

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-0139-PST-E **TCEQ ID:** RN101896876 **CASE NO.:** 37101

RESPONDENT NAME: TERMINAL MARKET GARAGE, L.L.C. dba Terminal Market Garage

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Terminal Market Garage, 726 Hazel Street, San Antonio, Bexar County</p> <p>TYPE OF OPERATION: Vehicle maintenance garage</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on May 25, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Judy Kluge, Enforcement Division, Enforcement Team 6, MC R-04, (817) 588-5825; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Frank Sepulveda, Registered Agent/Owner, TERMINAL MARKET GARAGE, L.L.C., 726 Hazel Street, San Antonio, Texas 78207 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: December 19, 2008</p> <p>Date of NOV/NOE Relating to this Case: January 21, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>1) Failure to provide an amended underground storage tank ("UST") registration form to the TCEQ for any change or additional information regarding USTs within 30 days from the date of occurrence of the change. Specifically, the used oil UST was not registered. Also, the registration was not updated to reflect the current operational status of the three USTs which had been previously removed from the ground [30 TEX. ADMIN. CODE § 334.7(a)(1) and (d)(3)].</p> <p>2) Failure to submit a release determination report to the TCEQ following the removal of the UST system. Specifically, the Respondent did not submit a release determination report to the TCEQ regarding the closure procedures conducted in conjunction with the previous removal of USTs at the Facility [30 TEX. ADMIN. CODE § 334.55(a)(6)(D)(ii)].</p> <p>3) Failure to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements. Specifically, the Respondent did not remove the used oil UST from service. Also, the Respondent did not permanently remove the piping associated with the three previously removed USTs from the ground [30 TEX. ADMIN. CODE § 334.47(a)(2)].</p>	<p>Total Assessed: \$7,000</p> <p>Total Deferred: \$1,400 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$175 (remaining \$5,425 due in 35 monthly payments of \$155 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 Order will require the Respondent to:</p> <p>a) Within 30 days after the effective date of this Agreed Order:</p> <p>i) Submit an amended registration to indicate the current operational status of the UST system;</p> <p>ii) Complete and submit a release determination report to the TCEQ specifically related to the three previously removed USTs; and</p> <p>iii) Permanently remove the used oil UST system from service, and the piping associated with the three previously removed USTs.</p> <p>b) Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.</p>

Additional ID No(s): PST No. 31834



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	26-Jan-2009	Screening	28-Jan-2009	EPA Due	
	PCW	30-Jan-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	TERMINAL MARKET GARAGE, L.L.C. dba Terminal Market Garage
Reg. Ent. Ref. No.	RN101896876
Facility/Site Region	13-San Antonio
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	37101	No. of Violations	3
Docket No.	2009-0139-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Judy Kluge
		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 \$7,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 0.0% Enhancement Subtotals 2, 3, & 7 \$0

Notes No adjustment due to compliance history.

Culpability No 0.0% Enhancement Subtotal 4 \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments Subtotal 5 \$0

Economic Benefit 0.0% Enhancement* Subtotal 6 \$0

Total EB Amounts	\$2,719	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$5,600	

SUM OF SUBTOTALS 1-7 Final Subtotal \$7,000

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount \$7,000

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$7,000

DEFERRAL 20.0% Reduction Adjustment -\$1,400

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 \$5,600

Screening Date 28-Jan-2009

Docket No. 2009-0139-PST-E

PCW

Respondent TERMINAL MARKET GARAGE, L.L.C. dba Terminal Ma

Policy Revision 2 (September 2002)

Case ID No. 37101

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101896876

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOV's with same or similar violations as those in the current enforcement action (number of NOV's meeting criteria)	0	0%
	Other written NOV's	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
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) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment due to compliance history.

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

Screening Date 28-Jan-2009	Docket No. 2009-0139-PST-E	PCW			
Respondent TERMINAL MARKET GARAGE, L.L.C. dba Terminal Market Garag	<small>Policy Revision 2 (September 2002)</small>				
Case ID No. 37101	<small>PCW Revision October 30, 2008</small>				
Reg. Ent. Reference No. RN101896876					
Media [Statute] Petroleum Storage Tank					
Enf. Coordinator Judy Kluge					
Violation Number	1				
Rule Cite(s)	30 Tex. Admin. Code § 334.7(a)(1) and (d)(3)				
Violation Description	Failed to provide an amended UST registration form to the TCEQ for any change or additional information regarding USTs within 30 days from the date of occurrence of the change. Specifically, the used oil UST was not registered. Also, the registration was not updated to reflect the current operational status of the three USTs which had been previously removed from the ground.				
Base Penalty		\$10,000			
>> Environmental, Property and Human Health Matrix					
OR	Harm				
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
				Percent <input type="text" value="0%"/>	
>> 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	100% of the rule requirement was not met.				
Adjustment				\$9,000	
				\$1,000	
Violation Events					
Number of Violation Events		<input type="text" value="1"/>	Number of violation days		
		<input type="text" value="40"/>			
<small>mark only one with an x</small>	daily	<input type="text"/>			
	weekly	<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 <input type="text" value="\$1,000"/>	
One single event is recommended based on documentation of the violation during the December 19, 2008 investigation.					
Good Faith Efforts to Comply			<input type="text" value="0.0%"/> Reduction	\$0	
		Before NOV	NOV to EDPRP/Settlement Offer		
Extraordinary	<input type="text"/>	<input type="text"/>			
Ordinary	<input type="text"/>	<input type="text"/>			
N/A	<input checked="" type="text" value="x"/>	(mark with x)			
Notes	The Respondent does not meet the good faith criteria for this violation.				
Violation Subtotal				\$1,000	
Economic Benefit (EB) for this violation			Statutory Limit Test		
Estimated EB Amount		<input type="text" value="\$4"/>	Violation Final Penalty Total <input type="text" value="\$1,000"/>		
			This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,000"/>		

Economic Benefit Worksheet

Respondent TERMINAL MARKET GARAGE, L.L.C. dba Terminal Market Garage
Case ID No. 37101
Reg. Ent. Reference No. RN101896876
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	\$100	19-Dec-2008	30-Sep-2009	0.78	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to prepare and submit an amended UST registration. The date required is the investigation date and the final date is the expected date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$4

Screening Date 28-Jan-2009	Docket No. 2009-0139-PST-E	PCW		
Respondent TERMINAL MARKET GARAGE, L.L.C. dba Terminal Market Garage	<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 37101	<i>PCW Revision October 30, 2008</i>			
Reg. Ent. Reference No. RN101896876				
Media [Statute] Petroleum Storage Tank				
Enf. Coordinator Judy Kluge				
Violation Number <input type="text" value="2"/>				
Rule Cite(s)	30 Tex. Admin. Code § 334.55(a)(6)(D)(ii)			
Violation Description	Failed to submit a release determination report to the TCEQ following the removal of the UST system. Specifically, the Respondent did not submit a release determination report to the TCEQ regarding the closure procedures conducted in conjunction with the removal of the USTs at the Facility.			
Base Penalty		<input type="text" value="\$10,000"/>		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
				Percent <input type="text" value="0%"/>
>> Programmatic Matrix				
Falsification				
Major				
Moderate				
Minor				
	<input type="text"/>	x	<input type="text"/>	<input type="text"/>
				Percent <input type="text" value="10%"/>
Matrix Notes	100% of the rule requirement was not met.			
Adjustment				<input type="text" value="\$9,000"/>
				<input type="text" value="\$1,000"/>
Violation Events				
Number of Violation Events		<input type="text" value="1"/>	<input type="text" value="40"/> Number of violation days	
<i>mark only one with an x</i>	daily	<input type="text"/>		
	weekly	<input type="text"/>		
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input checked="" type="checkbox"/>		
				Violation Base Penalty <input type="text" value="\$1,000"/>
One single event is recommended based on documentation of the violation during the December 19, 2008 investigation.				
Good Faith Efforts to Comply				
		0.0% Reduction	<input type="text" value="\$0"/>	
		Before NOV NOV to EDRP/Settlement Offer		
Extraordinary	<input type="text"/>	<input type="text"/>		
Ordinary	<input type="text"/>	<input type="text"/>		
N/A	x	(mark with x)		
Notes	The Respondent does not meet the good faith criteria for this violation.			
Violation Subtotal				<input type="text" value="\$1,000"/>
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount <input type="text" value="\$20"/>		Violation Final Penalty Total <input type="text" value="\$1,000"/>		
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,000"/>				

Economic Benefit Worksheet

Respondent **TERMINAL MARKET GARAGE, L.L.C. dba Terminal Market Garage**
 Case ID No. 37101
 Reg. Ent. Reference No. RN101896876
 Media 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
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)	\$500	19-Dec-2008	30-Sep-2009	0.78	\$20	n/a	\$20

Notes for DELAYED costs: Estimated cost to submit a release determination report to the TCEQ. The date required is the investigation date and the final date is the expected date of compliance.

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs:

Approx. Cost of Compliance \$500 TOTAL \$20

Screening Date 28-Jan-2009	Docket No. 2009-0139-PST-E	PCW
Respondent TERMINAL MARKET GARAGE, L.L.C. dba Terminal Market Garage	<small>Policy Revision 2 (September 2002)</small>	
Case ID No. 37101	<small>PCW Revision October 30, 2008</small>	
Reg. Ent. Reference No. RN101896876		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Judy Kluge		
Violation Number <input type="text" value="3"/>		
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 334.47(a)(2)"/>	
Violation Description	<input type="text" value="Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements. Specifically, the Respondent did not remove the used oil UST from service. Also, the Respondent did not permanently remove the piping associated with the three previously removed USTs from the ground."/>	
Base Penalty		<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

OR	Harm				
	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"/>	Percent <input type="text" value="25%"/>

>> Programmatic Matrix

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

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty

Good Faith Efforts to Comply

Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
	Extraordinary	<input type="text"/>
	Ordinary	<input type="text"/>
	N/A	(mark with x)
	<input type="text" value="x"/>	

Notes

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 **TERMINAL MARKET GARAGE, L.L.C. dba Terminal Market Garage**
 Case ID No. 37101
 Reg. Ent. Reference No. RN101896876
 Media Petroleum Storage Tank
 Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				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)	\$5,000	22-Dec-1998	30-Sep-2009	10.78	\$2,695	n/a	\$2,695

Notes for DELAYED costs

The minimum cost of permanently removing the used oil UST and the piping associated with three previously removed USTs. The date required is the date when the Respondent was required to upgrade the UST system and the final date is the expected compliance date.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

TOTAL

\$2,695

Compliance History Report

Customer/Respondent/Owner-Operator: CN603443847 TERMINAL MARKET GARAGE, L.L.C. Classification: AVERAGE Rating: 3.01
Regulated Entity: RN101896876 Terminal Market Garage Classification: AVERAGE Site Rating: 3.01
BY DEFAULT
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 31834
REGISTRATION
Location: 726 HAZEL ST, SAN ANTONIO, TX, 78207
TCEQ Region: REGION 13 - SAN ANTONIO
Date Compliance History Prepared: January 26, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: January 26, 2004 to January 26, 2009
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Judy Kluge Phone: 817-588-5825

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? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A
6. Rating Date: 9/1/2008 Repeat Violator: NO

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 01/21/2009 (722540)
 - 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
TERMINAL MARKET GARAGE,
L.L.C. DBA TERMINAL MARKET
GARAGE
RN101896876

§
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BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

**AGREED ORDER
DOCKET NO. 2009-0139-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 TERMINAL MARKET GARAGE, L.L.C. dba Terminal Market Garage ("the Respondent") under the authority of 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 vehicle maintenance garage at 726 Hazel Street in San Antonio, Bexar County, Texas (the "Facility").
2. The Respondent's four underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
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 January 26, 2009.
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 Seven Thousand Dollars (\$7,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent

has paid One Hundred Seventy-Five Dollars (\$175) of the administrative penalty and One Thousand Four Hundred Dollars (\$1,400) 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 Five Thousand Four Hundred Twenty-Five Dollars (\$5,425) of the administrative penalty shall be payable in 35 monthly payments of One Hundred Fifty-Five Dollars (\$155) 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 may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

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

1. Failed to provide an amended UST registration form to the TCEQ for any change or additional information regarding USTs within 30 days from the date of occurrence of the change, in violation of 30 TEX. ADMIN. CODE § 334.7(a)(1) and (d)(3), as documented during an investigation conducted on December 19, 2008. Specifically, the used oil UST was not registered. Also, the registration was not updated to reflect the current operational status of the three USTs which had been previously removed from the ground.

2. Failed to submit a release determination report to the TCEQ following the removal of the UST system, in violation of 30 TEX. ADMIN. CODE § 334.55(a)(6)(D)(ii), as documented during an investigation conducted on December 19, 2008. Specifically, the Respondent did not submit a release determination report to the TCEQ regarding the closure procedures conducted in conjunction with the previous removal of USTs at the Facility.
3. Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, in violation of 30 TEX. ADMIN. CODE § 334.47(a)(2), as documented during an investigation conducted on December 19, 2008. Specifically, the Respondent did not remove the used oil UST from service. Also, the Respondent did not permanently remove the piping associated with the three previously removed USTs from the ground.

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: TERMINAL MARKET GARAGE, L.L.C. dba Terminal Market Garage, Docket No. 2009-0139-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. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order:
 - i. Submit an amended registration to indicate the current operational status of the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

Registration and Reporting Section
Permitting & Registration Support Division, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- ii. Complete and submit a release determination report to the TCEQ specifically related to the three previously removed USTs, in accordance with 30 TEX. ADMIN. CODE § 334.55; and
 - iii. Permanently remove the used oil UST system from service, and the piping associated with the three previously removed USTs, in accordance with 30 TEX. ADMIN. CODE § 334.47.
- b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a.i. through 2.a.iii. 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 this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Waste Section Manager
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Road
San Antonio, Texas 78233-4480

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days

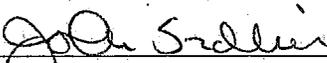
after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This 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 under this Agreed Order.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

4/28/2009
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.


Signature

3/27/09
Date

FRANK T. SEPULVEDA
Name (Printed or typed)
Authorized Representative of
TERMINAL MARKET GARAGE, L.L.C. dba Terminal Market Garage

OWNER
Title

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