

**Executive Summary – Enforcement Matter – Case No. 41212
TA Operating LLC dba Baytown Travel Center
RN102463700
Docket No. 2011-0302-PST-E**

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

No

Location(s) Where Violation(s) Occurred:

Baytown Travel Center, 6800 Thompson Road, Baytown, Harris 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: May 27, 2011

Comments Received: No

Penalty Information

Total Penalty Assessed: \$4,764

Amount Deferred for Expedited Settlement: \$952

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$3,812

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Average

Site/RN - Average

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

**Executive Summary – Enforcement Matter – Case No. 41212
TA Operating LLC dba Baytown Travel Center
RN102463700
Docket No. 2011-0302-PST-E**

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: January 27, 2011
Date(s) of NOE(s): February 9, 2011

Violation Information

Failed to verify proper operation of 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 Respondent did not conduct the triennial testing by the due date of June 6, 2009 [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Executive Director recognizes that the Respondent successfully conducted the triennial testing of the Stage II equipment on January 27, 2011.

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: Andrea Park, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-4575; Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495
TCEQ SEP Coordinator: N/A
Respondent: Peter P. Ward, Senior Vice President – Construction, TA Operating LLC, 24601 Center Ridge Road, Suite 200, Westlake, Ohio 44145
David Plummer, Environmental Associate, TA Operating LLC, 24601 Center Ridge Road, Suite 200, Westlake, Ohio 44145
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	14-Feb-2011	Screening	24-Feb-2011	EPA Due	
	PCW	23-Feb-2011				

RESPONDENT/FACILITY INFORMATION

Respondent	TA Operating LLC dba Baytown Travel Center				
Reg. Ent. Ref. No.	RN102463700				
Facility/Site Region	12-Houston	Major/Minor Source	Major		

CASE INFORMATION

Enf./Case ID No.	41212	No. of Violations	1
Docket No.	2011-0302-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Andrea Park
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$5,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **9.0%** Enhancement **Subtotals 2, 3, & 7** **\$450**

Notes: Enhancement for one NOV with same/similar violations and two NOVs with 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 **\$564**
 Approx. Cost of Compliance **\$500**
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$4,200**

OTHER FACTORS AS JUSTICE MAY REQUIRE **13.4%** **Adjustment** **\$564**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with the violation.

Final Penalty Amount **\$4,764**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$4,764**

DEFERRAL **20.0%** Reduction **Adjustment** **-\$952**

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY **\$3,812**

Screening Date 24-Feb-2011

Docket No. 2011-0302-PST-E

PCW

Respondent TA Operating LLC dba Baytown Travel Center

Policy Revision 2 (September 2002)

Case ID No. 41212

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102463700

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Andrea Park

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%

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) 9%

>> **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 and two NOVs with dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 9%

Screening Date 24-Feb-2011

Docket No. 2011-0302-PST-E

PCW

Respondent TA Operating LLC dba Baytown Travel Center

Policy Revision 2 (September 2002)

Case ID No. 41212

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102463700

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Andrea Park

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 115.245(2) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to verify proper operation of the Stage II vapor space manifold and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first. Specifically, the Respondent did not conduct the triennial testing by the due date of June 6, 2009.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				50%
	Potential	x			

>> 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 \$5,000

\$5,000

Violation Events

Number of Violation Events 1 600 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$5,000

One single event is recommended for the period preceding the January 27, 2011 record review.

Good Faith Efforts to Comply

25.0% Reduction

\$1,250

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

Notes The Respondent came into compliance on January 27, 2011, before the Notice of Enforcement dated February 9, 2011.

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$564

Violation Final Penalty Total \$4,764

This violation Final Assessed Penalty (adjusted for limits) \$4,764

Economic Benefit Worksheet

Respondent TA Operating LLC dba Baytown Travel Center
Case ID No. 41212
Req. Ent. Reference No. RN102463700
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$500	6-Jun-2009	27-Jan-2011	2.56	\$64	\$500	\$564
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost for triennial testing of the Stage II equipment. The date required is the test due date and the final date is the compliance date.

Approx. Cost of Compliance

\$500

TOTAL

\$564

Compliance History

Customer/Respondent/Owner-Operator:	CN603804220 TA Operating LLC	Classification: AVERAGE	Rating: 6.00
Regulated Entity:	RN102463700 Baytown Travel Center	Classification: AVERAGE	Site Rating: 6.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	64471
Location:	6800 THOMPSON RD, BAYTOWN, TX, 77521		
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	February 23, 2011		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	February 23, 2006 to February 23, 2011		

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

Name: Andrea Park Phone: (512) 239-4575

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?

TA OPERATING LLC
4. If Yes, who was/were the prior owner(s)/operator(s)?

Travelcenters Properties LP dba TravelCenters
5. When did the change(s) in owner or operator occur?

01/31/2007
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	08/15/2006	(466791)
2	08/09/2007	(567571)
3	11/23/2010	(872972)
4	02/09/2011	(891830)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	05/18/2006	(466791)	CN603804220		
Self Report?	NO			Classification:	Moderate
Citation:	30 TAC Chapter 115, SubChapter C 115.244(1)				
Description:	At the time of the initial investigation, the facility did not maintain a Stage II Vapor Recovery daily inspection log.				
Self Report?	NO			Classification:	Moderate
Citation:	30 TAC Chapter 115, SubChapter C 115.248(1)				
Description:	The facility did not have a trained facility representative at the time of the initial investigation.				
Self Report?	NO			Classification:	Moderate
Citation:	30 TAC Chapter 115, SubChapter C 115.246(1)				
Description:	At the time of the investigation, the facility did not have a copy of their CARB executive order in the Stage II log book.				

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)
 Description: The TXP 106 test failed at dispensers 7 and 8 on June 6, 2006. The facility took over 30 days to correct the problem and retest the system.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)
 Description: The facility could not have proof of conducting an annual compliance test within the prior 12 months.

Date: 07/11/2007 (567571) CN603804220
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)
 Description: Failure to develop and maintain all UST records required by the provisions of Title 30 TAC §334.50(e)(1) pertaining to release detection records.

Date: 11/23/2010 (872972) CN603804220
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 334, SubChapter C 334.42(i)
 Description: Failure to ensure that any sumps (including dispenser sumps) or manways installed prior to January 1, 2009, which are utilized as an integral part of a UST release detection system, and any overflow containers or catchment basins installed at any time, which are associated with a UST system are inspected at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight.

Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 115, SubChapter C 115.246(7)(A)
 Description: Failure to maintain records on-site at facilities ordinarily manned during business hours, and made immediately available for review upon request by authorized representatives of the TCEQ, EPA, or any local air pollution control program with jurisdiction.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(A)
 Description: Failure to provide and maintain the Stage II Vapor Recovery system in proper operating condition, as specified by the California Air Resources Board (CARB) Executive Order, including the absence or disconnection of any component that is a part of the approved system.

- 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
TA OPERATING LLC DBA
BAYTOWN TRAVEL CENTER
RN102463700**

**§
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§
§
§
§**

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2011-0302-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 TA Operating LLC dba Baytown Travel Center ("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 operates a convenience store with retail sales of gasoline at 6800 Thompson Road in Baytown, 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 February 14, 2011.
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 Four Thousand Seven Hundred Sixty-Four Dollars (\$4,764) is assessed by the Commission in settlement of the violations alleged in

Section II ("Allegations"). The Respondent has paid Three Thousand Eight Hundred Twelve Dollars (\$3,812) of the administrative penalty and Nine Hundred Fifty-Two Dollars (\$952) 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 successfully conducted the triennial testing of the Stage II equipment on January 27, 2011.
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 operator of the Station, the Respondent is alleged to have failed to verify proper operation of the Stage II vapor space manifold 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 TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on January 27, 2011. Specifically, the Respondent did not conduct the triennial testing by the due date of June 6, 2009.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

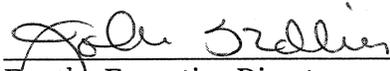
1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations 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: TA Operating LLC dba Baytown Travel Center, Docket No. 2011-0302-PST-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088
2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Station operations referenced in this Agreed Order.
3. 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



For the Executive Director

Date 6/2/2011

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:

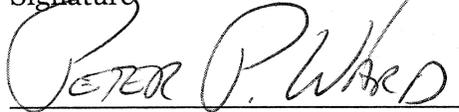
- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement 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

Date 4/8/11



Name (Printed or typed)
Authorized Representative of
TA Operating LLC dba Baytown Travel Center

Title SVP CONSTRUCTION

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.