

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2009-1299-PST-E **TCEQ ID:** RN102481017 **CASE NO.:** 38118  
**RESPONDENT NAME:** MPA River Oaks Limited Partnership dba River Oaks Apartments

<b>ORDER TYPE:</b>		
<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	
<b>CASE TYPE:</b>		
<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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> River Oaks Apartments, 3435 Westheimer Road, Houston, Harris County</p> <p><b>TYPE OF OPERATION:</b> Apartment complex with one underground storage tank ("UST")</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on December 28, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. Rajesh Acharya, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-0577;  Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387  <b>Respondent:</b> Mr. Gary Romano, Registered Agent, MPA River Oaks Limited Partnership, 3435 Westheimer Road, Houston, Texas 77027  Mr. Jeffrey J. Cohen, CEO, MPA River Oaks Limited Partnership, 3435 Westheimer Road, Houston, Texas 77027  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> June 19, 2009</p> <p><b>Date of NOV/NOE Relating to this Case:</b> July 23, 2009 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>WASTE</b></p> <p>1) Failure to timely renew a previously issued TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date. Specifically, the delivery certificate expired on August 31, 2004 [30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)].</p> <p>2) Failure to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)].</p> <p>3) Failure to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of a petroleum UST [30 TEX. ADMIN. CODE § 37.815(a) and (b)].</p> <p>4) Failure to monitor the UST system for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(e)(1)].</p> <p>5) Failure to provide release detection for the piping associated with the UST.</p>	<p><b>Total Assessed:</b> \$11,295</p> <p><b>Total Deferred:</b> \$2,259  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$9,036</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ by submitting a properly completed UST registration and self-certification form.</p> <p>b. Within 30 days after the effective date of this Agreed Order:</p> <p>i. Implement a release detection method for the UST and the piping associated with the UST, test the line leak detectors for performance and operational reliability, and begin conducting inventory volume measurement of regulated substance inputs, withdrawals, and amount remaining in the tank each operating day; and</p> <p>ii. Submit documentation that demonstrates acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of a petroleum UST.</p> <p>c. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a. through b.ii.</p>

<p>Specifically, the Respondent did not conduct the annual piping tightness test [30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a)].</p> <p>6) Failure to test the line leak detectors at least once per year for performance and operational reliability [30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a)].</p> <p>7) Failure to record the inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day [30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1)].</p>		
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Additional ID No(s): PST 60032





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

<b>DATES</b>	Assigned	3-Aug-2009		
	PCW	6-Aug-2009	Screening	6-Aug-2009
			EPA Due	

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	MPA River Oaks Limited Partnership dba River Oaks Apartments
Reg. Ent. Ref. No.	RN102481017
Facility/Site Region	12-Houston
Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	38118	No. of Violations	4
Docket No.	2009-1299-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	\$2,364	<small>*Capped at the Total EB \$ Amount</small>
Approx. Cost of Compliance	\$3,650	

**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** 6-Aug-2009

**Docket No.** 2009-1299-PST-E

**PCW**

**Respondent** MPA River Oaks Limited Partnership dba River Oaks Ap;

Policy Revision 2 (September 2002)

**Case ID No.** 38118

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN102481017

**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	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<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)**

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

**Adjustment Percentage (Subtotal 3)**

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

**Adjustment Percentage (Subtotal 7)**

>> **Compliance History Summary**

**Compliance History Notes**

No adjustments due to compliance history.

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

<b>Screening Date</b> 6-Aug-2009	<b>Docket No.</b> 2009-1299-PST-E	<b>PCW</b>			
<b>Respondent</b> MPA River Oaks Limited Partnership dba River Oaks Apartments	<i>Policy Revision 2 (September 2002)</i>				
<b>Case ID No.</b> 38118	<i>PCW Revision October 30, 2008</i>				
<b>Reg. Ent. Reference No.</b> RN102481017					
<b>Media [Statute]</b> Petroleum Storage Tank					
<b>Enf. Coordinator</b> Rajesh Acharya					
<b>Violation Number</b> <input type="text" value="1"/>					
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)				
<b>Violation Description</b>	Failed to timely renew a previously issued TOEQ delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date. Specifically, the delivery certificate expired on August 31, 2004.				
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>			
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>					
<b>OR</b>	Harm				
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
				<b>Percent</b> <input type="text" value="0%"/>	
<b>&gt;&gt; Programmatic Matrix</b>					
		Falsification	Major	Moderate	Minor
		<input type="text"/>	x	<input type="text"/>	<input type="text"/>
				<b>Percent</b> <input type="text" value="10%"/>	
<b>Matrix Notes</b>	100% of the rule requirement was not met.				
				<b>Adjustment</b> <input type="text" value="\$9,000"/>	
				<input type="text" value="\$1,000"/>	
<b>Violation Events</b>					
<b>Number of Violation Events</b> <input type="text" value="5"/>		<input type="text" value="1753"/> <b>Number of violation days</b>			
<i>mark only one with an x</i>	daily	<input type="text"/>			
	weekly	<input type="text"/>			
	monthly	<input type="text"/>			
	quarterly	<input type="text"/>			
	semiannual	<input type="text"/>			
	annual	x			
	single event	<input type="text"/>			
		<b>Violation Base Penalty</b> <input type="text" value="\$5,000"/>			
Five annual events are recommended based on documentation of the violation during the June 19, 2009 investigation.					
<b>Good Faith Efforts to Comply</b>			<input type="text" value="\$0"/>		
		<input type="text" value="0.0%"/> <b>Reduction</b>			
		Before NOV	NOV to EDPRP/Settlement Offer		
Extraordinary	<input type="text"/>	<input type="text"/>			
Ordinary	<input type="text"/>	<input type="text"/>			
N/A	x	(mark with x)			
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.				
		<b>Violation Subtotal</b> <input type="text" value="\$5,000"/>			
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>			
<b>Estimated EB Amount</b> <input type="text" value="\$520"/>		<b>Violation Final Penalty Total</b> <input type="text" value="\$6,275"/>			
		<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$6,275"/>			

## Economic Benefit Worksheet

**Respondent** MPA River Oaks Limited Partnership dba River Oaks Apartments  
**Case ID No.** 38118  
**Reg. Ent. Reference No.** RN102481017  
**Media** Petroleum Storage Tank  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
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	19-Jun-2009	19-Mar-2010	0.75	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to renew a delivery certificate by submitting a properly completed UST registration and self-certification form. Date Required is date of the investigation. Final Date is the estimated date of compliance.

**Avoided Costs**

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

Disposal				0.00	\$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]	\$400	1-Aug-2004	19-Jun-2009	5.80	\$116	\$400	\$516
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost (\$100 per full year) to accurately prepare and submit an updated UST registration and obtain a TCEQ delivery certificate. Date Required is 30 days prior to the expiration date of the delivery certificate. Final Date is the investigation date.

Approx. Cost of Compliance

\$500

TOTAL

\$520

<b>Screening Date</b> 6-Aug-2009	<b>Docket No.</b> 2009-1299-PST-E	<b>PCW</b>		
<b>Respondent</b> MPA River Oaks Limited Partnership dba River Oaks Apartments	<i>Policy Revision 2 (September 2002)</i>			
<b>Case ID No.</b> 38118	<i>PCW Revision October 30, 2008</i>			
<b>Reg. Ent. Reference No.</b> RN102481017				
<b>Media [Statute]</b> Petroleum Storage Tank				
<b>Enf. Coordinator</b> Rajesh Acharya				
<b>Violation Number</b> <input type="text" value="2"/>				
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 334.8(c)(6)(A)(i) and Tex. Water Code § 26.3467(a)"/>			
<b>Violation Description</b>	<input type="text" value="Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, one fuel delivery was accepted without a delivery certificate."/>			
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>		
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
<b>OR</b>	<b>Harm</b>			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text" value="x"/>	<input type="text"/>
		<b>Percent</b>	<input type="text" value="5%"/>	
<b>&gt;&gt; Programmatic Matrix</b>				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
		<b>Percent</b>	<input type="text" value="0%"/>	
<b>Matrix Notes</b>	<input type="text" value="Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation."/>			
		<b>Adjustment</b>	<input type="text" value="\$9,500"/>	
		<input type="text" value="\$500"/>		
<b>Violation Events</b>				
	<b>Number of Violation Events</b>	<input type="text" value="1"/>	<b>Number of violation days</b>	<input type="text" value="1"/>
<i>mark only one with an x</i>	daily	<input type="text"/>		
	weekly	<input type="text"/>		
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input type="text" value="x"/>		
		<b>Violation Base Penalty</b>	<input type="text" value="\$500"/>	
<input type="text" value="One single event is recommended for accepting one delivery of fuel."/>				
<b>Good Faith Efforts to Comply</b>				
		<b>0.0% Reduction</b>	<input type="text" value="\$0"/>	
		Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary	<input type="text"/>	<input type="text"/>		
Ordinary	<input type="text"/>	<input type="text"/>		
N/A	<input type="text" value="x"/>	<input type="text" value="(mark with x)"/>		
<b>Notes</b>	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>			
		<b>Violation Subtotal</b>	<input type="text" value="\$500"/>	
<b>Economic Benefit (EB) for this violation</b>				
<b>Statutory Limit Test</b>				
<b>Estimated EB Amount</b>	<input type="text" value="\$0"/>			
		<b>Violation Final Penalty Total</b>	<input type="text" value="\$628"/>	
		<b>This violation Final Assessed Penalty (adjusted for limits)</b>		
		<input type="text" value="\$628"/>		

## Economic Benefit Worksheet

**Respondent** MPA River Oaks Limited Partnership dba River Oaks Apartments  
**Case ID No.** 38118  
**Reg. Ent. Reference No.** RN102481017  
**Media** Petroleum Storage Tank  
**Violation No.** 2

<b>Percent Interest</b>	<b>Years of Depreciation</b>
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

Economic benefit included in violation no. 1.

**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

TOTAL

<b>Screening Date</b> 6-Aug-2009	<b>Docket No.</b> 2009-1299-PST-E	<b>PCW</b>
<b>Respondent</b> MPA River Oaks Limited Partnership dba River Oaks Apartments	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 38118	<i>PCW Revision October 30, 2008</i>	
<b>Reg. Ent. Reference No.</b> RN102481017		
<b>Media [Statute]</b> Petroleum Storage Tank		
<b>Enf. Coordinator</b> Rajesh Acharya		
<b>Violation Number</b> <input type="text" value="3"/>		
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 37.815(a) and (b)	
<b>Violation Description</b>	Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of a petroleum UST.	
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>		
<b>Harm</b>		
<b>OR</b>	Release	Major      Moderate      Minor
	Actual	<input type="text"/> <input type="text"/> <input type="text"/>
	Potential	<input type="text"/> <input type="text"/> <input type="text"/>
	<b>Percent</b>	<input type="text" value="0%"/>
<b>&gt;&gt; Programmatic Matrix</b>		
	Falsification	Major      Moderate      Minor
	<input type="text"/>	<input checked="" type="text" value="x"/> <input type="text"/> <input type="text"/>
	<b>Percent</b>	<input type="text" value="10%"/>
<b>Matrix Notes</b>	100% of the rule requirement was not met.	
<b>Adjustment</b>		<input type="text" value="\$9,000"/>
		<input type="text" value="\$1,000"/>
<b>Violation Events</b>		
Number of Violation Events	<input type="text" value="1"/>	Number of violation days
	<input type="text" value="365"/>	
mark only one with an x	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="text" value="x"/>
<b>Violation Base Penalty</b>		<input type="text" value="\$1,000"/>
One single event is recommended based on documentation of the violation during the June 19, 2009 investigation.		
<b>Good Faith Efforts to Comply</b>		
<b>0.0% Reduction</b>		<input type="text" value="\$0"/>
Before NOV      NOV to EDPRP/Settlement Offer		
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	(mark with x)
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.	
<b>Violation Subtotal</b>		<input type="text" value="\$1,000"/>
<b>Economic Benefit (EB) for this violation</b>		
<b>Statutory Limit Test</b>		
<b>Estimated EB Amount</b>	<input type="text" value="\$683"/>	<b>Violation Final Penalty Total</b>
		<input type="text" value="\$1,255"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b>		<input type="text" value="\$1,255"/>

## Economic Benefit Worksheet

**Respondent** MPA River Oaks Limited Partnership dba River Oaks Apartments  
**Case ID No.** 38118  
**Reg. Ent. Reference No.** RN102481017  
**Media** Petroleum Storage Tank  
**Violation No.** 3

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
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]	\$650	19-Jun-2008	19-Jun-2009	1.00	\$33	\$650	\$683
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to provide financial assurance for one UST. Date Required is one year prior to the investigation date. Final Date is the investigation date.

Approx. Cost of Compliance \$650 TOTAL \$683

<b>Screening Date</b> 6-Aug-2009	<b>Docket No.</b> 2009-1299-PST-E	<b>PCW</b>		
<b>Respondent</b> MPA River Oaks Limited Partnership dba River Oaks Apartments	<i>Policy Revision 2 (September 2002)</i>			
<b>Case ID No.</b> 38118	<i>PCW Revision October 30, 2009</i>			
<b>Reg. Ent. Reference No.</b> RN102481017				
<b>Media [Statute]</b> Petroleum Storage Tank				
<b>Enf. Coordinator</b> Rajesh Acharya				
<b>Violation Number</b> 4				
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 334.50(b)(1)(A), 334.50(b)(2), 334.50(b)(2)(A)(i)(II), and 334.50(d)(1)(B)(iii)(I) and Tex. Water Code § 26.8475(a) and (c)(1)			
<b>Violation Description</b>	Failed to monitor the UST system for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Failed to provide release detection for the piping associated with the UST. Specifically, the Respondent did not conduct the annual piping tightness test. Failed to test the line leak detectors at least once per year for performance and operational reliability. Also, failed to record the inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day.			
<b>Base Penalty</b>		\$10,000		
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
Harm				
Release	Major	Moderate	Minor	
Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Potential	x	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Percent</b>		25%		
<b>&gt;&gt; Programmatic Matrix</b>				
Falsification				
Major			Moderate	Minor
<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>
<b>Percent</b>		0%		
<b>Matrix Notes</b>	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.			
<b>Adjustment</b>		\$7,500		
		\$2,500		
<b>Violation Events</b>				
<b>Number of Violation Events</b>	1	<b>Number of violation days</b>	48	
mark only one with an x	daily	<input type="checkbox"/>		
	weekly	<input type="checkbox"/>		
	monthly	<input type="checkbox"/>		
	quarterly	x		
	semiannual	<input type="checkbox"/>		
	annual	<input type="checkbox"/>		
	single event	<input type="checkbox"/>		
<b>Violation Base Penalty</b>		\$2,500		
One quarterly event is recommended based on the documentation of the violation during the June 19, 2009 investigation to the August 6, 2009 screening date.				
<b>Good Faith Efforts to Comply</b>				
<b>0.0% Reduction</b>		\$0		
Before NOV		NOV to EDRP/Settlement Offer		
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>		
Ordinary	<input type="checkbox"/>	<input type="checkbox"/>		
N/A	x	(mark with x)		
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.			
<b>Violation Subtotal</b>		\$2,500		
<b>Economic Benefit (EB) for this violation</b>				
<b>Statutory Limit Test</b>				
<b>Estimated EB Amount</b>	\$1,152	<b>Violation Final Penalty Total</b>	\$3,138	
<b>This violation Final Assessed Penalty (adjusted for limits)</b>		\$3,138		

### Economic Benefit Worksheet

**Respondent** MPA River Oaks Limited Partnership dba River Oaks Apartments  
**Case ID No.** 38118  
**Reg. Ent. Reference No.** RN102481017  
**Media** Petroleum Storage Tank  
**Violation No.** 4

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<i>No commas or \$</i>							
<b>Delayed Costs</b>							
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)	\$1,500	19-Jun-2009	19-Mar-2010	0.75	\$56	n/a	\$56

Notes for DELAYED costs

Estimated cost to provide release detection for the UST system including volume measurement. Date Required is the date of investigation. Final Date is the estimated date of compliance.

**Avoided Costs**

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

Disposal				0.00	\$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]	\$1,000	19-Jun-2008	19-Jun-2009	1.92	\$96	\$1,000	\$1,096
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost for conducting the piping tightness and line leak detector tests. Date Required is one year prior to the investigation date. Final Date is the date of investigation.

Approx. Cost of Compliance

\$2,600

**TOTAL**

\$1,152

# Compliance History Report

Customer/Respondent/Owner-Operator:	CN602595589	MPA River Oaks Limited Partnership	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN102481017	RIVER OAKS APARTMENTS	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	60032
Location:	3435 WESTHEIMER RD, HOUSTON, TX, 77027			
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	August 18, 2009			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	August 18, 2004 to August 18, 2009			

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/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: 9/1/2008 Repeat Violator: NO

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
1 07/23/2009 (760104)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
- F. Environmental audits.  
N/A
- G. Type of environmental management systems (EMSs).  
N/A
- H. Voluntary on-site compliance assessment dates.  
N/A
- I. Participation in a voluntary pollution reduction program.  
N/A
- J. Early compliance.  
N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
MPA RIVER OAKS LIMITED  
PARTNERSHIP DBA RIVER OAKS  
APARTMENTS  
RN102481017

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BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

**AGREED ORDER**  
**DOCKET NO. 2009-1299-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 MPA River Oaks Limited Partnership dba River Oaks Apartments ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns an apartment complex with one underground storage tank ("UST") for an emergency backup generator at 3435 Westheimer Road in Houston, Harris County, Texas (the "Facility").
2. The Respondent's one UST is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about 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 Eleven Thousand Two Hundred Ninety-Five Dollars (\$11,295) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Nine Thousand Thirty-Six Dollars (\$9,036) of the administrative penalty and Two Thousand Two Hundred Fifty-Nine Dollars (\$2,259) 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 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 of the Facility, the Respondent is alleged to have:

1. Failed to timely renew a previously issued TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii), as documented during an investigation conducted on June 19, 2009. Specifically, the delivery certificate expired on August 31, 2004.
2. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a), as documented during an investigation conducted on June 19, 2009.
3. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of a petroleum UST, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b), as documented during an investigation conducted on June 19, 2009.

4. Failed to monitor the UST system for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on June 19, 2009.
5. Failed to provide release detection for the piping associated with the UST, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a), as documented during an investigation conducted on June 19, 2009. Specifically, the Respondent did not conduct the annual piping tightness test.
6. Failed to test the line leak detectors at least once per year for performance and operational reliability, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a), as documented during an investigation conducted on June 19, 2009.
7. Failed to record the inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on June 19, 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: MPA River Oaks Limited Partnership dba River Oaks Apartments, Docket No. 2009-1299-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, cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ by submitting a properly completed UST registration and self-certification form, in accordance with 30 TEX. ADMIN. CODE § 334.8.

- b. Within 30 days after the effective date of this Agreed Order:
- i. Implement a release detection method for the UST and the piping associated with the UST, test the line leak detectors for performance and operational reliability, and begin conducting inventory volume measurement of regulated substance inputs, withdrawals, and amount remaining in the tank each operating day, in accordance with 30 TEX. ADMIN. CODE § 334.50;
  - ii. Submit documentation that demonstrates acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of a petroleum UST, in accordance with 30 TEX. ADMIN. CODE § 37.815 to:

Financial Assurance Unit, MC 184  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

- 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. through 2.b.ii. 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:

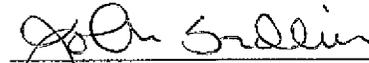
Waste Section Manager  
Houston Regional Office  
Texas Commission on Environmental Quality  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486

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 Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

12/8/2009  
~~October 19, 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

Oct 19, 2009  
\_\_\_\_\_  
Date

Jeffrey J. Cohen  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
MPA River Oaks Limited Partnership dba River Oaks Apartments

CEO  
\_\_\_\_\_  
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.