

Executive Summary – Enforcement Matter – Case No. 40365
FVC Food Mart Inc.
RN102701117
Docket No. 2010-1487-PST-E

Page 1 of 3

Order Type:

Agreed Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

2216 Thompson Road, Richmond, Fort Bend County

Type of Operation:

convenience store with retail sales of gasoline

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: January 27, 2012

Comments Received: None

Penalty Information

Total Penalty Assessed:	\$8,486
Amount Deferred for Expedited Settlement:	N/A
Amount Deferred for Financial Inability to Pay:	\$4,886
Total Paid to General Revenue:	\$100.00
Total Due to General Revenue:	\$3,500
Payment Plan:	35 payments of \$100 each
SEP Conditional Offset:	N/A
Compliance History Classifications:	
Person/CN – High	
Site/RN – High	
Major Source:	No
Statutory Limit Adjustment:	N/A
Applicable Penalty Policy:	September 2002

FVC Food Mart Inc.

RN102701117

Docket No. 2010-1487-PST-E

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: June 30, 2010
Date(s) of NOV(s): N/A
Date(s) of NOE(s): August 27, 2010

Violation Information

1. Failed to test the leak line detectors at least once per year for performance and operational reliability; and failed to provide a release detection method for the UST system by failing to conduct reconciliation of inventory control at least once a month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons [TEX. WATER CODE § 26.3475(a) and 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and (d)(1)(B)(ii)].
2. Failed to inspect all sumps, manways, overspill containers or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight, and free of liquid and debris [TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.42(i)].
3. Failed to maintain Stage II records at the Station [TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.246(4)].
4. Failed to provide proper corrosion protection for the UST system [TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(a)].
5. Failed to verify proper operation of the Stage II equipment at least once every 12 months and vapor space manifolding and dynamic back-pressure once every 36 months or upon major system replacement or modification, whichever occurs first [TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.245(2)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

1. Immediately begin maintaining all Stage II records at the Station;
2. Within 30 days:
 - a. Implement a release detection method including reconciliation of inventory control for the UST system;
 - b. Install and implement a corrosion protection system for all USTs at the Station; and
 - c. Begin conducting bi-monthly inspections of all sumps, manways and overspill containers or catchment basins and remove and properly dispose of any liquid and debris.
3. Within 45 days, submit written certification to demonstrate compliance.

FVC Food Mart Inc.

RN102701117

Docket No. 2010-1487-PST-E

Litigation Information

Date Petition(s) Filed: March 17, 2011
Date Answer(s) Filed: May 19, 2011
SOAH Referral Date: April 19, 2011
Hearing Date(s):
 Preliminary hearing: June 2, 2011
 Evidentiary hearing: December 16, 2011 (scheduled)
Settlement Date: December 2, 2011

Contact Information

TCEQ Attorneys: Jim Sallans, Litigation Division, (512) 239-3400
 Lena Roberts, Litigation Division, (512) 239-3400
TCEQ SEP Coordinator: N/A
TCEQ Enforcement Coordinator: Wallace Myers, Waste Enforcement Section, (512) 239-6580
TCEQ Regional Contact: Nicole Bealle, Houston Regional Office, (713) 767-3623
Respondent: Fatehali Chatur, Director, FVC Food Mart, Inc., 2216 Thompson Road, Richmond, Texas 77469
Respondent's Attorney: N/A

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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	30-Aug-2010	Screening	2-Sep-2010	EPA Due	
	PCW	9-Dec-2011				

RESPONDENT/FACILITY INFORMATION			
Respondent	FVC Food Mart Inc		
Reg. Ent. Ref. No.	RN102701117		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	40365	No. of Violations	5
Docket No.	2010-1487-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Wallace Myers
		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	\$9,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	-10.0% Reduction	Subtotals 2, 3, & 7	-\$950
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Notes	Reduction due to high performer classification.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$625
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$1,024	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$8,530	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$7,925
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OTHER FACTORS AS JUSTICE MAY REQUIRE	7.1%	Adjustment	\$561
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Recommended enhancement to capture avoided costs of compliance associated with violation nos. 1, 2, and 5.
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Final Penalty Amount	\$8,486
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$8,486
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$8,486
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Screening Date 2-Sep-2010

Docket No. 2010-1487-PST-E

PCW

Respondent FVC Food Mart Inc

Case ID No. 40365

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102701117

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

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>)	0	0%
	Other written NOVs	0	0%
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%
<i>Please Enter Yes or No</i>			
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) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Reduction due to high performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) -10%

Screening Date 2-Sep-2010

Docket No. 2010-1487-PST-E

PCW

Respondent FVC Food Mart Inc

Policy Revision 2 (September 2002)

Case ID No. 40365

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102701117

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(2)(A)(i)(III) and (d)(1)(B)(ii) and Tex. Water Code § 26.3475(a)

Violation Description Failed to test the line leak detectors at least once per year for performance and operational reliability. Also, failed to provide a release detection method for the UST system by failing to conduct reconciliation of inventory control at least once a month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (25%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and 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 64 Number of violation days

Table for frequency: daily, weekly, monthly, quarterly (marked with x), semiannual, annual, single event.

Violation Base Penalty \$2,500

One quarterly event is recommended based on documentation of the violation during the June 30, 2010 investigation to the September 2, 2010 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (marked 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

Statutory Limit Test

Estimated EB Amount \$279

Violation Final Penalty Total \$2,409

This violation Final Assessed Penalty (adjusted for limits) \$2,409

Economic Benefit Worksheet

Respondent FVC Food Mart Inc
Case ID No. 40365
Req. Ent. Reference No. RN102701117
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)	\$1,500	30-Jun-2010	2-May-2011	0.84	\$4	\$84	\$88
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

Estimated cost to conduct reconciliation of inventory control for the UST system. The date required is the date of the investigation and the 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]	\$180	1-May-2010	25-Aug-2010	1.24	\$11	\$180	\$191
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Actual avoided cost (per invoice) of conducting line leak detector tests. The date required is the beginning date of ownership and the final date is the date of compliance.

Approx. Cost of Compliance

\$1,680

TOTAL

\$279

Screening Date 2-Sep-2010

Docket No. 2010-1487-PST-E

PCW

Respondent FVC Food Mart Inc

Policy Revision 2 (September 2002)

Case ID No. 40365

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102701117

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.42(i) and Tex. Water Code § 26.3475(c)(1)

Violation Description Failed to inspect all sumps, manways, overspill containers or catchment basins associated with an underground storage tank ("UST") system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid-tight, and free of liquid or debris. Specifically, the overfill containers contained liquid and debris.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (10%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (0%).

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 64 Number of violation days

Table for frequency: daily, weekly, monthly, quarterly (marked with x), semiannual, annual, single event.

Violation Base Penalty \$1,000

One quarterly event is recommended based on documentation of the violation during the June 30, 2010 investigation to the September 2, 2010 screening date.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (marked 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

Statutory Limit Test

Estimated EB Amount \$105

Violation Final Penalty Total \$964

This violation Final Assessed Penalty (adjusted for limits) \$964

Economic Benefit Worksheet

Respondent FVC Food Mart Inc
Case ID No. 40365
Req. Ent. Reference No. RN102701117
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				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)	\$100	1-May-2010	30-Jun-2010	1.08	\$5	\$100	\$105

Notes for AVOIDED costs

Estimated avoided cost of conducting bimonthly inspections of the overfill equipment and removing liquid and debris. The date required is 60 days prior to the investigation and the final date is the investigation date.

Approx. Cost of Compliance \$100

TOTAL \$105

Screening Date 2-Sep-2010

Docket No. 2010-1487-PST-E

PCW

Respondent FVC Food Mart Inc

Policy Revision 2 (September 2002)

Case ID No. 40365

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102701117

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 115.246(4) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to maintain Stage II records at the Station.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
	x			10%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 64 Number of violation days

mark only one with an x	daily		Violation Base Penalty \$1,000
	weekly		
	monthly		
	quarterly		
	semiannual		
	annual		
	single event	x	

One single event is recommended based on documentation of the violation during the June 30, 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

Statutory Limit Test

Estimated EB Amount \$22

Violation Final Penalty Total \$964

This violation Final Assessed Penalty (adjusted for limits) \$964

Economic Benefit Worksheet

Respondent FVC Food Mart Inc
Case ID No. 40365
Req. Ent. Reference No. RN102701117
Media Petroleum Storage Tank
Violation No. 3

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	\$500	30-Jun-2010	17-May-2011	0.88	\$22	n/a	\$22
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

Estimated cost to maintain Stage II records. The date required is the investigation date and 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

\$500

TOTAL

\$22

Screening Date 2-Sep-2010

Docket No. 2010-1487-PST-E

PCW

Respondent FVC Food Mart Inc

Policy Revision 2 (September 2002)

Case ID No. 40365

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102701117

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 334.49(a) and Tex. Water Code § 26.3475(d)

Violation Description Failed to provide proper corrosion protection for the UST system.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				25%
	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 \$7,500

\$2,500

Violation Events

Number of Violation Events 1 64 Number of violation days

mark only one with an x	daily		Violation Base Penalty \$2,500
	weekly		
	monthly		
	quarterly	x	
	semiannual		
	annual		
	single event		

One quarterly event is recommended based on documentation of the violation during the June 30, 2010 investigation to the September 2, 2010 screening date.

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

Statutory Limit Test

Estimated EB Amount \$352

Violation Final Penalty Total \$2,409

This violation Final Assessed Penalty (adjusted for limits) \$2,409

Economic Benefit Worksheet

Respondent FVC Food Mart Inc
Case ID No. 40365
Req. Ent. Reference No. RN102701117
Media Petroleum Storage Tank
Violation No. 4

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	\$6,000	30-Jun-2010	2-May-2011	0.84	\$17	\$335	\$352
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

Estimated cost to provide corrosion protection for the UST system. The date required is the date of the investigation and 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

\$6,000

TOTAL

\$352

Screening Date 2-Sep-2010

Docket No. 2010-1487-PST-E

PCW

Respondent FVC Food Mart Inc

Policy Revision 2 (September 2002)

Case ID No. 40365

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102701117

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Violation Number 5

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 equipment at least once every 12 months and 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 tests had not been conducted.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				25%
	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 \$7,500

\$2,500

Violation Events

Number of Violation Events 1 124 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$2,500

One single event is recommended for the period preceding the June 30, 2010 investigation.

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 came into compliance on August 25, 2010 prior to the Notice of Enforcement dated August 27, 2010.

Violation Subtotal \$1,875

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$265

Violation Final Penalty Total \$1,740

This violation Final Assessed Penalty (adjusted for limits) \$1,740

Economic Benefit Worksheet

Respondent FVC Food Mart Inc
Case ID No. 40365
Req. Ent. Reference No. RN102701117
Media Petroleum Storage Tank
Violation No. 5

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]				0.00	\$0	\$0	\$0
Other (as needed)	\$250	1-May-2010	25-Aug-2010	1.24	\$15	\$250	\$265

Notes for AVOIDED costs

Actual avoided cost (per invoice) to conduct the required annual and triennial Stage II testing. The date required is the date of ownership change and the final date is the date of compliance.

Approx. Cost of Compliance

\$250

TOTAL

\$265

Compliance History Report

Customer/Respondent/Owner-Operator: CN603685959 FVC Food Mart Inc. Classification: HIGH Rating: 0.00
Regulated Entity: RN102701117 FVC Food Mart Classification: HIGH Site Rating: 0.00

ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 20454
REGISTRATION

Location: 2216 THOMPSON RD, RICHMOND, TX, 77469

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: September 02, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: September 02, 2005 to September 02, 2010

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

Name: Tate Barrett Phone: (713) 422-8968

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 FVC Food Mart Inc
4. If Yes, who was/were the prior owner(s)/operator(s)? OWNOPR USMANIS CORPORATION
5. When did the change(s) in owner or operator occur? 05/01/2010 OWNOPR USMANIS CORPORATION
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 08/27/2010 (829458)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
 - 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

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
FVC FOOD MART INC.;
RN102701117**

§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2010-1487-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding FVC Food Mart Inc. ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26 and TEX. HEALTH & SAFETY CODE ch. 382. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent appear before the Commission and together stipulate that:

1. Respondent owns and operates, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), an underground storage tank ("UST") system and a convenience store with retail sales of gasoline located at 2216 Thompson Road in Richmond, Fort Bend County, Texas (the "Station"). The USTs at the Station are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contain a regulated petroleum substance as defined in the rules of the TCEQ. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 382, and TCEQ rules.
3. The Executive Director and Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondent is subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of eight thousand four hundred eighty-six dollars (\$8,486.00) is assessed by the Commission in settlement of the violations alleged in Section II. The Financial Assurance Section of the Commission's Financial Administration Division reviewed the financial documentation submitted by Respondent and determined that Respondent is unable to pay part of the administrative penalty and qualifies for a deferral of all or part of the administrative penalty under TEX. WATER CODE § 7.034. Therefore, four thousand eight hundred

eighty-six dollars (\$4,886.00) of the administrative penalty is deferred contingent upon Respondent's timely and satisfactory compliance with all the terms of this Agreed Order and shall be waived only upon full compliance with all the terms and conditions contained in this Agreed Order. If Respondent fails to timely and satisfactorily comply with any requirement contained in this Agreed Order, including any payment schedule, the Executive Director may require Respondent to pay all or part of the deferred administrative penalty.

Respondent paid one hundred dollars (\$100.00) of the undeferred administrative penalty. The remaining amount of three thousand five hundred dollars (\$3,500.00) shall be payable in thirty-five (35) monthly payments of one hundred dollars (\$100.00) each. The first 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 his 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 acceleration of any remaining balance constitutes the failure by Respondent to timely and satisfactorily comply with all the terms of this Agreed Order and the Executive Director may demand payment of the deferred penalty amount.

6. 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.
7. The Executive Director of the TCEQ and Respondent agree on a settlement of the matters addressed in this Agreed Order, subject to the approval of the Commission.
8. The Executive Director recognizes that on August 25, 2010, Respondent submitted documentation to demonstrate proper operation of the Stage II equipment (Allegation 1.e.)
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 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

1. During an investigation conducted on June 30, 2010, a TCEQ Houston Regional Office investigator documented that Respondent:

- a. Failed to test the leak line detectors at least once per year for performance and operational reliability; and failed to provide a release detection method for the UST system by failing to conduct reconciliation of inventory control at least once a month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons, in violation of TEX. WATER CODE § 26.3475(a) and 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and (d)(1)(B)(ii);
 - b. Failed to inspect all sumps, manways, overspill containers or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight, and free of liquid and debris, in violation of TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.42(i);
 - c. Failed to maintain Stage II records at the Station, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.246(4);
 - d. Failed to provide proper corrosion protection for the UST system, in violation of TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(a); and
 - e. Failed to verify proper operation of the Stage II equipment at least once every 12 months and vapor space manifolding and dynamic back-pressure once every 36 months or upon major system replacement or modification, whichever occurs first, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.245(2).
2. Respondent received notice of the violations on or about September 1, 2010.

III. DENIALS

Respondent generally denies each Allegation in Section II.

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Respondent pay an administrative penalty as set forth in Section I, Paragraph, 5 above. The payment of this administrative penalty and 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 considering or requiring corrective actions or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: FVC Food Mart Inc., Docket No. 2010-1487-PST-E" to:

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

2. Respondent shall undertake the following technical requirements:

- a. Immediately upon the effective date of this Agreed Order, Respondent shall begin maintaining all Stage II records at the Station, in accordance with TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.246(4) (Allegation 1.c.);
- b. Within 30 days after the effective date of this Agreed Order, Respondent shall:
 - i. Implement a release detection method including reconciliation of inventory control for the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.50 (Allegation 1.a.);
 - ii. Install and implement a corrosion protection system for all USTs at the Station, in accordance with 30 TEX. ADMIN. CODE § 334.49 (Allegation 1.d.); and
 - iii. Begin conducting bi-monthly inspections of all sumps, manways and overspill containers or catchment basins and remove and properly dispose of any liquid and debris, in accordance with 30 TEX. ADMIN. CODE § 334.42(i) (Allegation 1.b.).
- c. Within 45 days after the effective date of this Agreed Order, Respondent shall submit written certification and detailed supporting documentation, in accordance with Ordering Provision No. 2.d., below, to demonstrate compliance with Ordering Provisions Nos. 2.a. through 2.b.iii.
- d. The certifications required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall 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 fine and imprisonment for knowing violations."

Respondent shall submit the written certifications and supporting documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and:

Waste Section Manager
Texas Commission on Environmental Quality
Houston Regional Office
5425 Polk Avenue, Suite H
Houston, Texas 77023

3. All relief not expressly granted in this Agreed Order is denied.
4. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Station operations referenced in this Agreed Order.
5. If 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, Respondent's failure to comply is not a violation of this Agreed Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against 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.
8. 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.

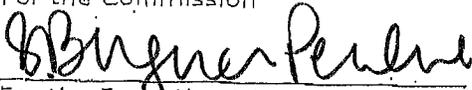
9. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

FVC Food Mart Inc.
Docket No. 2010-1487-PST-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

2/24/2012 ~~808~~

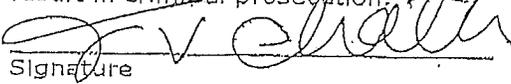
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of FVC Food Mart Inc., 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 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;
- * 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, I understand that any falsification of any compliance documents may result in criminal prosecution.



Signature

12/9/2011

Date

FATEHALL CHATUR

Name (Printed or typed)
Fatehall Chatur, Director
FVC Food Mart Inc.