

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2009-1240-PST-E **TCEQ ID:** RN100822931 **CASE NO.:** 38085
RESPONDENT NAME: UNITED PARCEL SERVICE, INC. dba UPS El Paso

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: UPS El Paso, 23 Spur Drive, El Paso, El Paso County</p> <p>TYPE OF OPERATION: Parcel delivery service with two underground storage tanks ("USTs")</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" 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 February 22, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Mike Pace, Enforcement Division, Enforcement Team 6, MC R-04, (817) 588-5933; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Ray Martinez, District Environmental Coordinator, UNITED PARCEL SERVICE, INC., 6400 Seven States, San Antonio, Texas 78244 Mr. Norman M. Brothers, Jr., Vice President, UNITED PARCEL SERVICE, INC., 6400 Seven States, San Antonio, Texas 78244 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: June 24, 2009</p> <p>Date of NOV/NOE Relating to this Case: August 4, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>Failure to verify proper operation of the Stage II equipment at least once every 36 months. Specifically, the Stage II triennial system compliance testing had not been conducted by the due date of April 19, 2009 [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$4,417</p> <p>Total Deferred: \$883 <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: \$3,534</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 City of El Paso, a TCEQ contractor, received documentation verifying that the Respondent successfully conducted the required annual testing of the Stage II equipment on June 25, 2009.</p>

Additional ID No(s): PST 24414

Penalty Calculation Worksheet (PCW)

TCEQ Policy Revision 2 (September 2002)PCW Revision October 30, 2008

DATES	Assigned	3-Aug-2009			
	PCW	5-Aug-2009	Screening	5-Aug-2009	EPA Due

RESPONDENT/FACILITY INFORMATION			
Respondent	UNITED PARCEL SERVICE, INC. dba UPS El Paso		
Reg. Ent. Ref. No.	RN100822931		
Facility/Site Region	6-El Paso	Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	38085	No. of Violations	1
Docket No.	2009-1240-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Mike Pace
		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 \$5,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 5.0% Enhancement Subtotals 2, 3, & 7 \$250

Notes Enhancement for one NOV with same or similar violations.

Culpability No 0.0% Enhancement Subtotal 4 \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments Subtotal 5 \$1,250

Economic Benefit 0.0% Enhancement Subtotal 6 \$0

Total EB Amounts \$417
Approx. Cost of Compliance \$395 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal \$4,000

OTHER FACTORS AS JUSTICE MAY REQUIRE 10.4% Adjustment \$417

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes Recommended enhancement to capture the avoided cost of compliance associated with the violation.

Final Penalty Amount \$4,417

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$4,417

DEFERRAL 20.0% Reduction Adjustment -\$883

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 \$3,534

Screening Date 5-Aug-2009

Docket No. 2009-1240-PST-E

PCW

Respondent UNITED PARCEL SERVICE, INC. dba UPS El Paso

Policy Revision 2 (September 2002)

Case ID No. 38085

PCW Revision October 30, 2009

Reg. Ent. Reference No. RN100822931

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Mike Pace

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	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same or similar violations.

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

Screening Date 5-Aug-2009	Docket No. 2009-1240-PST-E	PCW		
Respondent UNITED PARCEL SERVICE, INC. dba UPS El Paso	<small>Policy Revision 2 (September 2002)</small>			
Case ID No. 38085	<small>PCW Revision October 30, 2008</small>			
Reg. Ent. Reference No. RN100822931				
Media [Statute] Petroleum Storage Tank				
Enf. Coordinator Mike Pace				
Violation Number <input type="text" value="1"/>				
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 115.245(2) and Tex. Health & Safety Code § 382.085(b)"/>			
Violation Description	<input type="text" value="Failed to verify proper operation of the Stage II equipment at least once every 36 months. Specifically, the Stage II triennial system compliance testing had not been conducted by the date of April 19, 2009."/>			
Base Penalty		<input type="text" value="\$10,000"/>		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	x	<input type="text"/>	<input type="text"/>
		Percent	<input type="text" value="50%"/>	
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
		Percent	<input type="text" value="0%"/>	
Matrix Notes	<input type="text" value="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		<input type="text" value="\$5,000"/>		
		<input type="text" value="\$5,000"/>		
Violation Events				
Number of Violation Events		<input type="text" value="1"/>	Number of violation days	
		<input type="text" value="67"/>		
<small>mark only one with an x</small>	daily	<input type="text"/>	Violation Base Penalty	
	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="checkbox"/>	<input type="text" value="\$5,000"/>		
<input type="text" value="One single event is recommended for the period preceding the June 24, 2009 investigation."/>				
Good Faith Efforts to Comply		<input type="text" value="25.0%"/>	Reduction	
			<input type="text" value="\$1,250"/>	
	Extraordinary	<input type="text"/>	Violation Subtotal	
	Ordinary	x		
	N/A	(mark with x)		
Notes	<input type="text" value="The Respondent came into compliance on June 25, 2009, prior to the NOE dated August 4, 2009."/>			
		Violation Subtotal	<input type="text" value="\$3,750"/>	
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount	<input type="text" value="\$417"/>	Violation Final Penalty Total	<input type="text" value="\$4,417"/>	
		This violation Final Assessed Penalty (adjusted for limits)		
		<input type="text" value="\$4,417"/>		

Economic Benefit Worksheet

Respondent UNITED PARCEL SERVICE, INC. dba UPS El Paso
Case ID No. 38085
Reg. Ent. Reference No. RN190822931
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
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]	\$395	19-Apr-2009	25-Jun-2009	1.10	\$22	\$395	\$417
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Actual avoided cost to conduct the required testing per receipt submitted by the Respondent. The date required is the test due date and the final date is the compliance date.

Approx. Cost of Compliance

\$395

TOTAL

\$417

Compliance History Report

Customer/Respondent/Owner-Operator:	CN602297624 UNITED PARCEL SERVICE, INC.	Classification: AVERAGE	Rating: 1.96
Regulated Entity:	RN100822931 UPS El Paso	Classification: AVERAGE	Site Rating: 0.33
ID Number(s):	AIR NEW SOURCE PERMITS INDUSTRIAL AND HAZARDOUS WASTE GENERATION	ACCOUNT NUMBER EPA ID	EE1201B TXD981597701
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	70829
	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	24414
	STORMWATER	PERMIT	TXR050462
Location:	23 SPUR DR, EL PASO, TX, 79906		
TCEQ Region:	REGION 06 - EL PASO		
Date Compliance History Prepared:	August 03, 2009		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	August 03, 2004 to August 03, 2009		

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

Name: Mike Pace Phone: 817-588-5933

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?
UNITED PARCEL SERVICE, INC.
4. If Yes, who was/were the prior owner(s)/operator(s) ?
CITY OF EL PASO
5. When did the change(s) in owner or operator occur?
11/14/2006
6. Rating Date: 9/4/2008 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	08/03/2004	(283524)
2	06/23/2005	(396795)
3	08/25/2005	(399848)
4	07/17/2006	(487159)
5	05/16/2008	(671128)
6	09/10/2008	(702075)
7	07/29/2009	(763427)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	08/26/2005 (399848)	CN602297624
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 115, SubChapter C 115.245(2)	
Description:	Failure to test the Stage II equipment at least once every twelve months.	

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
UNITED PARCEL SERVICE, INC.
DBA UPS EL PASO
RN100822931**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2009-1240-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 UNITED PARCEL SERVICE, INC. dba UPS El Paso ("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 parcel delivery service with two underground storage tanks ("USTs") at 23 Spur Drive in El Paso, El Paso 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 August 9, 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 Four Thousand Four Hundred Seventeen Dollars (\$4,417) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). The Respondent has paid Three Thousand Five Hundred Thirty-Four Dollars (\$3,534) of the administrative penalty and Eight Hundred Eighty-Three Dollars (\$883) 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 City of El Paso, a TCEQ contractor, received documentation verifying that the Respondent successfully conducted the required annual testing of the Stage II equipment on June 25, 2009.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Station, the Respondent is alleged to have failed to verify proper operation of the Stage II equipment at least once every 36 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 June 24, 2009. Specifically, the Stage II triennial system compliance testing had not been conducted by the due date of April 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: UNITED PARCEL SERVICE, INC. dba UPS El Paso, Docket No. 2009-1240-PST-E" to:

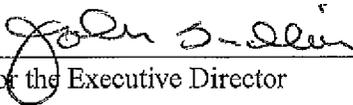
Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

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 1/19/2010

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

Date 12-1-09

Norman M. Brothers, Jr.
Name (Printed or typed)
Authorized Representative of
UNITED PARCEL SERVICE, INC. dba UPS El Paso

Vice President
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.