

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

Page 1 of 2

DOCKET NO.: 2009-1286-PST-E **TCEQ ID:** RN102357183 **CASE NO.:** 38125**RESPONDENT NAME:** One Tri-State Enterprises, L.L.C. dba J & B 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: J & B Food Mart, 202 Crosstimbers Street, 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 has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on January 4, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Ross Fife, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-2541; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Bijo Mathew, Registered Agent, One Tri-State Enterprises, L.L.C., 202 Crosstimbers Street, Houston, Texas 77018 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: July 7, 2009</p> <p>Date of NOV/NOE Relating to this Case: July 23, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>1) Failure to verify proper operation of Stage II equipment at least once every 12 months. Specifically, the Stage II annual compliance testing had not been conducted [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2) Failure to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel. Specifically, daily Stage II inspections logs were not available [30 TEX. ADMIN. CODE § 115.246(6) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$5,996</p> <p>Total Deferred: \$1,199 <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: \$177 (remaining \$4,620 due in 35 monthly payments of \$132 each)</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" 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. Immediately upon the effective date of this Agreed Order, begin maintaining Stage II records at the Station;</p> <p>b. Within 30 days after the effective date of this Agreed Order, conduct the required annual testing of the Stage II equipment; and</p> <p>c. Within 45 days after the effective date of this Agreed Order, submit written certification to demonstrate compliance with Ordering Provisions a. and b.</p>

Additional ID No(s): 33094

Penalty Calculation Worksheet (PCW)
 Policy Revision 2 (September 2002) PCW Revision October 30, 2008

DATES	Assigned	27-Jul-2009	Screening	5-Aug-2009	EPA Due	
	PCW	18-Aug-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	One Tri-State Enterprises, L.L.C. dba J & B Food Mart
Reg. Ent. Ref. No.	RN102357183
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	38125	No. of Violations	2
Docket No.	2009-1286-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Ross Fife
		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 \$3,500
ADJUSTMENTS (+/-) TO SUBTOTAL 1	
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>	
Compliance History	Subtotals 2, 3, & 7 \$1,400
Notes	Enhancement due to one previous default order, one notice of violation, and poor performer classification.
Culpability	Subtotal 4 \$0
Notes	The Respondent does not meet the culpability criteria.
Good Faith Effort to Comply Total Adjustments	Subtotal 5 \$0
Economic Benefit	Subtotal 6 \$0
Total EB Amounts	\$1,110
Approx. Cost of Compliance	\$1,500
<small>*Capped at the Total EB \$ Amount</small>	
SUM OF SUBTOTALS 1-7	Final Subtotal \$4,900
OTHER FACTORS AS JUSTICE MAY REQUIRE	Adjustment \$1,096
<small>Reduces or enhances the Final Subtotal by the indicated percentage.</small>	
Notes	Recommended enhancement to capture the avoided cost of compliance associated with violation no. 1.
	Final Penalty Amount \$5,996
STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty \$5,996
DEFERRAL	Adjustment -\$1,199
<small>Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)</small>	
Notes	Deferral offered for expedited settlement.
PAYABLE PENALTY	\$4,797

Screening Date 5-Aug-2009

Docket No. 2009-1286-PST-E

PCW

Respondent One Tri-State Enterprises, L.L.C. dba J & B Food Mart

Policy Revision 2 (September 2002)

Case ID No. 38125

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102357183

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Ross Fife

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)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	1	25%
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 judgments 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%
<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) 30%

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

No

Adjustment Percentage (Subtotal 3) 0%

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

Poor Performer

Adjustment Percentage (Subtotal 7) 10%

>> **Compliance History Summary**

Compliance History Notes

Enhancemet due to one previous default order, one notice of violation, and poor performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 40%

Screening Date: 5-Aug-2009	Docket No.: 2009-1286-PST-E	PCW	
Respondent: One Tri-State Enterprises, L.L.C. dba J & B Food Mart	<i>Policy Revision 2 (September 2002)</i>		
Case ID No.: 38125	<i>PCW Revision October 30, 2008</i>		
Reg. Ent. Reference No.: RN102357183			
Media [Statute]: Petroleum Storage Tank			
Enf. Coordinator: Ross Fife			
Violation Number: 1			
Rule Cite(s):	30 Tex. Admin. Code § 116.245(2) and Tex. Health & Safety Code § 382.085(b)		
Violation Description:	Failed to verify proper operation of Stage II equipment at least once every 12 months. Specifically, the Stage II annual system compliance testing had not been conducted.		
Base Penalty		\$10,000	
>> Environmental, Property and Human Health Matrix			
OR	Harm		
	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	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
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	1	Number of violation days	365
<i>mark only one with an x</i>	daily	<input type="checkbox"/>	Violation Base Penalty
	weekly	<input type="checkbox"/>	
	monthly	<input type="checkbox"/>	
	quarterly	<input type="checkbox"/>	
	semiannual	<input type="checkbox"/>	
	annual	<input checked="" type="checkbox"/>	
	single event	<input type="checkbox"/>	
One annual event is recommended for the 12-month period preceding the July 7, 2009 investigation.			\$2,500
Good Faith Efforts to Comply		0.0% Reduction	\$0
	Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>	
Ordinary	<input type="checkbox"/>	<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			\$2,500
Economic Benefit (EB) for this violation		Statutory Limit Test	
Estimated EB Amount	\$1,098	Violation Final Penalty Total	\$4,283
This violation Final Assessed Penalty (adjusted for limits)			\$4,283

Economic Benefit Worksheet

Respondent: One Tri-State Enterprises, L.L.C. dba J & B Food Mart
Case ID No.: 38125
Reg. Ent. Reference No.: RN102357183
Media: Petroleum Storage Tank
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	16

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

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment	0.00			0.00	\$0	\$0	\$0
Buildings	0.00			0.00	\$0	\$0	\$0
Other (as needed)	0.00			0.00	\$0	\$0	\$0
Engineering/construction	0.00			0.00	\$0	\$0	\$0
Land	0.00			0.00	\$0	n/a	\$0
Record Keeping System	0.00			0.00	\$0	n/a	\$0
Training/Sampling	0.00			0.00	\$0	n/a	\$0
Remediation/Disposal	0.00			0.00	\$0	n/a	\$0
Permit Costs	0.00			0.00	\$0	n/a	\$0
Other (as needed)	0.00			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)

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal	0.00			0.00	\$0	\$0	\$0
Personnel	0.00			0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling	0.00			0.00	\$0	\$0	\$0
Supplies/equipment	0.00			0.00	\$0	\$0	\$0
Financial Assurance [2]	0.00			0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$1,000	7-Jul-2008	7-Jul-2009	1.92	\$96	\$1,000	\$1,096
Other (as needed)	0.00			0.00	\$0	\$0	\$0

Notes for AVOIDED costs

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

Approx. Cost of Compliance	\$1,000	TOTAL	\$1,096
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Screening Date: 6-Aug-2009 **Docket No.:** 2009-1286-PST-E **PCW**
Respondent: One Tri-State Enterprises, L.L.C. dba J & B Food Mart *Policy Revision 2 (September 2002)*
Case ID No.: 38125 *PCW Revision October 30, 2008*
Reg. Ent. Reference No.: RN102357183
Media [Statute]: Petroleum Storage Tank
Enf. Coordinator: Ross Fife

Violation Number: 2
Rule Cite(s): 30.Tex. Admin. Code § 115.246(6) and Tex. Health & Safety Code § 382.065(b)
Violation Description: Failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel. Specifically, daily Stage II Inspections logs were not available.
Base Penalty: \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	x			10%

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

Adjustment: \$9,000
Subtotal: \$1,000

Violation Events

Number of Violation Events: 1 Number of violation days: 29
 mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty: \$1,000

One single event is recommended based on the documentation of the violation during the July 7, 2009 investigation.

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	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: \$14 **Violation Final Penalty Total:** \$1,713
This violation Final Assessed Penalty (adjusted for limits): \$1,713

Economic Benefit Worksheet

Respondent: One Tri-State Enterprises, L.L.C. dba J & B Food Mart
Case ID No.: 38125
Reg. Ent. Reference No.: RN102357183
Media: Petroleum Storage Tank
Violation No.: 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$500	7-Jul-2009	27-Jan-2010	0.56	\$14	n/a	\$14
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

Estimated cost to maintain Stage II records at the Station. The Date Required is the investigation date. The Final Date is the estimated date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$14

Compliance History Report

Customer/Respondent/Owner-Operator: CN602816753 One Tri-State Enterprises, L.L.C. Classification: POOR Rating: 93.00
Regulated Entity: RN102357183 J & B FOOD MART Classification: POOR Site Rating: 93.00
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 33094
REGISTRATION
Location: 202 CROSSTIMBERS ST, HOUSTON, TX, 77018
TCEQ Region: REGION 12 - HOUSTON
Date Compliance History Prepared: August 05, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: August 05, 2004 to August 05, 2009
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Ross Fife Phone: 512-239-2541

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? Yes
3. If Yes, who is the current owner/operator? OWNOPR One Tri-State Enterprises, L.L.C.
4. If Yes, who was/were the prior owner(s)/operator(s)?
OWN Motiva Enterprises LLC
OWNOPR DHANANI, NADYRSHAH
5. When did the change(s) in owner or operator occur? 04/07/2005
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.
- Effective Date: 11/24/2005 ADMINORDER 2004-0369-PST-E
Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.48(c)
Description: Failure to conduct effective manual or automatic inventory control procedures for all UST systems at retail service stations.
- Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)
30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)
30 TAC Chapter 334, SubChapter C 334.50(b)(2)
30 TAC Chapter 334, SubChapter C 334.50(d)(1)(B)(ii)
Description: Failure to monitor the USTs in a manner which would detect a release at a frequency of at least once every month not to exceed 35 days between each monitoring, failed to conduct monthly reconciliation of inventory control records as required and failed to perform a tightness test for pressurized piping once per year.
- Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.346(a)
30 TAC Chapter 334, SubChapter A 334.7(a)(1)
30 TAC Chapter 334, SubChapter A 334.8(c)(4)(B)
Description: Failure to fully and accurately complete the UST registration and self-certification form as required and ensuring that it is submitted to the agency in a timely manner.
- Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.3467(a)
30 TAC Chapter 334, SubChapter A 334.8(c)(5)(A)(I)
Description: Failure to make available to a common carrier a valid, current TCEQ delivery certificate before

delivery of a regulated substance into the UST(s) is accepted.

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)
Description: Failure to make records available for a UST inspection

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.6(b)(2)(A)
30 TAC Chapter 334, SubChapter A 334.6(b)(2)(C)

Description: Failure to provide written notification at least 30 days prior to initiating a major UST construction activity, and to confirm the initiation of the proposed activity between 24 and 72 hours prior to the commencement of the construction activity.

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	06/01/2005	(392853)
2	06/21/2005	(394332)
3	08/05/2005	(402073)
4	07/23/2009	(762017)

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

Date: 06/01/2005 (392853) CN602816753

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.246(7)(A)
Description: FAILURE TO MAINTAIN RECORDS ON-SITE AND MAKE IMMEDIATELY AVAILABLE FOR REVIEW UPON REQUEST BY AUTHORIZED REPRESENTATIVES.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.246(1)
Description: FAILURE TO MAINTAIN A COPY OF THE CALIFORNIA AIR RESOURCES BOARD(CARB) EXECUTIVE ORDER (S) FOR STAGE II VAPOR RECOVERY SYSTEM.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.245(1)
Description: FAILURE TO SUCCESSFULLY COMPLETE ALL APPLICABLE TESTS REQUIRED IN VAPOR RECOVERY TEST PROCEDURES WITHIN 30 DAYS OF INSTALLATION OF THE STAGE II EQUIPMENT.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.246(4)
Description: FAILURE TO MAINTAIN PROOF OF ATTENDANCE AND COMPLETION OF THE TRAINING SPECIFIED.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(A)
Description: FAILURE TO MAINTAIN THE STAGE II VAPOR RECOVERY SYSTEM IN PROPER OPERATING CONDITION, AS SPECIFIED.

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
ONE TRI-STATE ENTERPRISES,
L.L.C. DBA J & B FOOD MART
RN102357183**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2009-1286-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 One Tri-State Enterprises, L.L.C. dba J & B 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 retail sales of gasoline at 202 Crosstimbers Street in Houston, Harris 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 28, 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 Five Thousand Nine Hundred Ninety-Six Dollars (\$5,996) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). The Respondent has paid One Hundred Seventy-Seven Dollars (\$177) of the administrative penalty and One Thousand One Hundred Ninety-Nine Dollars (\$1,199) 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.

The remaining amount of Four Thousand Six Hundred Twenty Dollars (\$4,620) of the administrative penalty shall be payable in 35 monthly payments of One Hundred Thirty-Two Dollars (\$132) 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 Station, the Respondent is alleged to have:

1. Failed to verify proper operation of Stage II equipment at least once every 12 months, in violation of 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on July 7, 2009. Specifically, the Stage II annual compliance testing had not been conducted.

2. Failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 115.246(6) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on July 7, 2009. Specifically, daily Stage II inspections logs were not available.

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: One Tri-State Enterprises, L.L.C. dba J & B Food Mart, Docket No. 2009-1286-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. Immediately upon the effective date of this Agreed Order, begin maintaining Stage II records at the Station, in accordance with 30 TEX. ADMIN. CODE § 115.246;
 - b. Within 30 days after the effective date of this Agreed Order, conduct the required annual testing of the Stage II equipment, in accordance with 30 TEX. ADMIN. CODE § 115.245; and
 - c. 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. and 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines 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
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 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.
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

[Signature]
For the Executive Director

12/8/2009
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]
Signature

10/27/09
Date

BISO MATHEW
Name (Printed or typed)
Authorized Representative of
One Tri-State Enterprises, L.L.C. dba J & B Food Mart

MANAGER
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.

