Executive Summary – Enforcement Matter – Case No. 40894
Mujahid Nasir dba Terrys Food Mart 2
RN102017670
Docket No. 2010-2055-PST-E

Order Type:
1660 Agreed Order
Findings Order Justification:
N/A
Media:
PST
Small Business:
Yes
Location(s) Where Violation(s) Occurred:
Terry's Food Mart 2, 5221 Camp Bowie Boulevard, Fort Worth, Tarrant County
Type of Operation:
Convenience store with retail sales of gasoline
Other Significant Matters:
Additional Pending Enforcement Actions: No
Past-Due Penalties: No
Other: N/A
Interested Third-Parties: None
Texas Register Publication Date: April 29, 2011
Comments Received: No

Penalty Information

Total Penalty Assessed: $1,925
Amount Deferred for Expedited Settlement: $385
Amount Deferred for Financial Inability to Pay: $0
Total Paid to General Revenue: $132
Total Due to General Revenue: $1,408
Payment Plan: The remaining amount of $1,408 will be payable in 11 monthly payments of $128 each
SEP Conditional Offset: $0
Name of SEP: N/A
Compliance History Classifications:
Person/CN - Average
Site/RN - Average
Major Source: No
Statutory Limit Adjustment: N/A
Applicable Penalty Policy: September 2002

Executive Summary – Enforcement Matter – Case No. 40894
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Docket No. 2010-2055-PST-E

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: August 19, 2010
Date(s) of NOE(s): December 5, 2010

Violation Information

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) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Executive Director recognizes that on September 1, 2010, the Respondent had the probe on the automatic tank gauge fixed and completed an automatic tank gauge test to monitor the USTs for releases.

Technical Requirements:

N/A

Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Ms. Rebecca Johnson, Enforcement Division, Enforcement Team 5, MC R-14, (361) 825-3423; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495
TCEQ SEP Coordinator: N/A
Respondent: Mr. Mujahid Nasir, Owner, Terrys Food Mart, 5221 Camp Bowie Boulevard, Fort Worth, Texas 76107
Respondent's Attorney: N/A

Penalty Calculation Worksheet (PCW)

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

TCEQ

DATES						
Assigned	13-Dec-2010					
PCW	22-Dec-2010	**Screening**	22-Dec-2010	**EPA Due**	N/A	

RESPONDENT/FACILITY INFORMATION

Respondent	Mujahid Nasir dba Terrys Food Mart 2		
Reg. Ent. Ref. No.	RN102017670		
Facility/Site Region	4-Dallas/Fort Worth	**Major/Minor Source**	Minor

CASE INFORMATION

Enf./Case ID No.	40894	**No. of Violations**	1
Docket No.	2010-2055-PST-E	**Order Type**	1660
Media Program(s)	Petroleum Storage Tank	**Government/Non-Profit**	No
Multi-Media		**Enf. Coordinator**	Rebecca Johnson
		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*: $2,500

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*: $50

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*: $625

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

Total EB Amounts: $1
Approx. Cost of Compliance: $500
**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal*: $1,925

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount: $1,925

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty*: $1,925

DEFERRAL — **20.0%** Reduction — *Adjustment*: -$385

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: $1,540

Screening Date 22-Dec-2010 **Docket No.** 2010-2055-PST-E **PCW**

Respondent Mujahid Nasir dba Terrys Food Mart 2

Case ID No. 40894

Reg. Ent. Reference No. RN102017670

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rebecca Johnson

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

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 22-Dec-2010 **Docket No.** 2010-2055-PST-E **PCW**

Respondent Mujahid Nasir dba Terrys Food Mart 2 *Policy Revision 2 (September 2002)*

Case ID No. 40894 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN102017670

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rebecca Johnson

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A) 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).

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

	Harm		
Release	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 a significant amount of pollutants that would exceed levels protective of human health or environmental receptors.

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events: 1 — 13 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $2,500

One monthly event is recommended from the August 19, 2010 investigation date to the September 1, 2010 corrective action date.

Good Faith Efforts to Comply

25.0% Reduction — $625

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

Notes: The Respondent completed corrective actions on September 1, 2010, which was before the December 5, 2010 NOE.

Violation Subtotal $1,875

Economic Benefit (EB) for this violation

Estimated EB Amount $1

Statutory Limit Test

Violation Final Penalty Total $1,925

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

Economic Benefit Worksheet

Respondent Mujahid Nasir dba Terrys Food Mart 2
Case ID No. 40894
Reg. Ent. Reference No. RN102017670
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)	$500	19-Aug-2010	1-Sep-2010	0.04	$1	n/a	$1

Notes for DELAYED costs: Estimated cost to have the probe on the automatic tank gauge fixed so the USTs can be monitored for releases. The Date Required is the investigation date. The Final Date is the corrective action date.

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

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

Notes for AVOIDED costs:

Approx. Cost of Compliance $500

TOTAL $1

Compliance History

Customer/Respondent/Owner-Operator: CN602296428 NASIR, MUJAHID Classification: AVERAGE Rating: 1.00

Regulated Entity: RN102017670 TERRYS FOOD MART 2 Classification: AVERAGE Site Rating: 1.00

ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 25170
REGISTRATION

Location: 5221 CAMP BOWIE BLVD, FORT WORTH, TX, 76107

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: December 20, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: December 20, 2005 to December 20, 2010

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

Name: Rebecca Johnson Phone: (361) 825-3420

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: 9/1/2010 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 06/22/2006 (480903)

2 07/28/2008 (681749)

3 12/05/2010 (877501)

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

Date: 06/14/2006 (480903)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(A)

Description: Failure install devices that prevent loosening or over-tightening.

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 MUJAHID NASIR DBA TERRYS FOOD MART 2 RN102017670	**§ § § § § §**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2010-2055-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 Mujahid Nasir dba Terrys Food Mart 2 ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a convenience store with retail sales of gasoline at 5221 Camp Bowie Boulevard in Fort Worth, Tarrant County, Texas (the "Facility").

2. The Respondent's two underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.

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 December 10, 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 One Thousand Nine Hundred Twenty-Five Dollars ($1,925) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Hundred Thirty-Two Dollars ($132) of the administrative penalty and Three Hundred Eighty-Five Dollars ($385) 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.

   The remaining amount of One Thousand Four Hundred Eight Dollars ($1,408) of the administrative penalty shall be payable in 11 monthly payments of One Hundred Twenty-Eight Dollars ($128) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. The Executive Director recognizes that on September 1, 2010, the Respondent had the probe on the automatic tank gauge fixed and completed an automatic tank gauge test to monitor the USTs for releases.

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 Facility, the Respondent is alleged to have 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 on August 19, 2010.

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: Mujahid Nasir dba Terrys Food Mart 2, Docket No. 2010-2055-PST-E" to:

   Financial Administration Division, Revenues Section
   Attention: Cashier's Office, MC 214
   Texas Commission on Environmental Quality
   P.O. Box 13088
   Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

3. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director.

The determination of what constitutes good cause rests solely with the Executive Director.

5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

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

7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Sadlier
For the Executive Director

6/2/2011
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.

Mujahid Nasir
Mujahid Nasir
Signature

5-27-11
5-12-11
Date

MUJAHID NASIR
MUJAHID NASIR
Name (Printed or typed)
Authorized Representative of
Mujahid Nasir dba Terrys Food Mart 2

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.