

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2009-1216-PST-E **TCEQ ID:** RN102252699 **CASE NO.:** 38068
RESPONDENT NAME: B. T. Rand Oil Company dba Conoco Food Mart

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Conoco Food Mart, 1110 North 11th Street, Beaumont, Jefferson 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 has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on December 14, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Clinton Sims, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-6933; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. R. Scott Rand, President, B. T. Rand Oil Company, 695 North Main Street, Vidor, Texas 77662 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: June 23, 2009</p> <p>Date of NOV/NOE Relating to this Case: July 9, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>1) Failure to conduct daily and monthly inspections of the Stage II vapor recovery system [30 TEX. ADMIN. CODE § 115.244(1) and (3) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2) Failure to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system [30 TEX. ADMIN. CODE § 115.242(9) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$1,968</p> <p>Total Deferred: \$393 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$1,575</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Station:</p> <p>a. Submitted daily and monthly inspection records of the Stage II vapor recovery system on June 30, 2009; and</p> <p>b. Posted operating instructions conspicuously on the front of each gasoline dispenser on June 30, 2009.</p>

Additional ID No(s): 23668



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ
DATES

Assigned 23-Jul-2009
PCW 2-Aug-2009 Screening 30-Jul-2009 EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent B. T. Rand Oil Company dba Conoco Food Mart
Reg. Ent. Ref. No. RN102252699
Facility/Site Region 10-Beaumont Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No. 38068 No. of Violations 2
Docket No. 2009-1216-PST-E Order Type 1660
Media Program(s) Petroleum Storage Tank Government/Non-Profit No
Multi-Media Inf. Coordinator Clinton Sims
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 \$2,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 5.0% Enhancement Subtotals 2, 3, & 7 \$100

Notes Enhancement for one NOV with same or similar violations.

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 \$500

Economic Benefit 0.0% Enhancement* Subtotal 6 \$0

Total EB Amounts \$368
Approx. Cost of Compliance \$450
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal \$1,600

OTHER FACTORS AS JUSTICE MAY REQUIRE 23.0% Adjustment \$368

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes Recommended enhancement to capture the avoided cost of compliance associated with violation no. 1.

Final Penalty Amount \$1,968

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$1,968

DEFERRAL 20.0% Reduction Adjustment -\$393

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

Notes Deferral offered for expedited settlement.

PAYABLE PENALTY \$1,575

Screening Date 30-Jul-2009

Docket No. 2009-1216-PST-E

PCW

Respondent B. T. Rand Oil Company dba Conoco Food Mart

Policy Revision 2 (September 2002)

Case ID No. 38068

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102252699

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Clinton Sims

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action <i>(number of NOV meeting criteria)</i>	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government <i>(number of judgements or consent decrees meeting criteria)</i>	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which notices were submitted)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%
<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) 5%

>> **Repeat Violator (Subtotal 3)**

No

Adjustment Percentage (Subtotal 3) 0%

>> **Compliance History Person Classification (Subtotal 7)**

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for one NOV with same or similar violations.

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

Screening Date 30-Jul-2009	Docket No. 2009-1216-PST-E	PCW		
Respondent B. T. Rand Oil Company dba Conoco Food Mart	<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 38068	<i>PCW Revision October 30, 2008</i>			
Reg. Ent. Reference No. RN102252699				
Media [Statute] Petroleum Storage Tank				
Enf. Coordinator Clinton Sims				
Violation Number <input type="text" value="1"/>				
Rule Cite(s)	<input style="width:100%;" type="text" value="30 Tex. Admin. Code § 115.244(1) and (3) and Tex. Health & Safety Code § 382.085(b)"/>			
Violation Description	<input style="width:100%;" type="text" value="Failed to conduct daily and monthly inspections of the Stage II vapor recovery system."/>			
Base Penalty		<input style="width:100%;" type="text" value="\$10,000"/>		
>> Environmental, Property and Human Health Matrix				
Harm				
Release	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Potential	<input type="text"/>	x	<input type="text"/>	
Percent		<input style="width:100%;" type="text" value="10%"/>		
>> Programmatic Matrix				
Falsification				
Major			Moderate	Minor
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Percent		<input style="width:100%;" type="text" value="0%"/>		
Matrix Notes	<input style="width:100%;" type="text" value="Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation."/>			
Adjustment		<input style="width:100%;" type="text" value="\$9,000"/>		
Violation Events		<input style="width:100%;" type="text" value="\$1,000"/>		
Number of Violation Events <input style="width:50px;" type="text" value="1"/>		Number of violation days <input style="width:50px;" type="text" value="7"/>		
mark only one with an x	daily <input type="text"/> weekly <input type="text"/> monthly <input type="text"/> quarterly <input checked="" type="text"/> semiannual <input type="text"/> annual <input type="text"/> single event <input type="text"/>	Violation Base Penalty <input style="width:100%;" type="text" value="\$1,000"/>		
<input style="width:100%;" type="text" value="One quarterly event is recommended from the June 23, 2009 investigation date to the June 30, 2009 date of compliance."/>				
Good Faith Efforts to Comply		<input style="width:100%;" type="text" value="\$250"/>		
		25.0% Reduction		
		Before NOV NOV to EDRP/ Settlement Offer		
Extraordinary	<input type="text"/>			
Ordinary	x			
N/A		(mark with x)		
Notes	<input style="width:100%;" type="text" value="The Respondent came into compliance on June 30, 2009."/>			
Violation Subtotal		<input style="width:100%;" type="text" value="\$750"/>		
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount <input style="width:100%;" type="text" value="\$368"/>		Violation Final Penalty Total <input style="width:100%;" type="text" value="\$984"/>		
This violation Final Assessed Penalty (adjusted for limits)		<input style="width:100%;" type="text" value="\$984"/>		

Economic Benefit Worksheet

Respondent B. T. Rand Oil Company dba Conoco Food Mart
Case ID No. 38068
Reg. Ent. Reference No. RN102252699
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
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$350	23-May-2009	30-Jun-2009	1.02	\$18	\$350	\$368
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct the required inspections of the components of the Stage II vapor recovery system. The Date Required is one month prior to the investigation date and the Final Date is the compliance date.

Approx. Cost of Compliance

\$350

TOTAL

\$368

Screening Date 30-Jul-2009	Docket No. 2009-1216-PST-E	PCW									
Respondent B. T. Rand Oil Company dba Conoco Food Mart		<small>Policy Revision 2 (September 2002)</small>									
Case ID No. 38088		<small>PCW Revision October 30, 2009</small>									
Reg. Ent. Reference No. RN102252699											
Media [Statute] Petroleum Storage Tank											
Enf. Coordinator Clinton Sims											
Violation Number	2										
Rule Cite(s)	30 Tex. Admin. Code § 115.242(8) and Tex. Health & Safety Code § 382.085(b)										
Violation Description	Failed to post operating instructions conspicuously on the front of each gasoline-dispensing pump equipped with a Stage II vapor recovery system.										
Base Penalty		\$10,000									
>> Environmental, Property and Human Health Matrix											
Harm											
	Major	Moderate	Minor								
OR	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">Actual</td> <td style="width:50px; height: 15px;"></td> <td style="width:50px; height: 15px;"></td> <td style="width:50px; height: 15px;"></td> </tr> <tr> <td style="text-align: center;">Potential</td> <td style="width:50px; height: 15px;"></td> <td style="width:50px; height: 15px; text-align: center;">x</td> <td style="width:50px; height: 15px;"></td> </tr> </table>		Actual				Potential		x		Percent 10%
Actual											
Potential		x									
>> Programmatic Matrix											
	Major	Moderate	Minor								
	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50px; height: 15px;"></td> <td style="width:50px; height: 15px;"></td> <td style="width:50px; height: 15px;"></td> <td style="width:50px; height: 15px;"></td> </tr> </table>						Percent 0%				
Matrix Notes	Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.										
Adjustment		\$9,000									
		\$1,000									
Violation Events											
Number of Violation Events		1	Number of violation days								
		7									
<small>mark only one with an x</small>	daily		Violation Base Penalty \$1,000								
	weekly										
	monthly										
	quarterly	x									
	semiannual										
	annual										
	single event										
One quarterly event is recommended from the June 23, 2009 investigation date to the June 30, 2009 date of compliance.											
Good Faith Efforts to Comply		25.0% Reduction	\$250								
		<small>Before NOV NOV to EDRP/Settlement Offer</small>									
Extraordinary											
Ordinary	x										
N/A		<small>(mark with x)</small>									
Notes	The Respondent came into compliance on June 30, 2009.										
Violation Subtotal		\$750									
Economic Benefit (EB) for this violation		Statutory Limit Test									
Estimated EB Amount \$0		Violation Final Penalty Total \$984									
		This violation Final Assessed Penalty (adjusted for limits) \$984									

Economic Benefit Worksheet

Respondent B. T. Rand Oil Company dba Conoco Food Mart
Case ID No. 38068
Reg. Ent. Reference No. RN102252699
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
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	23-Jun-2009	30-Jun-2009	0.02	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to post operating instructions on the dispensers. The Date Required is the investigation date and the Final Date is the 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

\$0

Compliance History Report

Customer/Respondent/Owner-Operator:	CN600986772	B T Rand Oil Company Inc	Classification: AVERAGE	Rating: 2.41
Regulated Entity:	RN102252699	CONOCO FOOD MART	Classification: AVERAGE	Site Rating: 2.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	23668
Location:	1110 N 11TH ST, BEAUMONT, TX, 77702			
TCEQ Region:	REGION 10 - BEAUMONT			
Date Compliance History Prepared:	September 03, 2009			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	September 01, 2004 to August 31, 2009			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	<u>Clinton Sims</u>	Phone:	<u>512-239-6933</u>	

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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2009 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	12/19/2007	(608931)	
N/A			
2	07/09/2009	(760037)	
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	12/19/2007	(608931)	CN600986772
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 115, SubChapter C 115.244(3)		
Description:	Failure to conduct monthly inspections of the Stage II vapor recovery system.		

At the time of the investigation, daily inspections were being conducted; however, monthly inspections for January 2007, March 2007 and October 2007 had not been conducted.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(9)

Description: Failure to post operating instructions conspicuously on the front of each dispenser equipped with a Stage II system. These instructions shall, at a minimum, include: a clear description of how to correctly dispense gasoline using the system; and a warning against attempting to continue to refuel after initial shutoff of the system.

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
B. T. RAND OIL COMPANY DBA
CONOCO FOOD MART
RN102252699**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2009-1216-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 B. T. Rand Oil Company dba Conoco Food Mart ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a convenience store with the retail sales of gasoline at 1110 North 11th Street in Beaumont, Jefferson County, Texas (the "Station").
2. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about July 14, 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 One Thousand Nine Hundred Sixty-Eight Dollars (\$1,968) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). The Respondent has paid One Thousand Five Hundred Seventy-Five Dollars (\$1,575) of the administrative penalty and Three Hundred Ninety-Three Dollars (\$393) is deferred contingent upon the Respondent'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 the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Station:
 - a. Submitted daily and monthly inspection records of the Stage II vapor recovery system on June 30, 2009; and
 - b. Posted operating instructions conspicuously on the front of each gasoline dispenser on June 30, 2009.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

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

1. Failed to conduct daily and monthly inspections of the Stage II vapor recovery system, in violation of 30 TEX. ADMIN. CODE § 115.244(1) and (3) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on June 23, 2009.
2. Failed to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system, in violation of 30 TEX. ADMIN. CODE § 115.242(9) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on June 23, 2009.

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: B. T. Rand Oil Company dba Conoco Food Mart, Docket No. 2009-1216-PST-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088
2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Station operations referenced in this Agreed Order.
3. 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.
4. 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.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Sadler
For the Executive Director

11/13/2009
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.

R. Scott Rand
Signature

10-12-09
Date

R. Scott Rand
Name (Printed or typed)
Authorized Representative of
B. T. Rand Oil Company dba Conoco Food Mart

President
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.