

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-0282-PST-E TCEQ ID RN102234168 CASE NO. 37209
RESPONDENT NAME: PRESTON/MERY PROPERTIES, INC.

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 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

SITE WHERE VIOLATION(S) OCCURRED: 703 State Highway 123 South, Stockdale, Wilson County

TYPE OF OPERATION: Convenience store with retail sales of gasoline

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The Texas Register comment period expired March 1, 2010. No comments were received.

CONTACTS AND MAILING LIST:
TCEQ Attorney: Mr. Steven M. Fishburn, Litigation Division, MC 175, (512) 239-3400
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400
TCEQ Enforcement Coordinator: Mr. Mike Pace, Waste Enforcement Section, MC R-4, (817) 588-5933
TCEQ Regional Contact: Mr. Joel Anderson, San Antonio Regional Office, MC R-13, (210) 490-3096
Respondent: Mr. Bruce Mery, President, Preston/Mery Properties, Inc., 8118 Datapoint Drive, San Antonio, Texas 78229
Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: January 30, 2009</p> <p>Date of NOE Relating to this Case: February 19, 2009</p> <p>Background Facts: The EDPRP was filed on July 1, 2009. The Respondent filed an answer and the case was referred to SOAH. Settlement was achieved and the agreed order was signed on January 5, 2010.</p> <p>Current Compliance Status: No outstanding Technical Requirements. The Facility was sold on October 6, 2009, to 703-123, LLC. The new owner shares common officers and directors with the Respondent. As of February 3, 2010, TCEQ has not received an amended registration form from the new owner of the Facility.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)]. Failed to provide a release detection method capable of detecting a release from any portion of the UST system which contained regulated substances [30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475(c) (1)]. Failed to ensure that a legible tag, label or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form [30 TEX. ADMIN. CODE § 334.8(c)(5)(C)]. Failed to ensure the observation well access vault or manhole is equipped with a liquid-tight cover and the observation well is properly capped, labeled, and secured or locked to prevent unauthorized access, tampering, and any deliberate or accidental depositing of unauthorized substances [30 TEX. ADMIN. CODE §§ 334.46(g)(1)(G) and (H) and 334.54(b)(2)]. 	<p>Total Assessed: \$7,000</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid/Due to General Revenue: \$210/\$6,790</p> <p>The Respondent paid \$210 of the administrative penalty. The remaining amount of \$6,750 shall be payable in 35 monthly payments of \$194 each.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that Respondent implemented the following corrective actions at the Facility:</p> <ol style="list-style-type: none"> On September 16, 2009, provided an updated UST registration; On July 14, 2009, provided a release detection method capable of detecting a release from any portion of the UST system which contained regulated substances; On July 14, 2009, permanently applied or affixed a legible tag, label or marking with the tank number to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form; and On July 14, 2009, equipped the observation well access vault or manhole with a liquid-tight cover and the observation well is properly capped, labeled, and secured or locked to prevent unauthorized access, tampering, and any deliberate or accidental depositing of unauthorized substances and have capped, plugged, locked, and/or otherwise secured all piping, pumps, manways, tank access points and ancillary equipment to prevent access, tampering, or vandalism by unauthorized persons.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	23-Feb-2009			
	PCW	4-Jun-2009	Screening	26-Feb-2009	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	PRESTON/MERY PROPERTIES, INC.				
Reg. Ent. Ref. No.	RN102234168				
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	37209	No. of Violations	4		
Docket No.	2009-0282-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	\$7,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No adjustment due to compliance history.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$81
Approx. Cost of Compliance	\$2,200

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$7,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$7,000

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$7,000
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$7,000
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Screening Date 26-Feb-2009 **Docket No.** 2009-0282-PST-E
Respondent PRESTON/MERY PROPERTIES, INC.
Case ID No. 37209
Reg. Ent. Reference No. RN102234168
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Mike Pace

PCW

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

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 adjustment due to compliance history.

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

Screening Date 26-Feb-2009 **Docket No.** 2009-0282-PST-E **PCW**
Respondent PRESTON/MERY PROPERTIES, INC. *Policy Revision 2 (September 2002)*
Case ID No. 37209 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102234168
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Mike Pace

Violation Number 1
Rule Cite(s) 30 Tex. Admin. Code § 334.7(d)(3)
Violation Description Failed to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current operational status of the UST system.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent
	Major	Moderate	Minor	
	Actual			
	Potential			

>> Programmatic Matrix

	Major	Moderate	Minor	Percent
Falsification	x			

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 11 Number of violation days

- daily
 - weekly
 - monthly
 - quarterly
 - semiannual
 - annual
 - single event
- mark only one with an x*

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the January 30, 2009 investigation.

Good Faith Efforts to Comply 0.0% Reduction Before NOV NOV to EDP/PP/ Settlement Offer \$0

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$3 Violation Final Penalty Total \$1,000

This violation Final Assessed Penalty (adjusted for limits) \$1,000

Economic Benefit Worksheet

Respondent PRESTON/MERY PROPERTIES, INC.

Case ID No. 37209

Reg. Ent. Reference No. RN102234168

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
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	30-Jan-2009	16-Sep-2009	0.63	\$3	n/a	\$3

Notes for DELAYED costs

Estimated cost to submit an amended UST registration form to the TCEQ. The date required is the investigation date and the final date is the compliance date.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$100

TOTAL \$3

Screening Date 26-Feb-2009 **Docket No.** 2009-0282-PST-E **PCW**
Respondent PRESTON/MERY PROPERTIES, INC. *Policy Revision 2 (September 2002)*
Case ID No. 37209 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102234168
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Mike Pace

Violation Number 2
Rule Cite(s) 30 Tex. Admin. Code § 334.50(a)(1)(A) and Tex. Water Code § 26.3475(c)(1)
Violation Description Failed to provide a release detection method capable of detecting a release from any portion of the UST system which contained regulated substances.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				25%
	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 \$7,500
\$2,500

Violation Events

Number of Violation Events 1 27 Number of violation days
 mark only one with an x
 daily
 weekly
 monthly
 quarterly
 semiannual
 annual
 single event

Violation Base Penalty \$2,500

One monthly event is recommended based on documentation of the violation during the January 30, 2009 investigation to the February 26, 2009 screening date.

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$55 **Violation Final Penalty Total** \$2,500

This violation Final Assessed Penalty (adjusted for limits) \$2,500

Economic Benefit Worksheet

Respondent PRESTON/MERY PROPERTIES, INC.

Case ID No. 37209

Reg. Ent. Reference No. RN102234168

Media Petroleum Storage Tank

Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	30-Jan-2009	26-Oct-2009	0.74	\$55	n/a	\$55

Notes for DELAYED costs

Estimated cost to provide proper release detection for the UST system. The date required is the investigation date and the final date is the expected 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 \$55

Screening Date 26-Feb-2009 **Docket No.** 2009-0282-PST-E **PCW**
Respondent PRESTON/MERY PROPERTIES, INC. *Policy Revision 2 (September 2002)*
Case ID No. 37209 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102234168
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Mike Pace

Violation Number 3
Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(C)
Violation Description Failed to ensure that a legible tag, label or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self certification form.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual					0%
Potential					

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			10%

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events: 1 27 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the January 30, 2009 investigation.

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes: The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$4 Violation Final Penalty Total \$1,000

This violation Final Assessed Penalty (adjusted for limits) \$1,000

Economic Benefit Worksheet

Respondent PRESTON/MERY PROPERTIES, INC.

Case ID No. 37209

Reg. Ent. Reference No. RN102234168

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)	\$100	30-Jan-2009	26-Oct-2009	0.74	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to label the tank fill ports. The date required is the investigation date and the final date is the expected date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$100

TOTAL \$4

Screening Date 26-Feb-2009 **Docket No.** 2009-0282-PST-E **PCW**
Respondent PRESTON/MERY PROPERTIES, INC. *Policy Revision 2 (September 2002)*
Case ID No. 37209 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102234168
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Mike Pace

Violation Number 4
Rule Cite(s) 30 Tex. Admin. Code §§ 334.46(g)(1)(G) and (H) and 334.54(b)(2)

Violation Description
 Failed to ensure that the observation well access vault or manhole is equipped with a liquid-tight cover and the observation well is properly capped, labeled, and secured or locked to prevent unauthorized access, tampering, and any deliberate or accidental depositing of unauthorized substances. Specifically, one tank hold manhole cover was missing and observation well was not capped. Also, failed to ensure that all piping, pumps, manways, tank access points and ancillary equipment shall be capped, plugged, locked, and/or otherwise secured to prevent access, tampering, or vandalism by unauthorized persons. Specifically, fill caps where not locked.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual			
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 a protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events: 1 27 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$2,500

One monthly event is recommended based on documentation of the violation during the January 30, 2009 investigation.

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes
 The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$18 **Violation Final Penalty Total** \$2,500

This violation Final Assessed Penalty (adjusted for limits) \$2,500

Economic Benefit Worksheet

Respondent PRESTON/MERY PROPERTIES, INC.

Case ID No. 37209

Reg. Ent. Reference No. RN102234168

Media Petroleum Storage Tank

Violation No. 4

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				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)	\$500	30-Jan-2009	26-Oct-2009	0.74	\$18	n/a	\$18

Notes for DELAYED costs

Estimated cost to provide a cover for the tank hold, cap for the observation well, and lock the fill caps. The date required is the investigation date and the final date is the expected 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 \$18

Compliance History Report

Customer/Respondent/Owner-Operator:	CN602480667 PRESTON/MERY PROPERTIES, INC.	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN102234168 Stockdale Chevron	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	64308
Location:	703 STATE HIGHWAY 123 SOUTH STOCKDALE, TX, 78160		
TCEQ Region:	REGION 13 - SAN ANTONIO		
Date Compliance History Prepared:	February 25, 2009		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	February 25, 2004 to February 25, 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 of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership 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 02/20/2009 (724322)
 - 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
PRESTON/MERY PROPERTIES,
INC;
RN102234168**

§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2009-0282-PST-E**

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality (“Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding Preston/Mery Properties, Inc. (“Preston/Mery”) under the authority of TEX. WATER CODE chs.7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Preston/Mery, appear before the Commission and together stipulate that:

1. Preston/Mery owned and operated a convenience store with retail sales of gasoline located at 703 State Highway 123 South, Stockdale, Wilson County, Texas (the “Facility”).
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and Preston/Mery agree that the Commission has jurisdiction to enter this Agreed Order, and that Preston/Mery is subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Preston/Mery of any violation alleged in Section II (“Allegations”), nor of any statute or rule.
5. An administrative penalty in the amount of seven thousand dollars (\$7,000.00) is assessed by the Commission in settlement of the violations alleged in Section II (“Allegations”). Preston/Mery paid two hundred ten dollars (\$210.00) of the administrative penalty. The remaining amount of six thousand seven hundred ninety dollars (\$6,790.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of one hundred

ninety-four dollars (\$194.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Preston/Mery fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Preston/Mery's failure to meet the payment schedule of this Agreed Order constitutes the failure by Preston/Mery to timely and satisfactorily comply with all of the terms of this Agreed Order.

6. 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.
7. The Executive Director of the TCEQ and Preston/Mery agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. The Executive Director recognizes that Preston/Mery has implemented the following corrective measures at the Facility:
 - a. On September 16, 2009, provided an updated UST registration;
 - b. On July 14, 2009, provided a release detection method capable of detecting a release from any portion of the UST system which contained regulated substances;
 - c. On July 14, 2009, permanently applied or affixed a legible tag, label or marking with the tank number to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form; and
 - d. On July 14, 2009, equipped the observation well access vault or manhole with a liquid-tight cover and the observation well is properly capped, labeled, and secured or locked to prevent unauthorized access, tampering, and any deliberate or accidental depositing of unauthorized substances and have capped, plugged, locked, and/or otherwise secured all piping, pumps, manways, tank access points and ancillary equipment to prevent access, tampering, or vandalism by unauthorized persons.

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 Preston/Mery 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

1. During an investigation conducted on January 30, 2009, a TCEQ San Antonio Regional Office investigator documented that Preston/Mery violated:
 - a. 30 TEX. ADMIN. CODE § 334.7(d)(3) by failing to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current operational status of the UST system;
 - b. 30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475(c)(1) by failing to provide a release detection method capable of detecting a release from any portion of the UST system which contained regulated substances;
 - c. 30 TEX. ADMIN. CODE § 334.8(c)(5)(C) by failing to ensure that a legible tag, label or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form; and
 - d. 30 TEX. ADMIN. CODE §§ 334.46(g)(1)(G) and (H) and 334.54(b)(2) by failing to ensure the observation well access vault or manhole is equipped with a liquid-tight cover and the observation well is properly capped, labeled, and secured or locked to prevent unauthorized access, tampering, and any deliberate or accidental depositing

of unauthorized substances. Specifically, one tank hold manhole cover was missing and the observation well was not capped. Also, by failing to ensure that all piping, pumps, manways, tank access points and ancillary equipment shall be capped, plugged, locked, and/or otherwise secured to prevent access, tampering, or vandalism by unauthorized persons. Specifically, fill caps were not locked.

2. Preston/Mery received notice of the violations on or about February 24, 2009.

III. DENIALS

Preston/Mery generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Preston/Mery pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and Preston/Mery'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 considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Preston/Mery Properties, Inc., Docket No. 2009-0282-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 Preston/Mery. Preston/Mery 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.
3. This Agreed Order, issued by the Commission, shall not be admissible against Preston/Mery 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.
5. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Agreed Order to Preston/Mery, or three days after the date on which the Commission mails notice of this Agreed Order to Preston/Mery, 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

Bongman Penner

For the Executive Director

2/3/2010

Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, 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 my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on Preston/Mery's compliance history;
- Greater scrutiny of any permit applications submitted by Preston/Mery;
- 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 against Preston/Mery;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Preston/Mery; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

B. Mery, Pres
Signature

1/5/2010
Date

BRUCE J. MERY, PRES
Name (Printed or typed)
Authorized representative of
Preston/Mery Properties, Inc.

President
Title