EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2010-1708-PST-E **TCEQ ID:** RN102268620 **CASE NO.:** 40559
RESPONDENT NAME: AB Grocery, Inc.

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: AB Grocery, 8902 Airport Boulevard, Houston, Harris 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 May 23, 2011. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Ms. Bridgett Lee, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-2565; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495
Respondent: Ms. Lang Le, Owner, AB Grocery, 8902 Airport Boulevard, Houston, Texas 77061
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:** September 29, 2010 **Date of NOV/NOE Relating to this Case:** October 6, 2010 (NOE) **Background Facts:** This was a routine investigation. **WASTE** 1) Failed to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system [30 TEX. ADMIN. CODE § 115.242(9) and TEXAS HEALTH & SAFETY CODE § 382.085(b)]. 2) Failed to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first. Specifically, the Stage II annual and triennial compliance testing had not been conducted [30 TEX. ADMIN. CODE § 115.245(2) and TEXAS HEALTH & SAFETY CODE § 382.082(b)]. 3) Failed to maintain Stage II records at the Station and make them available for review upon request by agency personnel. Specifically, a copy of the California Air Resources Board Executive Order was not maintained [30 TEX. ADMIN. CODE § 115.246(1) and TEXAS HEALTH & SAFETY CODE § 382.085(b)].	**Total Assessed:** $6,252 **Total Deferred:** $1,250 X Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid (Due) to General Revenue:** $277 (remaining $4,725 due in 35 monthly payments of $135 each) **Compliance History Classifications:** Person/CN - Average Site/RN - Average **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** The Order will require the Respondent to: a. Within 30 days after the effective date of this Agreed Order: i. Conspicuously post a legible and clear description of operation instructions on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system; ii. Conduct the required annual and triennial testing of the Stage II equipment; and iii. Begin maintaining all Stage II records at the Station. 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 Provisions a.i. through a.iii.

Additional ID No(s).: PST 73843

Penalty Calculation Worksheet (PCW)

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

TCEQ

DATES						
Assigned	11-Oct-2010					
PCW	18-Oct-2010	**Screening**	18-Oct-2010	**EPA Due**		

RESPONDENT/FACILITY INFORMATION

Respondent	AB Grocery, Inc.		
Reg. Ent. Ref. No.	RN102268620		
Facility/Site Region	12-Houston	**Major/Minor Source**	Minor

CASE INFORMATION

Enf./Case ID No.	40559	**No. of Violations**	3
Docket No.	2010-1708-PST-E	**Order Type**	1660
Media Program(s)	Petroleum Storage Tank	**Government/Non-Profit**	No
Multi-Media		**Enf. Coordinator**	Bridgett Lee
		EC's Team	Enforcement Team 7

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

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1*: $4,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 27.0% Enhancement — *Subtotals 2, 3, & 7*: $1,215

Notes: Enhancement for one NOV with same/similar violations, one NOV with dissimilar violation, and one Agreed Order with Denial of Liability.

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*: $0

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

Total EB Amounts $545
Approx. Cost of Compliance $700

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal*: $5,715

OTHER FACTORS AS JUSTICE MAY REQUIRE — 9.4% — *Adjustment*: $537

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommend enhancement to capture the avoided cost of compliance associated with violation No. 2.

Final Penalty Amount: $6,252

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty*: $6,252

DEFERRAL — 20.0% Reduction — *Adjustment*: -$1,250

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: $5,002

Screening Date 18-Oct-2010 **Docket No.** 2010-1708-PST-E **PCW**

Respondent AB Grocery, Inc.

Policy Revision 2 (September 2002)

Case ID No. 40559

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102268620

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Bridgett Lee

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*)	1	5%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	1	20%
	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) 27%

>> 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 with same/similar violations, one NOV with dissimilar violation, and one Agreed Order with Denial of Liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 27%

Screening Date 18-Oct-2010 **Docket No.** 2010-1708-PST-E **PCW**

Respondent AB Grocery, Inc. *Policy Revision 2 (September 2002)*

Case ID No. 40559 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN102268620

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Bridgett Lee

Violation Number	1
Rule Cite(s)	30 Tex. Admin. Code § 115.242(9) and Tex. Health & Safety Code § 382.085(b)
Violation Description	Failed to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

	Harm		
Release	Major	Moderate	Minor
Actual			
Potential			

OR

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes: 100% of the rule requirement was met.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events: 1 — 19 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 based on the documentation of the violation during the September 29, 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 $1,000

Economic Benefit (EB) for this violation

Estimated EB Amount $4

Statutory Limit Test

Violation Final Penalty Total $1,389

This violation Final Assessed Penalty (adjusted for limits) $1,389

Economic Benefit Worksheet

Respondent AB Grocery, Inc.
Case ID No. 40559
Reg. Ent. Reference No. RN102268620
Media Petroleum Storage Tank
Violation No. 1

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							
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	29-Sep-2010	19-Jul-2011	0.80	$4	n/a	$4
Notes for DELAYED costs	Estimated cost to post instructions on each dispensing pump. The date required is the investigation date. The final date is the estimated 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	$4

Screening Date 18-Oct-2010 **Docket No.** 2010-1708-PST-E **PCW**

Respondent AB Grocery, Inc. *Policy Revision 2 (September 2002)*

Case ID No. 40559 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN102268620

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Bridgett Lee

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 115.245(2) and Tex. Health & Safety Code § 382.082(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, whichever occurs first. Specifically, the Stage II annual and triennial compliance testing had not been conducted.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR	Harm: Release	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 — 207 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 period preceding the September 29, 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

Estimated EB Amount $537

Statutory Limit Test

Violation Final Penalty Total $3,473

This violation Final Assessed Penalty (adjusted for limits) $3,473

Economic Benefit Worksheet

Respondent AB Grocery, Inc.
Case ID No. 40559
Reg. Ent. Reference No. RN102268620
Media Petroleum Storage Tank
Violation No. 2

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)				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]				0.00	$0	$0	$0
Other (as needed)	$500	6-Mar-2010	29-Sep-2010	1.48	$37	$500	$537
Notes for AVOIDED costs	Estimated avoided cost for annual and triennial testing of the Stage II equipment. The date required is the date the test was due. The final date is the date of investigation.						

Approx. Cost of Compliance $500

TOTAL $537

Screening Date 18-Oct-2010 **Docket No.** 2010-1708-PST-E **PCW**

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

Respondent AB Grocery, Inc.

Case ID No. 40559

Reg. Ent. Reference No. RN102268620

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Bridgett Lee

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 115.246(1) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to maintain Stage II records at the Station and make them available for review upon request by agency personnel. Specifically, a copy of the California Air Resources Board Executive Order was not maintained.

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 10%

Matrix Notes: 100% percent of the rule requirement was met.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events: 1

19 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 based on the documenation of the violation during the September 29, 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 $1,000

Economic Benefit (EB) for this violation

Estimated EB Amount $4

Statutory Limit Test

Violation Final Penalty Total $1,389

This violation Final Assessed Penalty (adjusted for limits) $1,389

Economic Benefit Worksheet

Respondent AB Grocery, Inc.
Case ID No. 40559
Reg. Ent. Reference No. RN102268620
Media Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	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	29-Sep-2010	8-Jul-2011	0.77	$4	n/a	$4
Notes for DELAYED costs	Estimated cost to maintain Stage II records at the Station. The date required is the investigation date. The final date is the estimated 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 $4

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603732637	AB GROCERY, INC.	Classification: AVERAGE	Rating: 25.57
Regulated Entity:	RN102268620	AB GROCERY	Classification: AVERAGE	Site Rating: 25.57
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	73843
	PETROLEUM STORAGE TANK STAGE II		REGISTRATION	73843
Location:	8902 AIRPORT BLVD, HOUSTON, TX, 77061			
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	October 15, 2010			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	October 15, 2005 to October 15, 2010			

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

Name: Brlee Phone: 239-2565

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? Yes
3. If Yes, who is the current owner/operator? OWNOPR AB GROCERY, INC.
4. If Yes, who was/were the prior owner(s)/operator(s)? OWNOPR May Man Corp.
5. When did the change(s) in owner or operator occur? 02/01/2008 OWNOPR May Man Corp.
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.

Effective Date: 09/22/2008 ADMINORDER 2008-0245-PST-E

Classification: Major

Citation: 30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)
Description: Field Citation 1229 - At the time of the investigation, there was no proper method of release detection for the UST system in use.

Classification: Major

Citation: 30 TAC Chapter 334, SubChapter C 334.50(d)(1)(B)
Description: Field Citation #1229 - Failure to implement inventory control as required.

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	11/10/2005	(437090)
2	12/27/2007	(535971)
3	03/09/2007	(543288)
4	03/20/2007	(543736)
5	04/05/2007	(556070)
6	12/28/2007	(612856)
7	10/06/2010	(866423)

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

Date: 03/20/2007 (543736) CN603732637

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.246(7)(A)

Description: 30 Tex. Admin. Code Section 115.246 (7)(A) 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. ***** A

Self Report? NO Classification Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.244(1)

Description: Tex. Admin. Code Section 115.244 (1) Failure to conduct daily inspections of the Stage
vapor recovery system for the defects specified in '115.242(3)(A) (F), (H), and (K).
******Ms. Vo stated that no daily inspections were being conducted.

Self Report? NO Classification Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.244(3)

Description: Tex. Admin. Code Section 115.244 (3) Failure to conduct monthly inspections of the components listed in '115.242(3)(J) of this title.

Self Report? NO Classification Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.248(1)

Description: 30 Tex. Admin. Code Section 115.248(1) Failure to ensure at least one facility representative receive training and instruction in the operation and maintenance of the Stage 11 vapor recovery system by successfully completing a training course approved by the executive director. Successful completion shall constitute c

Self Report? NO Classification Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(3)

Description: 30 Tex. Admin. Code Section 115.246(3) Failure to maintain a record of any maintenance conducted on any part of the Stage II equipment, including a general part description, the date and time the equipment was taken out of service. the date of repair or replacement, the replacement part manufacturer=s information, a g

Self Report? NO Classification Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(1)

Description: 30 Tex. Admin Code Section 115.246 (1) Failure to maintain a copy of the California Air Resources Board (CARB) Executive Order(s) for the Stage II vapor recovery system and any related components installed at the facility. ******No records were available for review.

Self Report? NO Classification Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(5)

Description: 30 Tex. Admin. Code Section 115.246(5) 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).
***** Ms. Vo stated that she thought the testing had been c

Date 12/28/2007 (612856) CN603732637

Self Report? NO Classification Minor

Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)

Description: The facility had changed ownership and had not amended their tank registration as required.

Self Report? NO Classification Moderate

Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)
30 TAC Chapter 37, SubChapter I 37.815(b)

Description: FAILURE TO PROVIDE ACCEPTABLE FINANCIAL ASSURANCE

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 AB GROCERY, INC. RN102268620	**§ § § § §**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2010-1708-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 AB Grocery, Inc. ("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 with retail sales of gasoline at 8902 Airport Boulevard in Houston, Harris County, Texas (the "Station").

2. 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 October 11, 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 Six Thousand Two Hundred Fifty-Two Dollars ($6,252) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Hundred Seventy-Seven Dollars ($277) of the administrative penalty and One Thousand Two Hundred Fifty Dollars ($1,250) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require Respondent to pay all or part of the deferred penalty.

   The remaining amount of Four Thousand Seven Hundred Twenty-Five Dollars ($4,725) of the administrative penalty shall be payable in 35 monthly payments of One Hundred Thirty-Five Dollars ($135) 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 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 Respondent to meet the payment schedule of this Agreed Order constitutes the failure by 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 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.

10. 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.

11. 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 post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system, in violation of 30 TEX. ADMIN. CODE § 115.242(9) and TEXAS HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on September 29, 2010.

2. Failed to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first, in violation of 30 TEX. ADMIN. CODE § 115.245(2) and TEXAS HEALTH & SAFETY CODE § 382.082(b), as documented during an investigation conducted on September 29, 2010. Specifically, the Stage II annual and triennial compliance testing had not been conducted.

3. Failed to maintain Stage II records at the Station and make them available for review upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 115.246(1) and TEXAS HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on September 29, 2010. Specifically, a copy of the California Air Resources Board Executive Order was not maintained.

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: AB Grocery, Inc., Docket No. 2010-1708-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. Conspicuously post a legible and clear description of operation instructions on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system, in accordance with 30 TEX. ADMIN. CODE § 115.242;

ii. Conduct the required annual and triennial testing of the Stage II equipment, in accordance with 30 TEX. ADMIN. CODE § 115.245; and

iii. Begin maintaining all Stage II records at the Station, in accordance with 30 TEX. ADMIN. CODE § 115.246.

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 Nos. 2.a.i through 2.a.iii. 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:

Waste 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 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.

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

For the Executive Director

4/29/2011
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 [redacted] 03-18-2011
Date

LANG LE
Lang Le (Printed or typed)
Authorized Representative of
AB Grocery, Inc.

Owner
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.