

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2010-0686-PST-E **TCEQ ID:** RN101894558 **CASE NO.:** 39593

RESPONDENT NAME: RICHEY AND MONK GROCERY, INC. dba Thrif-Tee Food Center

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: Thrif-Tee Food Center, 1021 North Main Street, Liberty, Liberty County</p> <p>TYPE OF OPERATION: Grocery 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 October 4, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Tate Barrett, Enforcement Division, Enforcement Team 7, MC R-12, (713) 422-8968; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Clifford Richey, President, RICHEY AND MONK GROCERY, INC., P.O. Box 1239, Dayton, Texas 77535 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: March 25, 2010</p> <p>Date of NOV/NOE Relating to this Case: April 23, 2010 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>1) Failed to conduct effective manual or automatic inventory control procedures for the UST system [30 TEX. ADMIN. CODE § 334.48(c)].</p> <p>2) Failed to provide a release detection method for the UST by failing to conduct reconciliation of inventory control records at least once a month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons [30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>3) Failed to record 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> <p>4) Failed to verify proper operation of the Stage II equipment at least once every 12 months [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$12,517</p> <p>Total Deferred: \$2,503 <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: \$10,014</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 checked="" type="checkbox"/> Yes <input 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 documentation to the Houston Regional Office demonstrating the implementation of proper inventory control procedures and recording of the volume measurements and reconciliation of inventory control records for all USTs at the Station on April 14, 2010; and</p> <p>b. Successfully conducted the required annual testing of the Stage II equipment on April 26, 2010.</p>

Additional ID No(s): PST ID No. 73023



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	26-Apr-2010	Screening	28-Apr-2010	EPA Due	
	PCW	5-May-2010				

RESPONDENT/FACILITY INFORMATION			
Respondent	RICHEY AND MONK GROCERY, INC. dba Thrif-Tee Food Center		
Reg. Ent. Ref. No.	RN101894558		
Facility/Site Region	12-Houston	Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	39593	No. of Violations	3
Docket No.	2010-0686-PST-E	Order Type	1680
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Tate Barrett
		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** \$15,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

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

Notes: No enhancement for compliance history.

Culpability **Subtotal 4** \$0
 No 0.0% Enhancement

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** \$3,000

Economic Benefit **Subtotal 6** \$0
 0.0% Enhancement*

Total EB Amounts \$524
 Approx. Cost of Compliance \$2,470
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** \$12,000

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment** \$517
 4.3%

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost associated with violation no. 3.

Final Penalty Amount \$12,517

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$12,517

DEFERRAL **Adjustment** -\$2,503
 20.0% Reduction

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY \$10,014

Screening Date 28-Apr-2010

Docket No. 2010-0686-PST-E

PCW

Respondent RICHEY AND MONK GROCERY, INC. dba Thrif-Tee Fo

Policy Revision 2 (September 2002)

Case ID No. 39593

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101894558

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Tate Barrett

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) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No enhancement for compliance history.

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

Screening Date 28-Apr-2010

Docket No: 2010-0686-PST-E

PCW

Respondent RICHEY AND MONK GROCERY, INC. dba Thrif-Tee Food Center

Policy Revision 2 (September 2002)

Case ID No: 39593

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101894568

Media [Statute] Petroleum Storage Tank

Enf. Coordinator: Tate Barrett

Violation Number

1

Rule Cite(s)

30 Tex. Admin. Code §334.48(c)

Violation Description

Failed to conduct effective manual or automatic inventory control procedures for the underground storage tank ("UST") system.

Base Penalty

\$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent

50%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent

0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment

\$5,000

\$5,000

Violation Events

Number of Violation Events

1

20

Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty

\$5,000

One monthly event is recommended based on documentation of the violation during the March 25, 2010 investigation to the April 14, 2010 compliance date.

Good Faith Efforts to Comply

25.0% Reduction

\$1,250

Extraordinary

Ordinary

N/A

Before NOV

NOV to EOPRP/Settlement

(mark with x)

Notes

The Respondent came into compliance on April 14, 2010 prior to the April 23, 2010 Notice of Enforcement ("NOE").

Violation Subtotal

\$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

\$1

Violation Final Penalty Total

\$3,912

This violation Final Assessed Penalty (adjusted for limits)

\$3,912

Economic Benefit Worksheet

Respondent: RICHEY AND MONK GROCERY, INC. dba Thrif-Tee Food Center

Case ID No.: 39593

Reg. Ent. Reference No.: RN101894558

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
<small>No commas or \$</small>							

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	\$500	25-Mar-2010	14-Apr-2010	0.05	\$1	n/a	\$1
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 conduct proper inventory control procedures. 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

\$500

TOTAL

\$1

Screening Date 28-Apr-2010

Docket No. 2010-0686-PST-E

PCW

Respondent RICHEY AND MONK GROCERY, INC. dba Thrif-Tee Food Center

Policy Revision 2 (September 2002)

Case ID No. 39593

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101894558

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Tate Barrett

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §.334.50(d)(1)(B)(ii), (d)(1)(B)(iii)(I) and Tex. Water Code § 26.3475(c)(1)

Violation Description

Failed to provide a release detection method for the UST by failing to conduct reconciliation of inventory control records at least once a month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons. Also, failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				50%
	Potential	X			

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 1 Number of violation days 20

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$5,000

One monthly event is recommended based on documentation of the violation during the March 25, 2010 investigation to the April 14, 2010 compliance date.

Good Faith Efforts to Comply

	25.0% Reduction	
	Before NOV	NOV to EDPR/Settlement Offer
Extraordinary		
Ordinary	X	
N/A		(mark with x)

Notes The Respondent came into compliance on April 14, 2010 prior to the April 23, 2010 NOE.

\$1,250

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$6

Violation Final Penalty Total \$3,912

This violation Final Assessed Penalty (adjusted for limits) \$3,912

Economic Benefit Worksheet

Respondent: RICHEY AND MONK GROCERY, INC. dba Thrif-Tee Food Center

Case ID No.: 39593

Reg. Ent. Reference No.: RN101894558

Media: Petroleum Storage Tank

Violation No.: 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$1,500	25-Mar-2010	14-Apr-2010	0.05	\$0	\$5	\$6
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

Estimated cost to provide a method of release detection for the UST system including volume measurement and reconciliation of inventory control records. 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

\$1,500

TOTAL

\$6

Screening Date 28-Apr-2010 **Docket No.** 2010-0686-PST-E **PCW**
Respondent: RICHEY AND MONK GROCERY, INC. dba Thrif-Tee Food Center *Policy Revision 2 (September 2002)*
Case ID No. 39593 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN101894558
Media [Statute]: Petroleum Storage Tank
Enf. Coordinator: Tate Barrett

Violation Number
Rule Cite(s)
Violation Description
Base Penalty

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="50%"/>
Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

>> Programmatic Matrix

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

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days
 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 checked="" type="checkbox"/>
single event	<input type="text"/>

Violation Base Penalty

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input checked="" type="checkbox"/>
N/A	<input type="text" value="(mark with x)"/>	
Notes	<input type="text" value="The Respondent came into compliance on April 26, 2010."/>	

Violation Subtotal

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount **Violation Final Penalty Total**
This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent RICHEY AND MONK GROCERY, INC. dba Thrif-Tee Food Center

Case ID No. 39593

Reg. Ent. Reference No. RN101894558

Media Petroleum Storage Tank

Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				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]	\$470	25-Mar-2009	26-Apr-2010	2.01	\$47	\$470	\$517
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Actual avoided cost (per receipt) for annual testing of the Stage II equipment. The date required is one year prior to the investigation date and the final date is the date of compliance.

Approx. Cost of Compliance

\$470

TOTAL

\$517

Compliance History Report

Customer/Respondent/Owner-Operator: CN600581920 RICHEY AND MONK GROCERY, INC. Classification: AVERAGE Rating: 2.25
Regulated Entity: RN101894558 Thrif-Tee Food Center Classification: AVERAGE Site Rating: 1.50

ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 73023

REGISTRATION

Location: 1021 N. MAIN ST, LIBERTY, TX, 77575

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: April 28, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: April 28, 2005 to April 28, 2010

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

Name: Tate Barrett Phone: (713) 422-8968

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 RICHEY AND MONK GROCERY, INC.
4. If Yes, who was/were the prior owner(s)/operator(s) ? OWNOPR HEB Grocery Company, LP
5. When did the change(s) in owner or operator occur? 12/01/2007 OWNOPR HEB Grocery Company, LP
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 04/23/2010 (799375)
- 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 RICHEY AND MONK
GROCERY, INC. DBA THRIF-TEE
FOOD CENTER
RN101894558

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2010-0686-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 RICHEY AND MONK GROCERY, INC. dba Thrif-Tee Food Center ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a grocery store with retail sales of gasoline at 1021 North Main Street in Liberty, Liberty County, Texas (the "Station").
2. The Respondent's underground storage tank ("UST") is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. 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 April 28, 2010.
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 Twelve Thousand Five Hundred Seventeen Dollars (\$12,517) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Ten Thousand Fourteen Dollars (\$10,014) of the administrative penalty and Two Thousand Five Hundred Three Dollars (\$2,503) 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 documentation to the Houston Regional Office demonstrating the implementation of proper inventory control procedures and recording of the volume measurements and reconciliation of inventory control records for all USTs at the Station on April 14, 2010; and
 - b. Successfully conducted the required annual testing of the Stage II equipment on April 26, 2010.
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 effective manual or automatic inventory control procedures for the UST system, in violation of 30 TEX. ADMIN. CODE § 334.48(c), as documented during an investigation conducted on March 25, 2010.

2. Failed to provide a release detection method for the UST by failing to conduct reconciliation of inventory control records at least once a month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on March 25, 2010.
3. Failed to record 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 March 25, 2010.
4. Failed to verify proper operation of the 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 March 25, 2010.

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: RICHEY AND MONK GROCERY, INC. dba Thrif-Tee Food Center, Docket No. 2010-0686-PST-E" to:

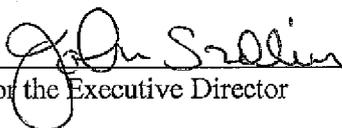
Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088
2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice 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



For the Executive Director

Date 9/22/2010

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

JULY 23, 2010

Date

CLIFFORD RICHEY

Name (Printed or typed)

PRESIDENT

Title

Authorized Representative of

RICHEY AND MONK GROCERY, INC. dba Thrif-Tee Food Center

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.

