

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2010-1170-PST-E **TCEQ ID:** RN102359528 **CASE NO.:** 40060
RESPONDENT NAME: RETAIL MAX INC. dba Step N Go

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: Step N Go, 2290 Calder Street, Beaumont, Jefferson 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 December 13, 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. Mohammad Khan, Director, RETAIL MAX INC., 2290 Calder Street, Beaumont, Texas 77701-1523 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: June 11, 2010</p> <p>Date of NOV/NOE Relating to this Case: July 15, 2010 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>1) 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. Specifically, the annual and triennial testing of the Stage II equipment had not been conducted [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2) 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, and free of defects that would impair the effectiveness of the system. Specifically, there was a large tear in a coaxial vapor recovery dispenser hose [30 TEX. ADMIN. CODE § 115.242(3) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>3) Failed to ensure that the underground storage tanks ("USTs") are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].</p>	<p>Total Assessed: \$9,675</p> <p>Total Deferred: \$1,935 <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: \$215 (remaining \$7,525 due in 35 monthly payments of \$215 each)</p> <p>Compliance History Classifications: Person/CN - Average Site/RN - Average</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. Successfully conducted the required annual and triennial testing of the Stage II equipment on August 28, 2010;</p> <p>b. Replaced the coaxial vapor recovery dispenser hose on June 18, 2010;</p> <p>c. Implemented statistical inventory reconciliation and inventory control as a release detection method for all USTs on September 1, 2010;</p> <p>d. Successfully conducted the required piping tightness and line leak detector tests on June 25, 2010;</p> <p>e. Began conducting proper inventory control procedures for all USTs on June 19, 2010; and</p> <p>f. Cleaned the spill buckets and tank sumps and began conducting bimonthly inspections of all sumps, manways, overfill containers, or catchment basins associated with the UST system on June 21, 2010.</p>

<p>4) Failed to provide release detection for the piping associated with the USTs. Specifically, the required annual piping tightness test had not been conducted [30 TEX. ADMIN. CODE § 334.50(b)(2)(A) and TEX. WATER CODE § 26.3475(a)].</p>		
<p>5) Failed to test the line leak detectors at least once per year for performance and operational reliability. Specifically, the line leak detectors had not been performance tested annually [30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a)].</p>		
<p>6) Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel [30 TEX. ADMIN. CODE § 334.48(c)].</p>		
<p>7) 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. Specifically, the spill buckets and tank sumps contained liquid [30 TEX. ADMIN. CODE § 334.42(i)].</p>		

Additional ID No(s): PST Registration 35102



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	19-Jul-2010	Screening	20-Jul-2010	EPA Due	
	PCW	23-Jul-2010				

RESPONDENT/FACILITY INFORMATION	
Respondent	RETAIL MAX INC. dba Step N Go
Reg. Ent. Ref. No.	RN102359528
Facility/Site Region	10-Beaumont
Major/Minor Source	Minor

CASE INFORMATION		No. of Violations	5
Enf./Case ID No.	40060	Order Type	1660
Docket No.	2010-1170-PST-E	Government/Non-Profit	No
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Judy Kluge
Multi-Media		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** **\$9,500**

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** **\$475**

Notes Enhancement for one notice of violation with same/similar violations.

Culpability **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** **\$1,125**

Economic Benefit **0.0%** Enhancement* **Subtotal 6** **\$0**

Total EB Amounts **\$888**
 Approx. Cost of Compliance **\$2,845**
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$8,850**

OTHER FACTORS AS JUSTICE MAY REQUIRE **9.3%** **Adjustment** **\$825**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes Enhancement for capturing the avoided cost of compliance associated with violation nos. 1, 3, and 5.

Final Penalty Amount **\$9,675**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$9,675**

DEFERRAL **20.0%** Reduction **Adjustment** **-\$1,935**

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 **\$7,740**

Screening Date 20-Jul-2010

Docket No. 2010-1170-PST-E

PCW

Respondent RETAIL MAX INC. dba Step N Go

Policy Revision 2 (September 2002)

Case ID No. 40060

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102359528

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 notices of violation ("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 notice of violation with same/similar violations.

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

Screening Date 20-Jul-2010

Docket No. 2010-1170-PST-E

PCW

Respondent RETAIL MAX INC. dba Step N Go

Policy Revision 2 (September 2002)

Case ID No. 40060

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102359528

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

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 and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification. Specifically, the annual and triennial testing of the Stage II equipment had not been conducted.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

1095 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$2,500

One single event is recommended for the three-year period preceding the June 11, 2010 investigation.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

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

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$598

Violation Final Penalty Total \$2,870

This violation Final Assessed Penalty (adjusted for limits) \$2,870

Economic Benefit Worksheet

Respondent: RETAIL MAX INC. dba Step N Go
Case ID No.: 40060
Reg. Ent. Reference No.: RN102359528
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]	\$500	11-Jun-2007	11-Jun-2010	3.92	\$98	\$500	\$598
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost for completing the required Stage II testing. The date required is three years before the investigation and the final date is the investigation date.

Approx. Cost of Compliance

\$500

TOTAL

\$598

Screening Date 20-Jul-2010

Docket No: 2010-1170-PST-E

PCW

Respondent: RETAIL MAX INC. dba Step N Go

Policy Revision 2 (September 2002)

Case ID No. 40060

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102359528

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number

2

Rule Cite(s)

30 Tex. Admin. Code § 115.242(3) 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 Executive Order, and free of defects that would impair the effectiveness of the system. Specifically, there was a large tear in a coaxial vapor recovery dispenser hose.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

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

7 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 June 11, 2010 investigation to the June 18, 2010 compliance date.

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 on June 18, 2010 prior to the notice of enforcement dated July 15, 2010.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$875

This violation Final Assessed Penalty (adjusted for limits) \$875

Economic Benefit Worksheet

Respondent: RETAIL MAX INC. dba Step N Go
Case ID No.: 40060
Reg. Ent. Reference No.: RN102359528
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				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)	\$135	11-Jun-2010	18-Jun-2010	0.02	\$0	n/a	\$0

Notes for DELAYED costs

Actual cost of repairing the coaxial dispenser hose per invoice. The date required is the investigation date and the final date is the compliance date.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

	\$135	TOTAL	\$0
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Screening Date: 20-Jul-2010

Docket No.: 2010-1170-PST-E

PCW

Respondent: RETAIL MAX INC. dba Step N Go

Policy Revision 2 (September 2002)

Case ID No.: 40060

PCW Revision October 30, 2008

Reg. Ent. Reference No.: RN102359528

Media [Statute]: Petroleum Storage Tank

Enf. Coordinator: Judy Kluge

Violation Number: 3

Rule Cite(s):

30 Tex. Admin. Code § 334.50(b)(1)(A), (b)(2)(A), and (b)(2)(A)(i)(III) and Tex. Water Code § 26.3475(a) and (c)(1)

Violation Description:

Failed to ensure that the underground storage tanks ("USTs") are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring). Failed to provide release detection for the piping associated with the USTs. Specifically, the required annual piping tightness test had not been conducted. Failed to test the line leak detectors at least once per year for performance and operational reliability. Specifically, the line leak detectors had not been performance tested annually.

Base Penalty: \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	X		

Percent: 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent: 0%

Matrix Notes:

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

Adjustment: \$7,500

\$2,500

Violation Events

Number of Violation Events: 1

39 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty: \$2,500

One quarterly event is recommended based on documentation of the violation during the June 11, 2010 investigation to the July 20, 2010 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal: \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount: \$138

Violation Final Penalty Total: \$2,870

This violation Final Assessed Penalty (adjusted for limits): \$2,870

Economic Benefit Worksheet

Respondent: RETAIL MAX INC. dba Step N Go
Case ID No.: 40060
Reg. Ent. Reference No.: RN102359528
Media: Petroleum Storage Tank
Violation No.: 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	11-Jun-2010	1-Sep-2010	0.22	\$17	n/a	\$17

Notes for DELAYED costs

The estimated cost of monitoring the USTs for releases. 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]	\$110	11-Jun-2009	25-Jun-2010	1.96	\$11	\$110	\$121
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost for piping tightness and line leak detector tests. The date required is one year prior to the investigation date and the final date is the compliance date.

Approx. Cost of Compliance

\$1,610

TOTAL

\$138

Screening Date 20-Jul-2010

Docket No. 2010-1170-PST-E

PCW

Respondent RETAIL MAX INC. dba Step N Go

Policy Revision 2 (September 2002)

Case ID No. 40060

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102359528

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code § 334.48(c)

Violation Description

Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel.

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

8 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$2,500

One quarterly event is recommended based on documentation of the violation during the June 11, 2010 investigation to the June 19, 2010 compliance date.

Good Faith Efforts to Comply

25.0% Reduction

\$625

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

Notes

The Respondent came into compliance on June 19, 2010 prior to the notice of enforcement dated July 15, 2010.

Violation Subtotal \$1,875

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$2,186

This violation Final Assessed Penalty (adjusted for limits) \$2,186

Economic Benefit Worksheet

Respondent: RETAIL MAX INC. dba Step N Go
Case ID No.: 40060
Reg. Ent. Reference No.: RN102359528
Media: Petroleum Storage Tank
Violation No.: 4

Percent Interest	Years of Depreciation
5.0	15

Item Cost: **Date Required:** **Final Date:** **Yrs. Interest Saved:** **Onetime Costs:** **EB Amount:**
Item Description: 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	11-Jun-2010	19-Jun-2010	0.02	\$1	n/a	\$1
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 conduct inventory control for the USTs involved in the retail sale of petroleum substances used as motor fuel. The date required is the date of the investigation 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

\$1

Screening Date 20-Jul-2010

Docket No. 2010-1170-PST-E

PCW

Respondent RETAIL MAX INC. dba Step N Go

Policy Revision 2 (September 2002)

Case ID No. 40060

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102359528

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 5

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 UST system at least once every 60 days to assure that the sides, bottoms, and any penetration points are maintained liquid-tight. Specifically, the spill buckets and tank sumps contained liquid.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	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

10 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 June 11, 2010 investigation to the June 21, 2010 compliance date.

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 on June 21, 2010 prior to the notice of enforcement dated July 15, 2010.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$106

Violation Final Penalty Total \$875

This violation Final Assessed Penalty (adjusted for limits) \$875

Economic Benefit Worksheet

Respondent: RETAIL MAX INC. dba Step N Go
Case ID No.: 40060
Reg. Ent. Reference No.: RN102359528
Media: Petroleum Storage Tank
Violation No.: 5

Percent Interest	Years of Depreciation
5.0	15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description 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]	\$100	12-Apr-2010	21-Jun-2010	1.11	\$6	\$100	\$106
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to clean the spill buckets and sumps and conduct bimonthly inspections of the sumps, manways, overflow containers or catchment basins. The data required is 60 days before the investigation and the final date is the compliance date.

Approx. Cost of Compliance

\$100

TOTAL

\$106

Compliance History Report

Customer/Respondent/Owner-Operator: CN603524778 RETAIL MAX INC. Classification: AVERAGE Rating: 2.00
Regulated Entity: RN102359528 Step N Go Classification: AVERAGE Site Rating: 2.00
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 35102
Location: 2290 CALDER ST, BEAUMONT, TX, 77701
TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: July 19, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: July 19, 2005 to July 19, 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? Retail Max Inc.
4. If Yes, who was/were the prior owner(s)/operator(s)? American Business Corporation
5. When did the change(s) in owner or operator occur? 11/01/2007
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.
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 | 12/21/2006 | (519739) |
| 2 | 05/22/2007 | (557969) |
| 3 | 07/15/2010 | (827944) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | |
|--------------|---|----------|--------------------------|
| Date: | 12/21/2006 | (519739) | CN603524778 |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.245(2) | | |
| Description: | Failure to conduct Stage II testing. | | |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.246(7)(A) | | |
| Description: | Failure to maintain records on-site and make immediately available for review upon request by authorized representatives of the executive director, EPA, or any local air pollution control program with jurisdiction at sites ordinarily manned during business hours. | | |
- 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
RETAIL MAX INC. DBA STEP N
GO
RN102359528

§
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§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2010-1170-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 RETAIL MAX INC. dba Step N Go ("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 2290 Calder Street in Beaumont, Jefferson County, Texas (the "Station").
2. The Respondent's three 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 July 20, 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 Six Hundred Seventy-Five Dollars (\$9,675) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Hundred Fifteen Dollars (\$215) of the administrative penalty and One Thousand Nine Hundred Thirty-Five Dollars (\$1,935) 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 Seven Thousand Five Hundred Twenty-Five Dollars (\$7,525) of the administrative penalty shall be payable in 35 monthly payments of Two Hundred Fifteen Dollars (\$215) 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. Successfully conducted the required annual and triennial testing of the Stage II equipment on August 28, 2010;
 - b. Replaced the coaxial vapor recovery dispenser hose on June 18, 2010;
 - c. Implemented statistical inventory reconciliation and inventory control as a release detection method for all USTs on September 1, 2010;
 - d. Successfully conducted the required piping tightness and line leak detector tests on June 25, 2010;
 - e. Began conducting proper inventory control procedures for all USTs on June 19, 2010; and
 - f. Cleaned the spill buckets and tank sumps and began conducting bimonthly inspections of all sumps, manways, overflow containers, or catchment basins associated with the UST system on June 21, 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 and the Stage II vapor space manifold 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 June 11, 2010. Specifically, the annual and triennial testing of the Stage II equipment had not been conducted.
2. 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, and free of defects that would impair the effectiveness of the system, in violation of 30 TEX. ADMIN. CODE § 115.242(3) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on June 11, 2010. Specifically, there was a large tear in a coaxial vapor recovery dispenser hose.
3. Failed to ensure that the USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on June 11, 2010.
4. Failed to provide release detection for the piping associated with the USTs, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2)(A) and TEX. WATER CODE § 26.3475(a), as documented during an investigation conducted on June 11, 2010. Specifically, the required annual piping tightness test had not been conducted.
5. Failed to test the line leak detectors at least once per year for performance and operational reliability, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a), as documented during an investigation conducted on June 11, 2010. Specifically, the line leak detectors had not been performance tested annually.
6. Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel, in violation

of 30 TEX. ADMIN. CODE § 334.48(c), as documented during an investigation conducted on June 11, 2010.

7. 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, in violation of 30 TEX. ADMIN. CODE § 334.42(i), as documented during an investigation conducted on June 11, 2010. Specifically, the spill buckets and tank sumps contained liquid.

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: RETAIL MAX INC. dba Step N Go, Docket No. 2010-1170-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. 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.
4. 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.

5. 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.
6. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
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 S. Miller
For the Executive Director

12/6/2010
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.

Mohammed Khan
Signature

10-4-2010
Date

Mohammed Khan (Director)
Name (Printed or typed)
Authorized Representative of
RETAIL MAX INC. dba Step N Go

DIRECTOR
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.