

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2009-1232-PST-E **TCEQ ID:** RN102372299 **CASE NO.:** 38080
RESPONDENT NAME: PostOak Retailer's Inc. dba Welcome Food Mart

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Welcome Food Mart, 15902 South Post Oak Road, Houston, Fort Bend County</p> <p>TYPE OF OPERATION: Convenience store with retail sales of gasoline</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the BD 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. Thomas Greimel, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-5690; Ms. Laurie Baves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Naresh Chaudhary, President, PostOak Retailer's Inc., 14806 Pool Forge Court, Sugar Land, Texas 77478 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: July 16, 2009</p> <p>Date of NOV/NOE Relating to this Case: July 23, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>Failure to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first. Specifically, the Stage II annual system compliance testing had not been conducted [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$5,315</p> <p>Total Deferred: \$1,063 <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: \$4,252</p> <p>Site Compliance History Classification <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input checked="" type="checkbox"/> High <input 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 University of Texas at Arlington, a TCEQ contractor, received documentation verifying that the Respondent successfully conducted the required annual testing of the Stage II equipment on July 16, 2009.</p>

Additional ID No(s): 35405



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	27-Jul-2009	Screening	3-Aug-2009	EPA Due	
	PCW	5-Aug-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	PostOak Retailer's Inc. dba Welcome Food Mart
Reg. Ent. Ref. No.	RN102372299
Facility/Site Region	12-Houston
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	38080	No. of Violations	1
Docket No.	2009-1232-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Thomas Greimel
Admin. Penalty \$ Limit Minimum	\$0	EC's Team	Enforcement Team 6
Maximum	\$10,000		

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$5,000
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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	10.0% Enhancement	Subtotals 2, 3, & 7	\$500
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Notes: Enhancement for one previous 1660 order with denial of liability and reduction due to high performer classification.

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	\$1,250
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$1,065
 Approx. Cost of Compliance: \$1,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$4,250
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OTHER FACTORS AS JUSTICE MAY REQUIRE	25.1%	Adjustment	\$1,065
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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	\$5,315
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$5,315
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DEFERRAL	20.0% Reduction	Adjustment	-\$1,063
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Reduces the Final Assessed Penalty by the Indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY	\$4,252
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Screening Date 3-Aug-2009

Docket No. 2009-1232-PST-E

PCW

Respondent PostOak Retailer's Inc. dba Welcome Food Mart

Policy Revision 2 (September 2002)

Case ID No. 38080

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102372299

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

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)	1	20%
	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 judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 20%

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

No

Adjustment Percentage (Subtotal 3) 0%

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

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for one previous 1660 order with denial of liability and reduction due to high performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 10%

Screening Date: 3-Aug-2009	Docket No.: 2009-1232-PST-E	PCW	
Respondent: PostOak Retailer's Inc. dba Welcome Food Mart	<small>Policy Revision 2 (September 2002)</small>		
Case ID No.: 38080	<small>PCW Revision October 30, 2008</small>		
Reg. Ent. Reference No.: RN102372299			
Media [Statute]: Petroleum Storage Tank			
Enf. Coordinator: Thomas Greimel			
Violation Number: 1			
Rule Cite(s):	30 Tex. Admin. Code § 115.245(2) and Tex. Health & Safety Code § 382.085(b)		
Violation Description:	Failed to verify proper operation of the Stage II equipment at least once every 12 months.		
Base Penalty		\$10,000	
>> Environmental, Property and Human Health Matrix			
OR	Harm		
	Major	Moderate	Minor
Release			
Actual			
Potential	x		
Percent			50%
>> Programmatic Matrix			
	Major	Moderate	Minor
Falsification			
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:
		137	
<small>mark only one with an x</small>	daily		Violation Base Penalty
	weekly		
	monthly		
	quarterly		
	semiannual		
	annual	x	
single event		\$5,000	
One annual event is recommended for the 12-month period preceeding the July 16, 2009 investigation.			
Good Faith Efforts to Comply		25.0% Reduction	\$1,250
		<small>Before NOV NOV to EDPRP/Settlement Offer</small>	
Extraordinary			
Ordinary	x		
N/A		<small>(mark with x)</small>	
Notes	The Respondent came into compliance on July 16, 2009.		
Violation Subtotal			\$3,750
Economic Benefit (EB) for this violation		Statutory Limit Test	
Estimated EB Amount	\$1,085	Violation Final Penalty Total	\$5,315
This violation Final Assessed Penalty (adjusted for limits)			\$5,315

Economic Benefit Worksheet

Respondent: PostOak Retailer's Inc. dba Welcome Food Mart
Case ID No.: 38080
Reg. Ent. Reference No.: RN102372299
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				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]	\$1,000	1-Mar-2009	16-Jul-2009	1.29	\$65	\$1,000	\$1,065
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost for annual testing of the Stage II equipment. The Date Required is the date the test was due. The Final Date is the date of compliance.

Approx. Cost of Compliance

\$1,000

TOTAL

\$1,065

Compliance History Report

Customer/Respondent/Owner-Operator: CN603363458 PostOak Retailer's, Inc. Classification: High Rating: 0.0
Regulated Entity: RN102372299 Welcome Food Mart Classification: High Site Rating: 0.0
ID Number(s):
Location: 15902 S POST OAK RD, HOUSTON, TX, 77053
TCEQ Region: REGION 12 - HOUSTON
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: Thomas Greimel Phone: (512) 239-5690

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? PostOak Retailer's, Inc.
4. If Yes, who was/were the prior owner(s)/operator(s) ?
Diamond Shamrock Refining
5. When did the change(s) in owner or operator occur?
2/1/2008
6. Rating Date: 9/1/2008 Repeat Violator: NO

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

- Effective Date: 02/08/2009 ADMINORDER 2008-1302-PST-E
Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)
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.
Classification: Major
Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)
30 TAC Chapter 37, SubChapter I 37.815(b)
Description: Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs.
Classification: Major
Citation: 2D TWC Chapter 26, SubChapter A 26.3467(a)
30 TAC Chapter 334, SubChapter A 334.8(c)(5)(A)(i)
Description: Failed to make available to the common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs, as documented during an investigation conducted on May 5, 2008. Specifically, one fuel delivery was accepted without a delivery certificate.
Classification: Major
Citation: 30 TAC Chapter 334, SubChapter A 334.8(c)(4)(C)
30 TAC Chapter 334, SubChapter A 334.8(c)(5)(B)(ii)
Description: Failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self certification within 30 days of the ownership change.

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 07/23/2009 (763292)

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
POSTOAK RETAILER'S INC. DBA
WELCOME FOOD MART
RN102372299

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

AGREED ORDER
DOCKET NO. 2009-1232-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 PostOak Retailer's Inc. dba Welcome Food Mart ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a convenience store with retail sales of gasoline at 15902 South Post Oak Road in Houston, Fort Bend County, Texas (the "Station").
2. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about July 28, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Five Thousand Three Hundred Fifteen Dollars (\$5,315) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). The Respondent has paid Four Thousand Two Hundred Fifty-Two Dollars (\$4,252) of the administrative penalty and One Thousand Sixty-Three Dollars (\$1,063) 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 University of Texas at Arlington, a TCEQ contractor, received documentation verifying that the Respondent successfully conducted the required annual testing of the Stage II equipment on July 16, 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 12 months or upon major system replacement or modification, whichever occurs first, in violation of 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on July 16, 2009. Specifically, the Stage II annual system compliance testing had not been conducted.

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: PostOak Retailer's Inc. dba Welcome Food Mart, Docket No. 2009-1232-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

J. S. Solis
For the Executive Director

1/29/2010
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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

N. Chaudhary
Signature

11-24-2009
Date

NARESH CHAUDHARY
Name (Printed or typed)
Authorized Representative of
PostOak Retailer's Inc. dba Welcome Food Mart

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.