

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-2003-PST-E RN102359809 CASE NO. 38822
RESPONDENT NAME: LINDALE STORES INC DBA QUICK PANTRY

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" 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 VIOLATIONS OCCURRED: 210 Hall Road, Seagoville, Dallas 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 July 26, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Phillip M. Goodwin, P.G., Litigation Division, MC 175, (512) 239-0675
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Mr. Rajesh Acharya, Waste Enforcement Section, MC 128, (512) 239-0577

TCEQ Regional Contact: Mr. Sam Barrett, DFW Regional Office, MC R-4, (817) 588-5903

Respondent: Mr. Quadir H. Ghaffar, 449 Tiffany Trail, Richardson, Texas 75081

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: October 13, 2009</p> <p>Date of NOE Relating to this Case: November 16, 2009</p> <p>Background Facts: The EDPRP was filed on April 21, 2010, and mailed to Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned. Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Respondent's delivery certificate expired in October 2009, and will not be renewed by the TCEQ until Respondent complies with all of the requirements of this order.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to verify proper operation of the Stage II equipment at least once every 12 months and the vapor space manifold and dynamic back-pressure at least once every 36 months [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. Failed to maintain the Stage II vapor recovery system in proper operating condition as specified by the manufacturer and/or any applicable California Air Resources Board ("CARB") Executive Order, and free of defects that would impair the effectiveness of the system [30 TEX. ADMIN. CODE § 115.242(3)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. Failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel [30 TEX. ADMIN. CODE § 115.246(7)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. 	<p>Total Assessed: \$5,207</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 Due to General Revenue: \$5,207</p> <p>This is a Default Order. Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</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: The Executive Director recognizes that Respondent performed the following corrective actions at the Station:</p> <ol style="list-style-type: none"> Performed the annual and triennial testing of the Stage II equipment; and Equipped the USTs with CARB approved products and Stage I fill adapters. <p>Ordering Provisions: Respondent's fuel delivery certificate is revoked immediately. Respondent may submit an application for a new delivery certificate only after Respondent has complied with all the terms and conditions contained in the order.</p> <p>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Immediately begin maintaining all Stage II records at the Station. Within 10 days, submit its delivery certificate to the TCEQ. Within 15 days, submit written certification demonstrating compliance.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	2-Dec-2009			
	PCW	4-Apr-2010	Screening	2-Dec-2009	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	LINDALE STORES INC dba Quick Pantry				
Reg. Ent. Ref. No.	RN102359809				
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	38822	No. of Violations	3		
Docket No.	2009-2003-PST-E	Order Type	1660		
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Rajesh Acharya		
		EC's Team	Enforcement Team 6		
Admin. Penalty \$ Limit	Minimum	\$0	Maximum	\$10,000	

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$4,500
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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	5.0% Enhancement	Subtotals 2, 3, & 7	\$225
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Notes: Enhancement for one NOV with same or similar violation.

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	\$504	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,150	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$4,725
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OTHER FACTORS AS JUSTICE MAY REQUIRE	10.2%	Adjustment	\$482
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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 violation no. 1.

Final Penalty Amount \$5,207

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$5,207
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$5,207
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Screening Date 2-Dec-2009

Docket No. 2009-2003-PST-E

PCW

Respondent LINDALE STORES INC dba Quick Pantry

Policy Revision 2 (September 2002)

Case ID No. 38822

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102359809

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	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 (<i>number of judgements or consent decrees meeting criteria</i>)	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 (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	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 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	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) 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 violation.

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

Screening Date 2-Dec-2009 **Docket No.** 2009-2003-PST-E **PCW**
Respondent LINDALE STORES INC dba Quick Pantry *Policy Revision 2 (September 2002)*
Case ID No. 38822 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102359809
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Rajesh Acharya

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="25%"/>
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

>> 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 type="text"/>
single event	<input type="text" value="x"/>

Violation Base Penalty

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDRP/Settlement
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	(mark with x)

Notes

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 LINDALE STORES INC dba Quick Pantry
Case ID No. 38822
Reg. Ent. Reference No. RN102359809
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)				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]	\$400	13-Oct-2006	15-Dec-2009	4.09	\$82	\$400	\$482
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Avoided cost for Stage II testing as per receipt submittal. Date Required is three years prior to the investigation date. Final Date is the date of compliance.

Approx. Cost of Compliance

\$400

TOTAL

\$482

Screening Date 2-Dec-2009 **Docket No.** 2009-2003-PST-E **PCW**
Respondent LINDALE STORES INC dba Quick Pantry *Policy Revision 2 (September 2002)*
Case ID No. 38822 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102359809
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Rajesh Acharya

Violation Number 2
Rule Cite(s) 30 Tex. Admin. Code § 115.242(3)(A) and Tex. Health & Safety Code § 382.085(b)
Violation Description Failed to maintain the Stage II vapor recovery system in proper operating condition as specified by the manufacturer and/or any applicable California Air Resources Board ("CARB") Executive Order, and free of defects that would impair the effectiveness of the system. Specifically, the USTs were not equipped with CARB approved products and Stage I fill adaptors.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate		Minor
	Actual				
	Potential		x		
				Percent 10%	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
					Percent 0%

Matrix Notes Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 51 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$1,000

One quarterly event is recommended based on documentation of the violation during the October 13, 2009 investigation to the December 2, 2009 screening date.

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 \$1,000

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

Estimated EB Amount \$3 **Violation Final Penalty Total** \$1,157

This violation Final Assessed Penalty (adjusted for limits) \$1,157

Economic Benefit Worksheet

Respondent LINDALE STORES INC dba Quick Pantry
Case ID No. 38822
Reg. Ent. Reference No. RN102359809
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	\$250	13-Oct-2009	15-Dec-2009	0.17	\$0	\$3	\$3
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

Estimated cost to install CARB approved adaptors. Date Required is the investigation date. 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

\$250

TOTAL

\$3

Screening Date 2-Dec-2009 **Docket No.** 2009-2003-PST-E **PCW**
Respondent LINDALE STORES INC dba Quick Pantry *Policy Revision 2 (September 2002)*
Case ID No. 38822 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102359809
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Rajesh Acharya

Violation Number 3
Rule Cite(s) 30 Tex. Admin. Code § 115.246(7)(A) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent
	Major	Moderate	Minor	
	Actual			
	Potential			0%

>> Programmatic Matrix

Falsification				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 51 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 October 13, 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 \$1,000

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

Estimated EB Amount \$19 **Violation Final Penalty Total** \$1,157

This violation Final Assessed Penalty (adjusted for limits) \$1,157

Economic Benefit Worksheet

Respondent LINDALE STORES INC dba Quick Pantry
Case ID No. 38822
Reg. Ent. Reference No. RN102359809
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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	13-Oct-2009	13-Jul-2010	0.75	\$19	n/a	\$19
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 maintain Stage II records at the Station. Date Required is the investigation date. Final Date is the estimated date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$19

Compliance History Report

Customer/Respondent/Owner-Operator: CN603070657 LINDALE STORES INC Classification: AVERAGE Rating: 2.00
Regulated Entity: RN102359809 QUICK PANTRY Classification: AVERAGE Site Rating: 2.00
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 27742
Location: 210 HALL RD, SEAGOVILLE, TX, 75159
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: December 02, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: December 02, 2004 to December 02, 2009
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Rajesh Acharya Phone: (512) 239-0577

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? Yes
3. If Yes, who is the current owner/operator? LINDALE STORES INC
4. If Yes, who was/were the prior owner(s)/operator(s)? FFP Operating Partners, L.P.
Southway, Inc.
5. When did the change(s) in owner or operator occur? 04/01/2005
6. Rating Date: 9/1/2009 Repeat Violator: NO 08/31/2005

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, 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 08/04/2006 (485786)
2 12/20/2006 (532606)
3 11/16/2009 (780865)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.) Date:
08/07/2006 (485786)
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 115, SubChapter C 115.248(1)
Description: Failure to ensure at least one facility representative receive training and instruction in the operation and maintenance of the Stage II vapor recovery system by successfully completing a training course approved by the Texas Commission on Environmental Quality (TCEQ).
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)
Description: 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. The verification shall include all functional tests that were required for the initial system test, except for TXP-101, and TXP-103
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 115, SubChapter C 115.246(7)(A)
Description: Failure to make stage II records available for review at the site upon request by authorized representatives of the Texas Commission on Environmental Quality (TCEQ), the U.S. Environmental Protection Agency (EPA), or any local air pollution control program with jurisdiction within 48-hours
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(E)
Description: Failure to maintain the stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resource Board (CARB) Executive Order(s), and free of defects that would impair the effectiveness of the system, including for booted nozzles in vacuum assist type

- 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	§	BEFORE THE
ENFORCEMENT ACTION	§	
CONCERNING	§	TEXAS COMMISSION ON
LINDALE STORES INC DBA	§	
QUICK PANTRY;	§	ENVIRONMENTAL QUALITY
RN102359809	§	

DEFAULT ORDER DOCKET NO. 2009-2003-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality, (“Commission” or “TCEQ”) considered the Executive Director’s Preliminary Report and Petition filed pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty, corrective action of the respondent, and revocation of the respondent’s fuel delivery certificate. The respondent made the subject of this Order is LINDALE STORES INC dba Quick Pantry (“Lindale Stores”).

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Lindale Stores owns and operates three underground storage tanks (“USTs”) and a convenience store with retail sales of gasoline located at 210 Hall Road, Seagoville, Dallas County, Texas (the “Station”).
2. The USTs at the Station are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contain a regulated petroleum substance as defined in the rules of the Commission. The Station consists of one or more sources as defined in Tex. Health & Safety Code § 382.003(12).
3. During an investigation conducted on October 13, 2009, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Lindale Stores:
 - a. Failed to verify proper operation of the Stage II equipment at least once every 12 months and the vapor space manifolding and dynamic back-pressure at least once every 36 months;
 - b. Failed to maintain the Stage II vapor recovery system in proper operating condition as specified by the manufacturer and/or any applicable California Air Resources Board

(“CARB”) Executive Order, and free of defects that would impair the effectiveness of the system. Specifically, the USTs were not equipped with CARB approved products and Stage I fill adapters; and

- c. Failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel.
4. Lindale Stores received notice of the violations on or about November 21, 2009.
 5. The Executive Director recognizes that as of December 15, 2009, Lindale Stores implemented the following corrective measures at the Station:
 - a. Performed the annual and triennial testing of the Stage II equipment; and
 - b. Equipped the USTs with CARB approved products and Stage I fill adapters.
 6. The Executive Director filed the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of LINDALE STORES INC dba Quick Pantry” (the “EDPRP”) in the TCEQ Chief Clerk’s office on April 21, 2010.
 7. By letter dated April 21, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Lindale Stores with notice of the EDPRP. The United States Postal Service returned the EDPRP sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Lindale Stores received notice of the EDPRP.
 8. More than 20 days have elapsed since Lindale Stores received notice of the EDPRP, provided by the Executive Director. Lindale Stores failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact Nos. 1 and 2, Lindale Stores is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 382 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Lindale Stores failed to verify proper operation of the Stage II equipment at least once every 12 months and the vapor space manifold and dynamic back-pressure at least once every 36 months, in violation of 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b).

3. As evidenced by Finding of Fact No. 3.b., Lindale Stores failed to maintain the Stage II vapor recovery system in proper operating condition as specified by the manufacturer and/or any applicable California Air Resources Board (“CARB”) Executive Order, and free of defects that would impair the effectiveness of the system, in violation of 30 TEX. ADMIN. CODE § 115.242(3)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b).
4. As evidenced by Finding of Fact No. 3.c., Lindale Stores failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 115.246(7)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b).
5. As evidenced by Findings of Fact Nos. 6 and 7, the Executive Director timely served Lindale Stores with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
6. As evidenced by Finding of Fact No. 8, Lindale Stores failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Lindale Stores and assess the penalty recommended by the Executive Director.
7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Lindale Stores for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission’s jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
8. An administrative penalty in the amount of five thousand two hundred seven dollars (\$5,207.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
9. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.
10. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Lindale Stores’s UST fuel delivery certificate if the Commission finds that good cause exists.
11. Good cause for revocation of Lindale Stores’s UST fuel delivery certificate exists as justified by Findings of Fact Nos. 3, and 6 through 8, and Conclusions of Law Nos. 2 through 6.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Lindale Stores is assessed an administrative penalty in the amount of five thousand two hundred seven dollars (\$5,207.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Lindale Stores's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: LINDALE STORES INC dba Quick Pantry; Docket No. 2009-2003-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. Lindale Stores's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Lindale Stores may submit an application for a new fuel delivery certificate only after Lindale Stores has complied with all of the requirements of this Order.
3. Within 10 days after the effective date of this Order, Lindale Stores shall send its UST fuel delivery certificate to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Lindale Stores shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Lindale Stores shall begin maintaining all Stage II records at the Station, in accordance with 30 TEX. ADMIN. CODE § 115.246;
 - b. Within 15 days after the effective date of this Order, Lindale Stores shall submit written certification and detailed supporting documentation, including photographs,

receipts, and/or other records, to demonstrate compliance with Ordering Provision No. 4.a.. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Lindale Stores shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision No. 4.a. to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Sam Barrett, Waste Section Manager
Texas Commission on Environmental Quality
Dallas/Fort Worth Regional Office
2309 Gravel Drive
Fort Worth, Texas 76118-6951

5. All relief not expressly granted in this Order is denied.
6. The provisions of this Order shall apply to and be binding upon Lindale Stores. Lindale Stores is ordered to give notice of this Order to personnel who maintain day-to-day control over the Station operations referenced in this Order.
7. If Lindale Stores fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Lindale Stores’s failure to comply is not a violation of this Order. Lindale Stores shall have the burden of establishing to the Executive Director’s satisfaction that such an event has occurred. Lindale Stores shall notify the Executive Director within seven days after Lindale Stores becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

8. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Lindale Stores shall be made in writing to the Executive Director. Extensions are not effective until Lindale Stores receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
9. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas (“OAG”) for further enforcement proceedings without notice to Lindale Stores if the Executive Director determines that Lindale Stores has not complied with one or more of the terms or conditions in this Order.
10. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
11. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date this Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF PHILLIP M. GOODWIN

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Phillip M. Goodwin. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of LINDALE STORES INC dba Quick Pantry” (the “EDPRP”) was filed with the Office of the Chief Clerk on April 21, 2010.

The EDPRP was mailed to Lindale Stores at its last known address on April 21, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Lindale Stores received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

More than 20 days have elapsed since Lindale Stores received notice of the EDPRP. Lindale Stores failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.”



Phillip M. Goodwin, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Phillip M. Goodwin, P.G., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 2nd day of June, A.D., 2010.


Notary Signature