

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1844-PST-E TCEQ ID: RN102247459 CASE NO.: 36873

RESPONDENT NAME: RUPAUL MINI MART, INC. DBA ALL SEASONS FOOD STORE

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
<p>SITE WHERE VIOLATION(S) OCCURRED: 5700 Gessner Drive, Houston, Harris County</p> <p>TYPE OF OPERATION: Convenience store with retail sales of gasoline</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 expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired August 24, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Mr. Jim Sallans, Litigation Division, MC 175, (512) 239-2053 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 TCEQ Enforcement Coordinator: Mr. Rajesh Acharya, Waste Enforcement Section, MC 128, (512) 239-0577 TCEQ Regional Contact: Ms. Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623 Respondent: Mr. Paviter Otal Singh, Vice-President, Rupaul Mini Mart, Inc., 5700 Gessner Drive, Houston, Texas 77041 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:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: November 10, 2008</p> <p>Date of NOE Relating to this Case: November 25, 2008</p> <p>Background Facts: The EDPRP was filed on April 9, 2009. The Agreed Order was signed May 8, 2009.</p> <p>Current Compliance Status: Not yet in compliance.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to report a suspected release to the TCEQ within 24 hours of the discovery [30 TEX. ADMIN. CODE § 334.72]. Failed to investigate a suspected release within 30 days of discovery [30 TEX. ADMIN. CODE § 334.74]. 	<p>Total Assessed: \$11,320</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid/Due to General Revenue: \$260/\$11,060</p> <p>The Respondent paid \$260 of the administrative penalty. The remaining amount of \$11,030 shall be payable in 35 monthly payments of \$316 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 Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Immediately establish and implement a process for reporting and investigating a suspected release. Within 30 days conduct an investigation of the suspected release and implement appropriate corrective measures. Within 45 days, submit written certification demonstrating compliance.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	1-Dec-2008	Screening	2-Dec-2008	EPA Due	
	PCW	3-Mar-2009				

RESPONDENT/FACILITY INFORMATION			
Respondent	Rupaul Mini Mart, Inc. dba All Seasons Food Store		
Reg. Ent. Ref. No.	RN102247459		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36873	No. of Violations	2
Docket No.	2008-1844-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Rajesh Acharya
		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**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability Enhancement **Subtotal 4**

Notes

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit Enhancement* **Subtotal 6**

Total EB Amounts
 Approx. Cost of Compliance *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 2-Dec-2008

Docket No. 2008-1844-PST-E

PCW

Respondent Rupaul Mini Mart, Inc. dba All Seasons Food Store

Policy Revision 2 (September 2002)

Case ID No. 36873

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102247459

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (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)	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) 2%

>> **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 NOV without a same or similar violation.

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

Screening Date 2-Dec-2008	Docket No. 2008-1844-PST-E	PCW	
Respondent Rupaul Mini Mart, Inc. dba All Seasons Food Store	<small>Policy Revision 2 (September 2002)</small>		
Case ID No. 36873	<small>PCW Revision October 30, 2008</small>		
Reg. Ent. Reference No. RN102247459			
Media [Statute] Petroleum Storage Tank			
Enf. Coordinator Rajesh Acharya			
Violation Number <input type="text" value="1"/>			
Rule Cite(s)	30 Tex. Admin. Code § 334.72		
Violation Description	Failed to report a suspected release to the TCEQ within 24 hours of the discovery. Specifically, inventory control records for June and July, 2008 indicated a suspected release that was not reported.		
Base Penalty		<input type="text" value="\$10,000"/>	
>> Environmental, Property and Human Health Matrix			
OR	Release	Harm	
		Major Moderate Minor	
	Actual	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>
			Percent <input type="text" value="0%"/>
>> Programmatic Matrix			
	Falsification	Major	Moderate
	<input type="text"/>	<input checked="" type="text" value="x"/>	<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"/>		Number of violation days <input type="text" value="1"/>	
<small>mark only one with an x</small>	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$1,000"/>
	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"/>	
One single event is recommended based on documentation of the violation during the investigation date of November 10, 2008.			
Good Faith Efforts to Comply			
		0.0% Reduction	<input type="text" value="\$0"/>
		<small>Before NOV NOV to EDPRP/Settlement Offer</small>	
Extraordinary	<input type="text"/>	<input type="text"/>	
Ordinary	<input type="text"/>	<input type="text"/>	
N/A	<input checked="" type="text" value="x"/>	<small>(mark with x)</small>	
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="\$100"/>	Violation Final Penalty Total	<input type="text" value="\$1,029"/>
This violation Final Assessed Penalty (adjusted for limits)			<input type="text" value="\$1,029"/>

Economic Benefit Worksheet

Respondent: Rupaul Mini Mart, Inc. dba All Seasons Food Store
Case ID No.: 36873
Reg. Ent. Reference No.: RN102247459
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
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]				0.00	\$0	\$0	\$0
Other (as needed)	\$100	1-Aug-2008	2-Aug-2008	0.00	\$0	\$100	\$100

Notes for AVOIDED costs

Estimated cost to report a suspected release. Date Required is the date of the suspected release. Final Date is the date the report was due.

Approx. Cost of Compliance

\$100

TOTAL

\$100

Screening Date 2-Dec-2008	Docket No. 2008-1844-PST-E	PCW		
Respondent Rupaul Mini Mart, Inc. dba All Seasons Food Store	<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 36873	<i>PCW Revision October 30, 2008</i>			
Reg. Ent. Reference No. RN102247459				
Media [Statute] Petroleum Storage Tank				
Enf. Coordinator Rajesh Acharya				
Violation Number	2			
Rule Cite(s)	30 Tex. Admin. Code § 334.74			
Violation Description	Failed to investigate a suspected release within 30 days of discovery. Specifically, inventory control records for June and July 2008 indicated a suspected release that was not investigated.			
Base Penalty		\$10,000		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		Percent	25%	
>> Programmatic Matrix				
			Falsification	
			Major	
			Moderate	
			Minor	
		Percent	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		\$7,500		
		\$2,500		
Violation Events				
Number of Violation Events		4	Number of violation days	
		94		
<i>mark only one with an x</i>	daily	<input type="checkbox"/>		
	weekly	<input type="checkbox"/>		
	monthly	<input checked="" type="checkbox"/>		
	quarterly	<input type="checkbox"/>		
	semiannual	<input type="checkbox"/>		
	annual	<input type="checkbox"/>		
	single event	<input type="checkbox"/>		
		Violation Base Penalty	\$10,000	
Four monthly events are recommended from the release investigation due date of August 31, 2008 to the December 2, 2008 screening date.				
Good Faith Efforts to Comply		0.0% Reduction	\$0	
		Before NOV	NOV to EDRP/Settlement Offer	
Extraordinary	<input type="checkbox"/>			
Ordinary	<input type="checkbox"/>			
N/A	<input checked="" type="checkbox"/>	(mark with x)		
Notes	The Respondent does not meet the good faith criteria for this violation.			
Violation Subtotal		\$10,000		
Economic Benefit (EB) for this violation			Statutory Limit Test	
Estimated EB Amount		\$208	Violation Final Penalty Total	
			\$10,291	
This violation Final Assessed Penalty (adjusted for limits)			\$10,291	

Economic Benefit Worksheet

Respondent Rupaul Mini Mart, Inc. dba All Seasons Food Store
Case ID No. 36873
Reg. Ent. Reference No. RN102247459
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)	\$5,000	31-Aug-2008	1-Jul-2009	0.83	\$208	n/a	\$208

Notes for DELAYED costs

Estimated costs to investigate a suspected release. Date Required is 30 days after the discovery of the suspected release when the release investigation was due. Final Date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.00	\$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

\$208

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603136698 RUPAUL MINI MART INC.	Classification: AVERAGE	Rating: 15.75
Regulated Entity:	RN102247459 All Seasons Food Store	Classification: AVERAGE	Site Rating: 15.75
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	67577
Location:	5700 GESSNER DR, HOUSTON, TX, 77041		
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	December 02, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	December 02, 2003 to December 02, 2008		

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

Name: Rajesh Acharya Phone: (512) 239-0577

Site Compliance History Components

- | | |
|--|------------------------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | Yes |
| 3. If Yes, who is the current owner? | <u>RUPAUL MINI MART INC.</u> |
| 4. If Yes, who was/were the prior owner(s)? | Otal, Paviter |
| 5. When did the change(s) in ownership occur? | 02/10/2006 |
| 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. (CEEDS Inv. Track. No.)
- | | | |
|---|------------|----------|
| 1 | 01/16/2004 | (256325) |
| 2 | 07/14/2004 | (281916) |
| 3 | 11/28/2006 | (532230) |
| 4 | 11/10/2008 | (703960) |
- E. Written notices of violations (NOV). (CEEDS Inv. Track. No.)
- | | | | | |
|--------------|--|----------|-----------------|----------|
| Date: | 01/16/2004 | (256325) | Classification: | Moderate |
| Self Report? | NO | | | |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.245(2) | | | |
| Description: | Failure to verify proper operation of the Stage II equipment at least once every twelve months or upon major system replacement or modification, whichever occurs first. | | | |
- 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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
RUPAUL MINI MART, INC., DBA
ALL SEASONS FOOD STORE;
RN102247459**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2008-1844-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 Rupaul Mini Mart, Inc., dba all Seasons Food Mart ("Rupaul Mini Mart") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Rupaul Mini Mart, appear before the Commission and together stipulate that:

1. Rupaul Mini Mart owns and operates a convenience store with retail sales of gasoline located at 5700 Gessner Drive in Houston, Harris 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 ch. 26 and TCEQ rules.
3. The Commission and Rupaul Mini Mart agree that the Commission has jurisdiction to enter this Agreed Order, and that Rupaul Mini Mart is subject to the Commission's jurisdiction.
4. Rupaul Mini Mart received notice of the violations alleged in Section II ("Allegations") on or about November 30, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Rupaul Mini Mart of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of eleven thousand three hundred twenty dollars (\$11,320.00) is assessed by the Commission in settlement of the violations alleged in Section

II (“Allegations”). Rupaul Mini Mart paid two hundred sixty dollars (\$260.00) of the administrative penalty. The remaining amount of eleven thousand sixty dollars (\$11,060.00) of the administrative penalty shall be payable in 35 monthly payments of three hundred sixteen dollars (\$316.00) 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 date of the previous payments until paid in full. If Rupaul Mini Mart fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, 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 failure of Rupaul Mini Mart to meet the payment schedule of this Agreed Order constitutes the failure by Rupaul Mini Mart 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 Rupaul Mini Mart 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 Rupaul Mini Mart 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

1. During an investigation conducted on November 10, 2008, a University of Texas Health Science Center investigator documented that Rupaul Mini Mart violated the following requirements:
 - a. 30 TEX. ADMIN. CODE § 334.72 by failing to report a suspected release to the TCEQ within 24 hours of the discovery. Specifically, inventory control records for June and July 2008 indicated a suspected release that was not reported; and

- b. 30 TEX. ADMIN. CODE § 334.74 by failing to investigate a suspected release within 30 days of discovery. Specifically, inventory control records for June and July 2008 indicated a suspected release that was not investigated.

III. DENIALS

Rupaul Mini Mart generally denies each allegation in Section II (“Allegations”).

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Rupaul Mini Mart pay an administrative penalty as set forth in Section I, Paragraph 6, above. The payment of this administrative penalty and Rupaul Mini Mart’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: Rupaul Mini Mart, Inc., dba All seasons Food Store, Docket No. 2008-1844-PST-E” to:

Financial Administration Division, Revenues Section
Attention: Cashiers’ Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

2. Rupaul Mini Mart shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, Rupaul Mini Mart shall establish and implement a process for reporting and investigating a suspected release in accordance with 30 TEX. ADMIN. CODE § 334.72;
 - b. Within 30 days after the effective date of this Agreed Order, Rupaul Mini Mart shall conduct an investigation of the suspected release and implement appropriate corrective measures in accordance with 30 TEX. ADMIN. CODE § 334.74; and
 - c. Within 45 days after the effective date of this Order, Rupaul Mini Mart shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos.

2.a. through 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.”

Rupaul Mini Mart shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.b. to:

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

and

Waste Section Section Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

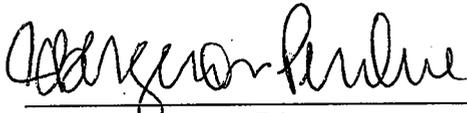
3. The provisions of this Agreed Order shall apply to and be binding upon Rupaul Mini Mart. Rupaul Mini Mart is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Rupaul Mini Mart fails to comply 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, Rupaul Mini Mart's failure to comply is not a violation of this Agreed Order. Rupaul Mini Mart shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Rupaul Mini Mart shall notify the Executive Director within seven days after Rupaul Mini Mart 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 Rupaul Mini Mart shall be made in writing to the Executive Director. Extensions are not effective until Rupaul Mini Mart 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 Rupaul Mini Mart 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 Rupaul Mini Mart or three days after the date on which the Commission mails notice of the Order to Rupaul Mini Mart 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

8/17/2009

Date

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

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

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


Signature

5-8-09
Date

PAVITER S. OTAL
Name (Printed or typed)

PRESIDENT
Title

Authorized representative of Rupaul Mini Mart, Inc.,
dba All Seasons Food Store