

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2010-1071-PST-E **TCEQ ID:** RN102056827 **CASE NO.:** 39960
RESPONDENT NAME: Flying J Inc. dba Flying J Travel Plaza Orange

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: Flying J Travel Plaza Orange, 7112 Interstate Highway 10 West, Orange, Orange County</p> <p>TYPE OF OPERATION: Truck stop and 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 November 15, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Judy Kluge, Enforcement Division, Enforcement Team 6, MC R-04, (817) 588-5825; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Thad Call, Director, Flying J Inc. dba Flying J Travel Plaza Orange, 1104 Country Hills Drive, Ogden, Utah 84403 Mr. Joey Cupp, Environmental Manager, Flying J Inc., 1104 Country Hills Drive, Ogden, Utah 84403 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: April 15, 2010</p> <p>Date of NOV/NOE Relating to this Case: June 11, 2010 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>1) Failed to maintain Stage II records at the Station and make them immediately available for inspection upon request by agency personnel. Specifically, a copy of the applicable California Air Resources Board ("CARB") Executive Order, Stage II training records, and copies of Stage II test results were not available for review [30 TEX. ADMIN. CODE § 115.246(1), (4), and (5) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2) Failed to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifold and dynamic back pressure at least once every 36 months or upon major system replacement or modification. Specifically, the Respondent did not conduct the required Stage II testing by the due date of July 21, 2009 [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$9,278</p> <p>Total Deferred: \$1,855 <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: \$7,423</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 type="checkbox"/> Average <input checked="" 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 Respondent has implemented the following corrective measures at the Station:</p> <p>a. Began maintaining a copy of the CARB Executive Order, the Stage II training records, and Stage II test results on May 26, 2010; and</p> <p>b. Successfully conducted the required testing of the Stage II equipment on May 26, 2010.</p>

Additional ID No(s): PST ID No. 65222



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	14-Jun-2010	Screening	28-Jun-2010	EPA Due	
	PCW	2-Jul-2010				

RESPONDENT/FACILITY INFORMATION	
Respondent	Flying J Inc. dba Flying J Travel Plaza Orange
Reg. Ent. Ref. No.	RN102056827
Facility/Site Region	10-Beaumont
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	39960	No. of Violations	2
Docket No.	2010-1071-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Judy Kluge
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$7,500
ADJUSTMENTS (+/-) TO SUBTOTAL 1		
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the Indicated percentage.</small>		
Compliance History	40.0% Enhancement	Subtotals 2, 3, & 7
Notes	Enhancement for two prior 1660 orders.	
Culpability	No	0.0% Enhancement
Notes	The Respondent does not meet the culpability criteria.	
Good Faith Effort to Comply Total Adjustments		Subtotal 5
Economic Benefit	0.0% Enhancement*	Subtotal 6
Total EB Amounts	\$656	
Approx. Cost of Compliance	\$1,100	*Capped at the Total EB \$ Amount
SUM OF SUBTOTALS 1-7		Final Subtotal
OTHER FACTORS AS JUSTICE MAY REQUIRE	7.6%	Adjustment
<small>Reduces or enhances the Final Subtotal by the indicated percentage.</small>		
Notes	Recommended enhancement to capture the avoided cost of compliance associated with violation no. 2.	
	Final Penalty Amount	\$9,278
STATUTORY LIMIT ADJUSTMENT		Final Assessed Penalty
DEFERRAL	20.0% Reduction	Adjustment
<small>Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)</small>		
Notes	Deferral offered for expedited settlement.	
PAYABLE PENALTY		\$7,423

Screening Date 28-Jun-2010

Docket No. 2010-1071-PST-E

PCW

Respondent Flying J Inc. dba Flying J Travel Plaza Orange

Policy Revision 2 (September 2002)

Case ID No. 39960

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102056827

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

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)	2	40%
	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%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 40%

>> 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 prior 1660 orders.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 40%

Screening Date 28-Jun-2010

Docket No. 2010-1071-PST-E

PCW

Respondent Flying J Inc. dba Flying J Travel Plaza Orange

Policy Revision 2 September 2002

Case ID No. 39960

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102056827

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 115.246(1), (4), and (5) 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 inspection upon request by agency personnel. Specifically, a copy of the applicable California Air Resources Board Executive Order, Stage II training records, and copies of Stage II test results were not available for review.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
	x		

Percent 25%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

Number of violation days 41

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$2,500

One single event is recommended based on documentation of the violation during the April 15, 2010 investigation.

Good Faith Efforts to Comply

25.0% Reduction

\$625

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

Notes

The Respondent came into compliance on May 26, 2010 prior to the notice of enforcement ("NOE") dated June 11, 2010.

Violation Subtotal \$1,875

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3

Violation Final Penalty Total \$3,093

This violation Final Assessed Penalty (adjusted for limits) \$3,093

Economic Benefit Worksheet

Respondent: Flying J Inc. dba Flying J Travel Plaza Orange

Case ID No.: 39960

Reg. Ent. Reference No.: RN102056827

Media: Petroleum Storage Tank

Violation No.: 1

Percent Interest	Years of Depreciation
6.0	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	15-Apr-2010	26-May-2010	0.11	\$3	n/a	\$3
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 and the final date is the 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

\$3

Screening Date 28-Jun-2010

Docket No. 2010-1071-PST-E

PCW

Respondent Flying J Inc. dba Flying J Travel Plaza Orange

Policy Revision 2 (September 2002)

Case ID No. 39960

PCW Revision October 30 2008

Reg. Ent. Reference No. RN102056827

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 2

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 and the Stage II vapor space manifold and dynamic back pressure at least once every 36 months or upon major system replacement or modification. Specifically, the Respondent did not conduct the required Stage II testing by the due date of July 21, 2009.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				50%
Potential	X			

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 1 Number of violation days 309

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

Violation Base Penalty \$5,000

One single event is recommended for the three-year period preceding the April 15, 2010 investigation.

Good Faith Efforts to Comply

25.0% Reduction

\$1,250

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

Notes

The Respondent came into compliance on May 26, 2010 prior to the NOE dated June 11, 2010.

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$653

Violation Final Penalty Total \$6,185

This violation Final Assessed Penalty (adjusted for limits) \$6,185

Economic Benefit Worksheet

Respondent: Flying J Inc. dba Flying J Travel Plaza Orange
Case ID No.: 39960
Reg. Ent. Reference No.: RN102056827
Media: Petroleum Storage Tank
Violation No.: 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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]	\$800	21-Jul-2009	26-May-2010	1.78	\$53	\$600	\$653
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Actual avoided cost for conducting the required Stage II testing per invoice submitted. The date required is the date the test was due and the final date is the compliance date.

Approx. Cost of Compliance

\$800

TOTAL

\$653

Compliance History Report

Customer/Respondent/Owner-Operator: CN600241970 Flying J Inc. Classification: AVERAGE Rating: 4.77
Regulated Entity: RN102056827 FLYING J TRAVEL PLAZA ORANGE Classification: POOR Site Rating: 61.00
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 65222
Location: 7112 IH 10 W, ORANGE, TX, 77632
TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: June 16, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: June 16, 2005 to June 16, 2010
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Judy Kluge Phone: 817-588-5825

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? Flying J Inc.
4. If Yes, who was/were the prior owner(s)/operator(s) ? CFJ Properties
5. When did the change(s) in owner or operator occur? 08/25/2008
6. Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site :

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

Effective Date: 02/18/2008 ADMINORDER 2007-0702-PST-E
Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.246(1), (4), (5), and (6)
5C THC Chapter 382, SubChapter D 382.085(b)

Description: Failed to maintain Stage II records on-site and make them immediately available for inspection upon request by Commission personnel.

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.248(2)
5C THC Chapter 382, SubChapter D 382.085(b)

Description: Failed to ensure that at least one Station representative receive training and instruction in the operation and maintenance of the Stage II vapor recovery system within three months of the departure of the previously trained Station representative.

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)
5C THC Chapter 382, SubChapter D 382.085(b)

Description: Failed to verify proper operation of the Stage II vapor space manifold and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first.

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(A)
30 TAC Chapter 115, SubChapter C 115.242(9)
5C THSC Chapter 382 382.085(b)

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 Executive Order(s), and free of defects that would impair the effectiveness of the system, including, but not limited to absence or disconnection of any component that is a part of the approved system.

Effective Date: 07/03/2008 ADMINORDER 2007-1784-PST-E

Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)

Description: Failed to have the required UST records maintained, readily accessible, and available for the inspection upon request by agency personnel.

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter D 334.74(1)

Description: Failed to investigate a suspected release within 30 days of discovery.

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.6(b)(2)

Description: Failed to submit a construction notification form to the TCEQ 30 days prior to the construction activity.

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.46(g)(1)(H)

Description: Failed to ensure that all monitoring wells and observation wells are properly capped, labeled, and secured (or locked) to prevent unauthorized access, tampering, accidental depositing of unauthorized substances, and designed to divert surface runoff away from the well.

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	04/23/2007	(540594)
2	10/18/2007	(574029)
3	10/26/2007	(597230)
4	08/12/2008	(699603)
5	08/27/2008	(700706)
6	04/08/2009	(741742)
7	07/08/2009	(760957)
8	06/11/2010	(802430)

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
FLYING J INC. DBA FLYING J
TRAVEL PLAZA ORANGE
RN102056827

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

AGREED ORDER
DOCKET NO. 2010-1071-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 Flying J Inc. dba Flying J Travel Plaza Orange ("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 truck stop and convenience store with retail sales of gasoline at 7112 Interstate Highway 10 West in Orange, Orange County, Texas (the "Station").
2. The Respondent's seven 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 June 16, 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 Nine Thousand Two Hundred Seventy-Eight Dollars (\$9,278) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Seven Thousand Four Hundred Twenty-Three Dollars (\$7,423) of the administrative penalty and One Thousand Eight Hundred Fifty-Five Dollars (\$1,855) 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 Respondent has implemented the following corrective measures at the Station:
 - a. Began maintaining a copy of the California Air Resources Board ("CARB") Executive Order, the Stage II training records, and Stage II test results on May 26, 2010; and
 - b. Successfully conducted the required testing of the Stage II equipment on May 26, 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 maintain Stage II records at the Station and make them immediately available for inspection upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 115.246(1), (4), and (5) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on April 15, 2010. Specifically, a copy of the applicable CARB Executive Order, Stage II training records, and copies of Stage II test results were not available for review.

2. Failed to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, 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 April 15, 2010. Specifically, the Respondent did not conduct the required Stage II testing by the due date of July 21, 2009.

III. DENIALS

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

IV. ORDERING PROVISIONS

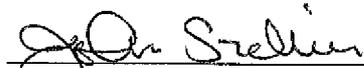
1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Flying J Inc. dba Flying J Travel Plaza Orange, Docket No. 2010-1071-PST-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088
2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Station operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

Date 10/14/2010

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

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

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

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



Signature

8-20-10

Date

Joey Cupp

Name (Printed or typed)
Authorized Representative of
Flying J Inc. dba Flying J Travel Plaza Orange

Environmental Manager

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.