melvin and Martha Terral dba T-Mart Food

Policy Revision 2 (September 2002)

Case ID No. 31241

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN103051561

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Shontay Wilcher

Violation Number 4

Primary Rule Cite(s) 30 Tex. Admin. Code § 37.815(a) and (b)

Secondary Rule Cite(s)

Violation Description

Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	X			10%

Matrix Notes: 100% of rule requirement was not met.

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

Violation Events

Number of Violation Events 3

mark only one use a small x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$3,000

Three single events (one event per tank) are recommended based on documentation of the violation during the July 6, 2006 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2,048

Violation Final Penalty Total \$3,000

This violation Final Assessed Penalty (adjusted for limits) \$3,000

Economic Benefit Worksheet

Respondent Melvin and Martha Terral dba T-Mart Food

Case ID No. 31241

Reg. Ent. Reference No. RN103051561

Media [Statute] Petroleum Storage Tank

Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]	\$1,950	06-Jul-2005	06-Jul-2006	1.0	\$98	\$1,950	\$2,048
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to provide financial assurance for one petroleum UST (\$650 per tank). The Date Required is one year prior to the investigation. The Final Date is the date of the investigation.

Approx. Cost of Compliance \$1,950

TOTAL \$2,048

Compliance History

Customer/Respondent/Owner-Operator:	CN601591316 Melvin Terral and Martha Terral	Classification: Average	Rating: 3.01
Regulated Entity:	RN103051561 T-MART FOOD	Classification: Average	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	9594
Location:	612 COMMERCE, ROBERT LEE, TX, 76945	Rating Date: September 01 06	Repeat Violator: NO
TCEQ Region:	REGION 08 - SAN ANGELO		
Date Compliance History Prepared:	September 15, 2006		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	September 15, 2001 to September 15, 2006		

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

Name: Jason Godeaux Phone: 512-239-2541

Site Compliance History Components

- | | |
|--|------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>N/A</u> |
| 5. When did the change(s) in ownership occur? | <u>N/A</u> |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
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 09/05/2006 (480386)
 - 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
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
MELVIN TERRAL DBA T-MART
FOOD AND MARTHA TERRAL
DBA T-MART FOOD,
RN103051561

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§
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§
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§
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BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2006-1685-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 Melvin Terral dba T-Mart Food and Martha Terral dba T-Mart Food ("Mr. Terral and Mrs. Terral") under the authority of TEX. WATER CODE chs. 5, 7, and 26. The Executive Director of the TCEQ, represented by the Litigation Division, Mr. Terral, and Mrs. Terral, appear before the Commission and together stipulate that:

1. Mr. Terral and Mrs. Terral own, and until 1994, operated a convenience store with retail sales of gasoline located at 612 Commerce, Robert Lee, Coke County, Texas (the "Facility").
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 chs. 5 and 26 and TCEQ rules.
3. The Commission, Mr. Terral, and Mrs. Terral agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Terral and Mrs. Terral are subject to the Commission's jurisdiction.
4. Mr. Terral and Mrs. Terral received notice of the violations alleged in Section II ("Allegations") on or about July 12, 2006.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Terral and Mrs. Terral of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of eight thousand dollars (\$8,000.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Financial Assurance Section of the Commission's Financial Administration Division reviewed the financial documentation submitted by Mr. Terral and Mrs. Terral and determined that Mr. Terral and Mrs. Terral are unable to pay part of the administrative penalty. Therefore, six thousand eight hundred dollars (\$6,800.00) of the penalty is deferred contingent upon Mr. Terral and Mrs. Terral'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 Mr. Terral and Mrs. Terral fail to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require Mr. Terral and Mrs. Terral to pay all or part of the deferred penalty.

Mr. Terral and Mrs. Terral paid one hundred dollars (\$100.00) of the undeferred administrative penalty. The remaining amount of one thousand one hundred dollars (\$1,100.00) shall be payable in eleven monthly payments of one hundred dollars (\$100.00) each. The first 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 Mr. Terral and Mrs. Terral fail to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at his 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 acceleration of any remaining balance constitutes the failure by Mr. Terral and Mrs. Terral to timely and satisfactorily comply with all the terms of this Agreed Order and the Executive Director may demand payment of any deferred penalty amount.

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, Mr. Terral, and Mrs. Terral 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 Mr. Terral and Mrs. Terral have 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

1. During an investigation conducted on July 6, 2006, a TCEQ San Angelo Regional Office investigator documented that Mr. Terral and Mrs. Terral violated:
 - a. 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1) by failing to monitor underground storage tanks ("USTs") for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring).
 - b. 30 TEX. ADMIN. CODE § 334.49(a) and TEX. WATER CODE § 26.3475(d) by failing to provide proper corrosion protection for the UST system.
 - c. 30 TEX. ADMIN. CODE § 37.815(a) and 37.815(b) by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.
2. During a record review conducted on September 21, 2006, TCEQ staff documented that Mr. Terral and Mrs. Terral violated 30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702 by failing to pay outstanding UST fees for TCEQ Financial Account No. 0038551U for fiscal years 1994 through 2006.

III. DENIALS

Mr. Terral and Mrs. Terral generally deny each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Terral and Mrs. Terral pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Terral's and Mrs. Terral'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: Melvin Terral dba T-Mart Food and Martha Terral dba T-Mart Food, Docket No. 2006-1685-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. Mr. Terral and Mrs. Terral shall undertake the following technical requirements:

- a. Within 365 days after the effective date of this Agreed Order, Mr. Terral and Mrs. Terral shall submit payment for outstanding fees, including any associated penalties and interest and with the notation, “Melvin Terral dba T-Mart Food and Martha Terral dba T-Mart Food, TCEQ Financial Account No. 0038551U,” 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

- b. Within 365 days after the effective date of this Agreed Order, Mr. Terral and Mrs. Terral shall either:
- i. Ensure that that the UST system has been protected from corrosion and emptied of all regulated substances, and maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked and/or otherwise secured manner, in accordance with 30 TEX. ADMIN. CODE § 334.54; or
- ii. Permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55.
- c. Within 380 days after the effective date of this Agreed Order, Mr. Terral and Mrs. Terral shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. 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."

Mr. Terral and Mrs. Terral shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. to:

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

and

Mark Newman, Waste Section Manager
Texas Commission on Environmental Quality
San Angelo Regional Office
622 South Oaks, Suite K
San Angelo, Texas 79705-5451

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Terral and Mrs. Terral. Mr. Terral and Mrs. Terral are ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Mr. Terral and Mrs. Terral fail 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, Mr. Terral and Mrs. Terral's failure to comply is not a violation of this Agreed Order. Mr. Terral and Mrs. Terral shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Terral and Mrs. Terral shall notify the Executive Director within seven days after Mr. Terral and Mrs. Terral become 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 Mr. Terral and Mrs. Terral shall be made in writing to the Executive Director. Extensions are not effective until Mr. Terral and Mrs. Terral receive 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 Mr. Terral and Mrs. Terral 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 Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order 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) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Mr. Terral and Mrs. Terral, or three days after the date on which the Commission mails notice of the Order to Mr. Terral and Mrs. Terral, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Johnny Penner

5/13/2009

For the Executive Director

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 Mr. Terral's and Mrs. Terral's compliance history;
- Greater scrutiny of any permit applications submitted by Mr. Terral and Mrs. Terral;
- 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 Mr. Terral and Mrs. Terral;
- Automatic referral to the Attorney General's Office of any future enforcement actions against

Mr. Terral and Mrs. Terral; and

For the TCEQ seeking other relief as authorized by law.

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

Melvin L. Terral
Signature

4/16/09
Date

MELVIN L. TERRAL
Name (Printed or typed)
Authorized representative of
Melvin Terral dba T-Mart Food

OWNER
Title

Martha A. Terral
Signature

4/16/09
Date

MARTHA A. TERRAL
Name (Printed or typed)
Authorized representative of
Martha Terral dba T-Mart Food

OWNER
Title