EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2010-1167-PST-E **TCEQ ID:** RN101251379 **CASE NO.:** 40053
RESPONDENT NAME: Frank James Pokluda dba Circle N Grocery

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	X PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Circle N Grocery, 29503 Farm-to-Market Road 1488, Waller County

TYPE OF OPERATION: Convenience store with retail sales of gasoline

SMALL BUSINESS: X **Yes** ___ **No**

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on November 29, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Ms. Trina Grieco, Enforcement Division, Enforcement Team 5, MC R-13, (210) 403-4006; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495
Respondent: Mr. Frank Pokluda, Owner, Circle N Grocery, 29503 Farm-to-Market Road 1488, Waller, Texas 77484-6007
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint X Routine __ Enforcement Follow-up __ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** May 17 through June 1, 2010 **Date of NOV/NOE Relating to this Case:** July 9, 2010 (NOE) **Background Facts:** This was a routine investigation. **WASTE** 1) Failed to monitor underground storage tanks ("USTs") for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Specifically, there were no records provided to demonstrate that a method of release detection was in place [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)]. 2) Failed to reconcile inventory control records at least once per month in order to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons. Specifically, inventory control records did not contain reconciliation necessary to determine if there was any indication of a release [30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii)]. 3) Failed to ensure that a legible tag, label, or marking is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST at the Station, in order to identify each tank number as it is reflected in the registration for the UST system. Specifically, during the investigation, it was noted that none of the USTs were labeled [30 TEX. ADMIN. CODE § 334.8(c)(5)(C)].	**Total Assessed:** $14,050 **Total Deferred:** $2,810 X Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $11,240 **Compliance History Classification:** Person/CN – Average Site/RN – Average **Major Source:** X Yes __ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Station: a. Repaired the leak from Dispenser No. 5/6 on May 19, 2010; and b. Replaced the missing dry break vapor cap on May 19, 2010. **Ordering Provisions:** The Order will require the Respondent to: a. Within 30 days after the effective date of this Agreed Order: i. Implement a release detection method for all USTs at the Station and begin reconciling inventory control records; ii. Permanently apply or affix tags, labels, or markings to the UST fill tubes with an identification number that matches the number listed on the UST registration and self-certification form; and iii. Install an overfill prevention device for the UST system. b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.

4) Failed to equip the UST system with overfill prevention equipment [30 TEX. ADMIN. CODE § 334.51(b)(2)(C)]. 5) Failed to prevent gasoline leaks detected by sight, sound, or smell anywhere in the liquid transfer or vapor balance systems, in the dispensing equipment, or in the Stage II vapor recovery system. Specifically, during the investigation, fuel was leaking from underneath Dispenser No. 5/6 [30 TEX. ADMIN. CODE §§ 115.222(3) and 115.242(4) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. 6) 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 or third-party certification. Specifically, during the investigation, the vapor cap over the dry break was missing [30 TEX. ADMIN. CODE § 115.242(3) and TEX. HEALTH & SAFETY CODE § 382.085(b)].		

Additional ID No(s).: 5872

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) *PCW Revision October 30, 2008*

TCEQ

DATES					
Assigned	12-Jul-2010				
PCW	14-Jul-2010	Screening	19-Jul-2010	EPA Due	N/A

RESPONDENT/FACILITY INFORMATION

Respondent	Frank James Pokluda dba Circle N Grocery		
Reg. Ent. Ref. No.	RN101251379		
Facility/Site Region	12-Houston	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	40053	No. of Violations	5
Docket No.	2010-1167-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Trina Grieco
		EC's Team	Enforcement Team 5

Admin. Penalty $ Limit Minimum $0 Maximum $10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* $15,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 2.0% Enhancement *Subtotals 2, 3, & 7* $300

Notes: Enhancement for one NOV issued for dissimilar 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* $1,250

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

Total EB Amounts $67
Approx. Cost of Compliance $1,900

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 *Final Subtotal* $14,050

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0% *Adjustment* $0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount $14,050

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* $14,050

DEFERRAL 20.0% Reduction *Adjustment* -$2,810

Reduces the Final Assessed Penalty by the indicted percentage. *(Enter number only; e.g. 20 for 20% reduction.)*

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY $11,240

Screening Date 19-Jul-2010 **Docket No.** 2010-1167-PST-E **PCW**

Respondent Frank James Pokluda dba Circle N Grocery *Policy Revision 2 (September 2002)*

Case ID No. 40053 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN101251379

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Trina Grieco

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	1	2%
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*	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) 2%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV issued for dissimilar violations.

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

Screening Date 19-Jul-2010 **Docket No.** 2010-1167-PST-E **PCW**

Respondent Frank James Pokluda dba Circle N Grocery *Policy Revision 2 (September 2002)*

Case ID No. 40053 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN101251379

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Trina Grieco

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A) and (d)(1)(B)(ii), and Tex. Water Code § 26.3475(c)(1)

Violation Description Failed to monitor underground storage tanks ("USTs") for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and to reconcile inventory control records at least once per month in order to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons. Specifically, there were no records provided to demonstrate that a method of release detection was in place and inventory control records did not contain reconciliation necessary to determine if there was any indication of a release.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

Release	Harm: Major	Moderate	Minor
Actual			
Potential	x		

OR

Percent 50%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment could be exposed to significant amounts of pollutants which would exceed levels that are protective of human health or the environment as a result of the violation.

Adjustment $5,000

$5,000

Violation Events

Number of Violation Events 1 — 63 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $5,000

One quarterly event is recommended from the investigation date of May 17, 2010 to the screening date of July 19, 2010.

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 $5,000

Economic Benefit (EB) for this violation

Estimated EB Amount $39

Statutory Limit Test

Violation Final Penalty Total $5,100

This violation Final Assessed Penalty (adjusted for limits) $5,100

Economic Benefit Worksheet

Respondent Frank James Pokluda dba Circle N Grocery
Case ID No. 40053
Reg. Ent. Reference No. RN101251379
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)	$1,000	17-May-2010	1-Mar-2011	0.79	$39	n/a	$39

Notes for DELAYED costs Estimated cost to provide release detection for the tanks, including conducting monthly reconciliation of inventory control records. The date required is the date of the investigation and the final date is the date corrective actions are projected to be completed.

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 $1,000

TOTAL $39

Screening Date	19-Jul-2010	**Docket No.** 2010-1167-PST-E	**PCW**
Respondent	Frank James Pokluda dba Circle N Grocery		*Policy Revision 2 (September 2002)*
Case ID No.	40053		*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN101251379		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Trina Grieco		

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(C)

Violation Description Failed to ensure that a legible tag, label, or marking is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST at the Station, in order to identify each tank number as it is reflected in the registration for the UST system. Specifically, during the investigation, it was noted that none of the USTs were labeled.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 25%

Matrix Notes: The Respondent failed to comply with 100% of the rule requirement.

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events: 1

63 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.

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

Estimated EB Amount $4

Statutory Limit Test

Violation Final Penalty Total $2,550

This violation Final Assessed Penalty (adjusted for limits) $2,550

Economic Benefit Worksheet

Respondent Frank James Pokluda dba Circle N Grocery
Case ID No. 40053
Reg. Ent. Reference No. RN101251379
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)	$100	17-May-2010	1-Mar-2011	0.79	$4	n/a	$4

Notes for DELAYED costs: Estimated cost to label the four USTs. The date required is the date of the investigation and the final date is the date corrective actions are projected to be completed.

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 $100

TOTAL $4

Screening Date 19-Jul-2010 **Docket No.** 2010-1167-PST-E **PCW**

Respondent Frank James Pokluda dba Circle N Grocery *Policy Revision 2 (September 2002)*

Case ID No. 40053 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN101251379

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Trina Grieco

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.51(b)(2)(C)

Violation Description Failed to equip the UST system with overfill prevention equipment.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

Release	Harm: Major	Moderate	Minor
Actual			
Potential		x	

OR

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

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

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events 1 | 63 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 from the investigation date of May 17, 2010 to the screening date of July 19, 2010.

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

Estimated EB Amount $24

Statutory Limit Test

Violation Final Penalty Total $2,550

This violation Final Assessed Penalty (adjusted for limits) $2,550

Economic Benefit Worksheet

Respondent Frank James Pokluda dba Circle N Grocery
Case ID No. 40053
Reg. Ent. Reference No. RN101251379
Media Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	$600	17-May-2010	1-Mar-2011	0.79	$24	n/a	$24

Notes for DELAYED costs: Estimated cost to equip the four USTs with overfill protection (ball float valves at $150 per tank). The date required is the investigation date and the final date is the date corrective actions are projected to be completed.

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 $600

TOTAL $24

Screening Date	19-Jul-2010	**Docket No.** 2010-1167-PST-E	**PCW**
Respondent	Frank James Pokluda dba Circle N Grocery		*Policy Revision 2 (September 2002)*
Case ID No.	40053		*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN101251379		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Trina Grieco		

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code §§ 115.222(3) and 115.242(4), and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to prevent gasoline leaks detected by sight, sound, or smell anywhere in the liquid transfer or vapor balance systems, in the dispensing equipment, or in the Stage II vapor recovery system. Specifically, during the investigation, fuel was leaking from underneath Dispenser No. 5/6.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			x
Potential			

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment has been exposed to insignificant amounts of pollutants which did not exceed levels that are protective of human health or the environment as a result of the violation.

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events: 1

63 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 from the investigation date of May 17, 2010 to the screening date of July 19, 2010.

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 completed corrective actions on May 19, 2010 (prior to the July 9, 2010 NOE).

Violation Subtotal $1,875

Economic Benefit (EB) for this violation

Estimated EB Amount $0

Statutory Limit Test

Violation Final Penalty Total $1,925

This violation Final Assessed Penalty (adjusted for limits) $1,925

Economic Benefit Worksheet

Respondent Frank James Pokluda dba Circle N Grocery
Case ID No. 40053
Reg. Ent. Reference No. RN101251379
Media Petroleum Storage Tank
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	$150	17-May-2010	19-May-2010	0.01	$0	n/a	$0

Notes for DELAYED costs: Estimated cost to fix the leak from Dispenser No. 5/6. The date required is the date of the investigation and the final date is the date corrective actions were completed.

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 $150

TOTAL $0

Screening Date 19-Jul-2010 **Docket No.** 2010-1167-PST-E **PCW**

Respondent Frank James Pokluda dba Circle N Grocery *Policy Revision 2 (September 2002)*

Case ID No. 40053 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN101251379

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Trina Grieco

Violation Number 5

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 or third-party certification. Specifically, during the investigation, the vapor cap over the dry break was missing.

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

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events 1 — 63 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 from the investigation date of May 17, 2010 to the screening date of July 19, 2010.

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 completed corrective actions on May 19, 2010 (prior to the July 9, 2010 NOE).

Violation Subtotal $1,875

Economic Benefit (EB) for this violation

Estimated EB Amount $0

Statutory Limit Test

Violation Final Penalty Total $1,925

This violation Final Assessed Penalty (adjusted for limits) $1,925

Economic Benefit Worksheet

Respondent Frank James Pokluda dba Circle N Grocery
Case ID No. 40053
Reg. Ent. Reference No. RN101251379
Media Petroleum Storage Tank
Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	$50	17-May-2010	19-May-2010	0.01	$0	n/a	$0

Notes for DELAYED costs: Estimated cost to replace the vapor cap. The date required is the investigation date and the final date is the date corrective actions were completed.

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 $50

TOTAL $0

Compliance History Report

Customer/Respondent/Owner-Operator:	CN602940702	POKLUDA, FRANK JAMES	Classification: AVERAGE	Rating: 25.00
Regulated Entity:	RN101251379	CIRCLE N GROCERY	Classification: AVERAGE	Site Rating: 25.00

ID Number(s): PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 5872

Location: 29503 FM RD 1488, WALLER COUNTY, TX, 77484

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: July 14, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: July 14, 2005 to July 14, 2010

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

Name: Trina Grieco Phone: (210) 403-4006

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? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
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 08/16/2005 (398171)
2 07/09/2010 (828842)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 08/16/2005 (398171) CN602940702

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(B)
Description: Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s), and free of defects that would impair the effectiveness of the system, including a hose that is crimped, kinked, or flattened such that the vapor passage

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 115, SubChapter C 115.246(5)
Description: Failure to maintain a record of the results of testing conducted at the motor vehicle fuel dispensing facility in accordance with the provisions specified in §115.245 of this title (relating to Testing Requirements).

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN	**§**	**BEFORE THE**
ENFORCEMENT ACTION	**§**	
CONCERNING	**§**	
FRANK JAMES POKLUDA DBA	**§**	**TEXAS COMMISSION ON**
CIRCLE N GROCERY	**§**	
RN101251379	**§**	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2010-1167-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 Frank James Pokluda dba Circle N Grocery ("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 a convenience store with retail sales of gasoline at 29503 Farm-to-Market Road 1488 in Waller County, Texas (the "Station").

2. The Respondent's four 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 14, 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 Fourteen Thousand Fifty Dollars ($14,050) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Eleven Thousand Two Hundred Forty Dollars ($11,240) of the administrative penalty and Two Thousand Eight Hundred Ten Dollars ($2,810) 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. Repaired the leak from Dispenser No. 5/6 on May 19, 2010; and

   b. Replaced the missing dry break vapor cap on May 19, 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 monitor USTs for releases 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 May 17 through June 1, 2010. Specifically, there were no records provided to demonstrate that a method of release detection was in place.

2. Failed to reconcile inventory control records at least once per month in order to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii), as documented during an investigation conducted May 17 through June 1, 2010. Specifically, inventory control records did not contain reconciliation necessary to determine if there was any indication of a release.

3. Failed to ensure that a legible tag, label, or marking is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST at the Station, in order to identify each tank number as it is reflected in the registration for the UST system, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(C), as documented during an investigation conducted on May 17, 2010. Specifically, during the investigation, it was noted that none of the USTs were labeled.

4. Failed to equip the UST system with overfill prevention equipment, in violation of 30 TEX. ADMIN. CODE § 334.51(b)(2)(C), as documented during an investigation conducted May 17 through June 1, 2010.

5. Failed to prevent gasoline leaks detected by sight, sound, or smell anywhere in the liquid transfer or vapor balance systems, in the dispensing equipment, or in the Stage II vapor recovery system, in violation of 30 TEX. ADMIN. CODE §§ 115.222(3) and 115.242(4), and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on May 17, 2010. Specifically, during the investigation, fuel was leaking from underneath Dispenser No. 5/6.

6. 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 or third-party certification, 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 May 17, 2010. Specifically, during the investigation, the vapor cap over the dry break was missing.

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: Frank James Pokluda dba Circle N Grocery, Docket No. 2010-1167-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. It is further ordered that the Respondent shall undertake the following technical requirements:

   a. Within 30 days after the effective date of this Agreed Order:

      i. Implement a release detection method for all USTs at the Station and begin reconciling inventory control records, in accordance with 30 TEX. ADMIN. CODE § 334.50;

      ii. Permanently apply or affix tags, labels, or markings to the UST fill tubes with an identification number that matches the number listed on the UST registration and self-certification form, in accordance with 30 TEX. ADMIN. CODE § 334.8; and

      iii. Install an overfill prevention device for the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.51.

   b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

The certification shall be submitted to:

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

with a copy to:

Petroleum Storage Tank Section, Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

3. 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.

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, 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.

7. 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.

8. 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

_____ 10/29/2010
For the Executive Director 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.

_____ 9-23-10
Signature Date

FRANK POKLUDA OWNER
Name (Printed or typed) Title
Authorized Representative of
Frank James Pokluda dba Circle N Grocery

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.