

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2010-0461-PST-E **TCEQ ID:** RN101431427 **CASE NO.:** 39365
RESPONDENT NAME: M & S Business Corporation dba M & S 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: M & S Food Mart, 922 South Broadway Street, La Porte, Harris 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 ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on July 19, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Philip Aldridge, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-0855; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Ms. Sonia Sheikh, President, M & S Business Corporation, 922 South Broadway Street, La Porte, Texas 77571 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: February 5, 2010</p> <p>Date of NOV/NOE Relating to this Case: March 5, 2010 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>1) Failure to verify proper operation of the Stage II equipment at least once every 12 months [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2) Failure to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system. Specifically, Stage II operating instructions were not posted on dispensers nos. 3 and 4 [30 TEX. ADMIN. CODE § 115.242(9) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>3) Failure to inspect all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the underground storage tank system at least once every 60 days to assure that the sides, bottoms, and any penetration points are maintained liquid tight and free of liquid and debris. Specifically, the spill buckets contained water [30 TEX. ADMIN. CODE § 334.42(i)].</p> <p>4) Failure 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>	<p>Total Assessed: \$5,951</p> <p>Total Deferred: \$1,190 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$141 (remaining \$4,620 due in 35 monthly payments of \$132 each)</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Site 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 the Respondent has implemented the following corrective measures at the Station:</p> <p>a. Began maintaining all Stage II records on February 7, 2010;</p> <p>b. Posted the operating instructions on dispensers nos. 3 and 4 on March 6, 2010;</p> <p>c. Successfully completed testing of the Stage II vapor recovery system on March 6, 2010; and</p> <p>d. Submitted documentation reflecting that bimonthly inspections of all sumps, manways, and overspill containers or catchment basins were being conducted on March 24, 2010.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	8-Mar-2010	Screening	15-Mar-2010	EPA Due	
	PCW	24-Mar-2010				

RESPONDENT/FACILITY INFORMATION	
Respondent	M & S Business Corporation dba M & S Food Mart
Reg. Ent. Ref. No.	RN101431427
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	39365	No. of Violations	4
Docket No.	2010:0461-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Phillip Aldridge
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$5,500
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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	10.0% Enhancement	Subtotals 2, 3, & 7	\$550
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Notes: Enhancement for two previous NOV's with same or similar violations.

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	\$700
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$801	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,056	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$5,350
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OTHER FACTORS AS JUSTICE MAY REQUIRE	11.2%	Adjustment	\$601
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture avoided cost associated with violations nos. 1 and 3.

Final Penalty Amount \$5,951

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$5,951
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DEFERRAL	20.0% Reduction	Adjustment	-\$1,190
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY	\$4,761
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Screening Date: 15-Mar-2010

Docket No.: 2010-0461-PST-E

PCW

Respondent: M & S Business Corporation dba M & S Food Mart

Policy Revision 2 (September 2002)

Case ID No.: 39365

PCW Revision October 30, 2008

Reg. Ent. Reference No.: RN101431427

Media [Statute]: Petroleum Storage Tank

Enf. Coordinator: Philip Aldridge

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)	2	10%
	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) 10%

>> 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 two previous NOVs with same or similar violations.

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

Screening Date 15-Mar-2010

Docket No. 2010-0461-PST-E

PCW

Respondent M & S Business Corporation dba M & S Food Mart

Policy Revision 2 (September 2002)

Case ID No. 39365

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101431427

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Phillip Aldridge

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

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	X		

Percent 25%

>> Programmatic Matrix

Falsification	Harm		
	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

365 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	X
single event	

mark only one with an x

Violation Base Penalty \$2,500

One annual event is recommended for the one-year period preceding the February 5, 2010 investigation.

Good Faith Efforts to Comply

10.0% Reduction

\$250

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

Notes

The Respondent came into compliance on March 6, 2010.

Violation Subtotal \$2,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$495

Violation Final Penalty Total \$2,781

This violation Final Assessed Penalty (adjusted for limits) \$2,781

Economic Benefit Worksheet

Respondent: M & S Business Corporation dba M & S Food Mart
Case ID No.: 39365
Reg. Ent. Reference No.: RN101431427
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

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				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)

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]	\$450	5-Feb-2009	6-Mar-2010	2.00	\$45	\$450	\$495
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Actual avoided cost for annual testing of the Stage II equipment (per receipt submitted by the Respondent). The Date Required is one year prior to the investigation and the Final Date is the date of compliance.

Approx. Cost of Compliance

\$450

TOTAL

\$495

Screening Date 15-Mar-2010

Docket No. 2010-0461-PST-E

PCW

Respondent M & S Business Corporation dba M & S Food Mart

Policy Revision 2 (September 2002)

Case ID No. 39365

PCW Revision October 30, 2009

Reg. Ent. Reference No. RN101431427

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Phillip Aldridge

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 115.242(9) and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system. Specifically, Stage II operating instructions were not posted on dispensers nos. 3 and 4.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				10%
Potential		X		

>> 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 \$0,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 29

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 from the February 5, 2010 investigation date to the March 6, 2010 date of compliance.

Good Faith Efforts to Comply

	10.0% Reduction	
	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		X
N/A		(mark with x)

Notes

The Respondent came into compliance on March 6, 2010.

Violation Subtotal \$900

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$1,112

This violation Final Assessed Penalty (adjusted for limits) \$1,112

Economic Benefit Worksheet

Respondent M & S Business Corporation dba M & S Food Mart
Case ID No. 38365
Reg. Ent. Reference No. RN101431427
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)	\$6	5-Feb-2010	6-Mar-2010	0.08	\$0	n/a	\$0

Notes for DELAYED costs

Actual cost to post operating instructions on the dispensers per receipt submitted by the Respondent. The Date Required is the investigation date and the Final Date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$6

TOTAL

\$0

Screening Date 15-Mar-2010

Docket No. 2010-0461-PST-E

PCW

Respondent M & S Business Corporation dba M & S Food Mart

Policy Revision 2 (September 2002)

Case ID No. 39365

PCW Revision October 30, 2000

Reg. Ent. Reference No. RN101431427

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Phillip Aldridge

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 334.42(l)

Violation Description

Failed to inspect all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the underground storage tank system at least once every 60 days to assure that the sides, bottoms, and any penetration points are maintained liquid tight and free of liquid and debris. Specifically, the spill buckets contained water.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

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

>> 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 Number of violation days 38

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$1,000

One quarterly event is recommended based on documentation of the violation during the February 5, 2010 investigation date to the March 15, 2010 screening date.

Good Faith Efforts to Comply

	10.0% Reduction	
	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		X
N/A		(mark with x)

Notes

The Respondent came into compliance on March 24, 2010.

Violation Subtotal \$900

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$106

Violation Final Penalty Total \$1,112

This violation Final Assessed Penalty (adjusted for limits) \$1,112

Economic Benefit Worksheet

Respondent M & S Business Corporation dba M & S Food Mart
Case ID No. 39365
Reg. Ent. Reference No. RN101431427
Media Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

	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				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)

	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]	\$100	7-Dec-2009	24-Mar-2010	1.21	\$6	\$100	\$106
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost of conducting bimonthly inspections of the sumps, manways, overspill containers or catchment basins. The Date Required is 60 days before the investigation. The Final Date is the date of compliance.

Approx. Cost of Compliance

\$100

TOTAL

\$106

Screening Date 15-Mar-2010

Docket No. 2010-0461-PST-E

PCW

Respondent: M & S Business Corporation dba M & S Food Mart

Policy Revision 2 (September 2002)

Case ID No. 39365

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101431427

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Phillip Aldridge

Violation Number 4

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

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			X		
100% of the rule requirement was not met.					

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 2

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.

Good Faith Efforts to Comply

25.0% Reduction

\$250

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

Notes: The Respondent came into compliance February 7, 2010, prior to the NOE dated March 5, 2010.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$945

This violation Final Assessed Penalty (adjusted for limits) \$945

Economic Benefit Worksheet

Respondent: M & S Business Corporation dba M & S Food Mart
Case ID No.: 39365
Reg. Ent. Reference No.: RN101431427
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	\$500	5-Feb-2010	7-Feb-2010	0.01	\$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 maintain Stage II records at the Station. The Date Required is the investigation date. The Final Date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$0

Compliance History Report

Customer/Respondent/Owner-Operator:	CN602940108 M & S Business Corporation	Classification: AVERAGE	Rating: 2.00
Regulated Entity:	RN101431427 M & S Food Mart	Classification: AVERAGE	Site Rating: 2.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	35151
Location:	822 S BROADWAY ST, LA PORTE, TX, 77571		
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	March 10, 2010		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	March 10, 2005 to March 10, 2010		

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

Name: Phillip Aldridge Phone: (512) 239-0855

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? Yes
3. If Yes, who is the current owner/operator?

	OWNOPR	M & S Business Corporation
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4. If Yes, who was/were the prior owner(s)/operator(s) ?

	OWN	Sheikh Umar Hayat
	OPR	Sheikh Omani
	OWNOPR	U & R Business, Corp.
5. When did the change(s) in owner or operator occur?

	10/23/2005	OWN	Sheikh Umar Hayat
		OPR	Sheikh Omani
		OWNOPR	U & R Business, Corp.
6. Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site :

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

N/A
- B. Any criminal convictions of the state of Texas and the federal government.

N/A
- C. Chronic excessive emissions events.

N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	07/09/2007	(562988)
2	10/03/2007	(596194)
3	03/05/2010	(793483)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	07/09/2007	(562988)	CN602940108
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 115, SubChapter C 115.245(2)		
Description:	Failure to have the required triennial Stage II tests conducted.		
Date:	10/03/2007	(596194)	CN602940108
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 115, SubChapter C 115.245(2)		
Description:	Failure to have the required triennial Stage II tests conducted.		
- 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
M & S BUSINESS CORPORATION
DBA M & S FOOD MART
RN101431427

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2010-0461-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 M & S Business Corporation dba M & S Food Mart ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a convenience store with retail sales of gasoline at 922 South Broadway Street in La Porte, Harris County, Texas (the "Station").
2. The Respondent's two underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about March 10, 2010.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Five Thousand Nine Hundred Fifty-One Dollars (\$5,951) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Hundred Forty-One Dollars (\$141) of the administrative penalty and One Thousand One Hundred Ninety Dollars (\$1,190) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Four Thousand Six Hundred Twenty Dollars (\$4,620) of the administrative penalty shall be payable in 35 monthly payments of One Hundred Thirty-Two Dollars (\$132) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's 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, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Station:
 - a. Began maintaining all Stage II records on February 7, 2010;
 - b. Posted the operating instructions on dispensers nos. 3 and 4 on March 6, 2010;
 - c. Successfully completed testing of the Stage II vapor recovery system on March 6, 2010;
and
 - d. Submitted documentation reflecting that bimonthly inspections of all sumps, manways, and overspill containers or catchment basins were being conducted on March 24, 2010.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Station, the Respondent is alleged to have:

1. Failed to verify proper operation of the Stage II equipment at least once every 12 months, in violation of 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on February 5, 2010.
2. Failed to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system, in violation of 30 TEX. ADMIN. CODE § 115.242(9) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on February 5, 2010. Specifically, Stage II operating instructions were not posted on dispensers nos. 3 and 4.
3. Failed to inspect all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the UST system at least once every 60 days to assure that the sides, bottoms, and any penetration points are maintained liquid tight and free of liquid and debris, in violation of 30 TEX. ADMIN. CODE § 334.42(i), as documented during an investigation conducted on February 5, 2010. Specifically, the spill buckets contained water.
4. 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), as documented during an investigation conducted on February 5, 2010.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: M & S Business Corporation dba M & S Food Mart, Docket No. 2010-0461-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. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. 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.
7. 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

John Sredler

For the Executive Director

7/9/2010

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.

Umar H. Sittler

Signature

05/12/2010

Date

UMAR H SITTILER

Name (Printed or typed)
Authorized Representative of
M & S Business Corporation dba M & S Food Mart

Officer

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.

