EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2010-1871-AIR-E **TCEQ ID:** RN105355150 **CASE NO.:** 40704

RESPONDENT NAME: Rudy's West Bar-B-Q, LLC

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:		
X AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__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: Rudy's Country Store and Bar B Q, 7970 Gateway Boulevard East, El Paso, El Paso County

TYPE OF OPERATION: Convenience store/truck stop 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 March 28, 2011. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Ms. Gena Hawkins, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-2583; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495
Respondent: Mr. Chad Parrish, Vice President, Rudy's West Bar-B-Q, LLC, 1514 Ranch Road 620 South, Austin, Texas 78734
Ms. Lynn Ford, President, Rudy's West Bar-B-Q, LLC, 1514 Ranch Road 620 South, Austin, Texas 78734
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:** October 7, 2010 **Date of NOV/NOE Relating to this Case:** October 21, 2010 (NOE) **Background Facts:** This was a routine investigation. **AIR** Failed to comply with the minimum oxygen content of 2.7% by weight of gasoline during the control period of October 1 through March 31. Specifically, the premium gasoline sample taken from pump no. 4 was found to be 0.99% oxygen content by weight [30 TEX. ADMIN. CODE § 114.100(a) and TEX. HEALTH & SAFETY CODE § 382.085(b)].	**Total Assessed:** $920 **Total Deferred:** $184 X Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $736 **Compliance History Classification:** Person/CN – Average Site/RN – Average **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that on November 30, 2010, the Respondent completed testing to demonstrate compliance with minimum oxygenate in the fuel at pump no. 4.

Additional ID No(s).: 78825

Penalty Calculation Worksheet (PCW)

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

TCEQ

DATES					
Assigned	25-Oct-2010				
PCW	14-Dec-2010	Screening	4-Nov-2010	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Rudy's West Bar-B-Q, LLC		
Reg. Ent. Ref. No.	RN105355150		
Facility/Site Region	6-El Paso	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	40704	No. of Violations	1
Docket No.	2010-1871-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Gena Hawkins
		EC's Team	Enforcement Team 4

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

Penalty Calculation Section

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

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* $20

Notes: Enhancement for one dissimilar NOV.

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* $100

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

Total EB Amounts $1
Approx. Cost of Compliance $100

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 *Final Subtotal* $920

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount $920

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* $920

DEFERRAL 20.0% Reduction *Adjustment* -$184

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 $736

Screening Date 4-Nov-2010 **Docket No.** 2010-1871-AIR-E **PCW**

Respondent Rudy's West Bar-B-Q, LLC *Policy Revision 2 (September 2002)*

Case ID No. 40704 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN105355150

Media [Statute] Air

Enf. Coordinator Gena Hawkins

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 (*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 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) 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 dissimilar NOV.

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

Screening Date 4-Nov-2010 **Docket No.** 2010-1871-AIR-E **PCW**

Respondent Rudy's West Bar-B-Q, LLC *Policy Revision 2 (September 2002)*

Case ID No. 40704 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN105355150

Media [Statute] Air

Enf. Coordinator Gena Hawkins

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 114.100(a) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to comply with the minimum oxygen content of 2.7% by weight of gasoline during the control period of October 1 through March 31, as documented during an investigation on October 7, 2010. Specifically, the premium gasoline sample taken from pump no. 4 was found to be 0.99% oxygen content by weight.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

Release	Harm: Major	Moderate	Minor
Actual			x
Potential			

OR

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment was exposed to insignificant amounts of pollutants which did not exceed levels that are protective of human health or the environment.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 1 — 28 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $1,000

One single event is recommended.

Good Faith Efforts to Comply

10.0% Reduction — $100

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

Notes: The Respondent came into compliance on November 30, 2010, and the NOE is dated October 21,2010.

Violation Subtotal $900

Economic Benefit (EB) for this violation

Estimated EB Amount $1

Statutory Limit Test

Violation Final Penalty Total $920

This violation Final Assessed Penalty (adjusted for limits) $920

Economic Benefit Worksheet

Respondent Rudy's West Bar-B-Q, LLC
Case ID No. 40704
Reg. Ent. Reference No. RN105355150
Media Air
Violation No. 1

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	$100	7-Oct-2010	30-Nov-2010	0.15	$1	n/a	$1
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 of implementing procedures designed to ensure the required oxygenated levels are maintained. Date required is the date of investigation. Final date is the date of compliance.

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0

Notes for AVOIDED costs:

Approx. Cost of Compliance $100

TOTAL $1

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603213703	Rudy's West Bar-B-Q, LLC	Classification: AVERAGE	Rating: 1.88
Regulated Entity:	RN105355150	RUDYS COUNTRY STORE AND BAR B Q	Classification: AVERAGE	Site Rating: 1.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	78825

Location: 7970 GATEWAY BLVD E, EL PASO, TX, 79907
TCEQ Region: REGION 06 - EL PASO
Date Compliance History Prepared: November 04, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: November 04, 2005 to November 04, 2010
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Gena Hawkins Phone: (512) 239 - 2583

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
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: 9/1/2010 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	11/20/2008	(708710)
2	07/07/2009	(759069)
3	02/02/2010	(790154)
4	06/14/2010	(825001)
5	08/04/2010	(843900)
6	10/18/2010	(870297)

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

Date: 06/16/2010 (825001) CN603213703
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)
Description: Failure to maintain required records for release detection for all tanks and piping on the premises of the facility. During the on-site investigation, Monthly Tank Tightness Test, Monthly Line Tightness Test and spill and overfill prevention verification were not available for inspection upon request.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.48(c)
30 TAC Chapter 334, SubChapter C 334.50(d)(1)(B)(ii)
30 TAC Chapter 334, SubChapter C 334.50(d)(1)(B)(iii)(I)
Description: Failure to conduct monthly reconciliation as required for the release detection method. Daily inventory control was being conducted at the facility, but reconciliation was not adequately performed (the sum of 1.0% of the total substance flow-through for the month plus 130 gallons).

F. Environmental audits.
N/A

G. Type of environmental management systems (EMSs).
N/A

H. Voluntary on-site compliance assessment dates.
N/A

I. Participation in a voluntary pollution reduction program.
N/A

J. Early compliance.
N/A

Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN	**§**	**BEFORE THE**
ENFORCEMENT ACTION	**§**	
CONCERNING	**§**	**TEXAS COMMISSION ON**
RUDY'S WEST BAR-B-Q, LLC	**§**	
RN105355150	**§**	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2010-1871-AIR-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 Rudy's West Bar-B-Q, LLC ("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 convenience store/truck stop with retail sales of gasoline at 7970 Gateway Boulevard East in El Paso, El Paso County, Texas (the "Site").

2. The Site 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 October 26, 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 Hundred Twenty Dollars ($920) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Seven Hundred Thirty-Six Dollars ($736) of the administrative penalty and One Hundred Eighty-Four Dollars ($184) 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 on November 30, 2010, the Respondent completed testing to demonstrate compliance with minimum oxygenate in the fuel at pump no. 4.

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 Site, the Respondent is alleged to have failed to comply with the minimum oxygen content of 2.7% by weight of gasoline during the control period of October 1 through March 31, in violation of 30 TEX. ADMIN. CODE § 114.100(a) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation on October 7, 2010. Specifically, the premium gasoline sample taken from pump no. 4 was found to be 0.99% oxygen content by weight.

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: Rudy's West Bar-B-Q, LLC, Docket No. 2010-1871-AIR-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 Site 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 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.

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

John Sadlier
For the Executive Director

2/25/2011
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.

Signature

1-6-11
Date

Lynn Ford
Name (Printed or typed)
Authorized Representative of
Rudy's West Bar-B-Q, LLC

President
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.