

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 37836
John Platis d/b/a South Main Diamond
RN103961546
Docket No. 2012-0556-PST-E

Order Type:

Findings Agreed Order

Findings Order Justification:

Indifference to legal duty based on violation of a previous order.

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

14647 Main Street, Houston, Harris County

Type of Operation:

convenience store with retail sales of gasoline

Other Significant Matters:

Additional Pending Enforcement Actions: None
Past-Due Penalties: \$3,737 (2009-0963-PST-E; payment plan)
Past-Due Fees: None
Other: None
Interested Third-Parties: None

Texas Register Publication Date: October 26, 2012

Comments Received: None

Penalty Information

Total Penalty Assessed: \$58,560

Total Paid to General Revenue: \$1,685

Total Due to General Revenue: \$56,875

Payment Plan: 35 payments of \$1,625 each

SEP Conditional Offset: N/A

Compliance History Classifications:

Person/CN – Poor
Site/RN – Poor

Major Source: Yes

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2002 (PCW 1)
September 2011 (PCW 2)

Investigation Information

Complaint Date(s): N/A

Date(s) of Investigation: November 1, 2011

Date(s) of NOV(s): June 1, 2011

Date(s) of NOE(s): February 6, 2012

John Platis d/b/a South Main Diamond

RN103961546

Docket No. 2012-0556-PST-E

Violation Information

1. Failed to verify proper operation of the Stage II equipment at least once every 12 months. [TEX. HEALTH & SAFETY CODE § 382.085(b), 30 TEX. ADMIN. CODE § 115.245(2), and TCEQ Agreed Order Docket No. 2009-0963-PST-E, Ordering Provision No. 2.b.i.].
2. Failed to upgrade the Stage II equipment to onboard refueling vapor recovery (“ORVR”) compatible systems; and failed to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or applicable CARB Executive Order, and free of defects that would impair the effectiveness of the system [TEX. HEALTH & SAFETY CODE § 382.085(b), 30 TEX. ADMIN. CODE § 115.242(1)(C) and (3), and TCEQ Agreed Order Docket No. 2009-0963-PST-E, Ordering Provision No. 2.b.ii.].
3. Failed to maintain Stage II records at the Station [TEX. HEALTH & SAFETY CODE § 382.085(b), 30 TEX. ADMIN CODE §§ 115.246(6) and (7)(A), and TCEQ Agreed Order Docket No. 2009-0963-PST-E, Ordering Provision No. 2.a.].
4. Failed to post a current delivery certificate at a location where it is clearly visible at all times [30 TEX. ADMIN CODE § 334.8(c)(5)(A)(iii)].

Corrective Actions/Technical Requirements**Corrective Action(s) Completed:**

1. Verified proper operation of the Stage II equipment on June 23, 2012 (Violation No. 1.);
2. Upgraded the Stage II system to ORVR compatible equipment and installed swivel adaptors, installed new seals on the vapor caps for the fill ports, and replaced the vapor cap on the regular tank dry break as of September 2, 2012 (Violation No. 2.);
3. Began maintaining Stage II records at the Station as of September 2, 2012 (Violation No. 3); and
4. Posted a current delivery certificate at a location where it is clearly visible at all times as of August 29, 2012 (Violation No. 4).

Technical Requirements:

N/A

Litigation Information**Date Petition(s) Filed:** May 8, 2012**Date Answer(s) Filed:** May 17, 2012**SOAH Referral Date:** June 20, 2012**Hearing Date(s):**

Preliminary hearing: August 9, 2012

Evidentiary hearing: November 27, 2012 (scheduled)

Settlement Date: September 28, 2012**Contact Information**

TCEQ Attorneys: Phillip M. Goodwin, P.G., Litigation Division, (512) 239-3400
 Lena Roberts, Litigation Division, (512) 239-3400
 Scott Humphrey, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Michael Meyer, Enforcement Division,**TCEQ Regional Contact:** Nicole Bealle, Houston Regional Office,**Respondent:** John Platis, 12003 Briar Forest Drive, Houston, Texas 77077-3027**Respondent's Attorney:** N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	13-Feb-2012	Screening	1-Mar-2012	EPA Due	
	PCW	29-Mar-2012				

RESPONDENT/FACILITY INFORMATION

Respondent	John Platis dba South Main Diamond		
Reg. Ent. Ref. No.	RN103961546		
Facility/Site Region	12-Houston	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	37836	No. of Violations	3
Docket No.	2012-0556-PST-E	Order Type	Findings
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Michael Meyer
		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** **\$32,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **60.0%** Enhancement **Subtotals 2, 3, & 7** **\$19,500**

Notes: Enhancement for one NOV with same/similar violations, one agreed order with a denial of liability, a repeat violator and a poor performer classification.

Culpability **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** **\$0**

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

Total EB Amounts **\$1,131**
 Approx. Cost of Compliance **\$4,000**
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$52,000**

OTHER FACTORS AS JUSTICE MAY REQUIRE **1.1%** **Adjustment** **\$560**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to capture the avoided cost of compliance associated with violation no. 1.

Final Penalty Amount **\$52,560**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$52,560**

DEFERRAL **0.0%** Reduction **Adjustment** **\$0**

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

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY **\$52,560**

Screening Date 1-Mar-2012

Docket No. 2012-0556-PST-E

PCW

Respondent John Platis dba South Main Diamond

Policy Revision 2 (September 2002)

Case ID No. 37836

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103961546

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Michael Meyer

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	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<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) 25%

>> Repeat Violator (Subtotal 3)

Yes

Adjustment Percentage (Subtotal 3) 25%

>> Compliance History Person Classification (Subtotal 7)

Poor Performer

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same/similar violations, one agreed order with a denial of liability, a repeat violator and a poor performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 60%

Screening Date	1-Mar-2012	Docket No.	2012-0556-PST-E	PCW
Respondent	John Platis dba South Main Diamond			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	37836			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN103961546			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Michael Meyer			

Violation Number

Rule Cite(s) TCEQ Agreed Order Docket No. 2009-0963-PST-E, Ordering Provision No. 2.b.i., 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. Specifically, annual testing of the Stage II equipment was not conducted.

Base Penalty

>> **Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="50%"/>
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="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

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text" value="x"/>
single event	<input type="text"/>	

Violation Base Penalty

Two annual events are recommended from the May 9, 2010 order effective date to the March 1, 2012 screening date.

Good Faith Efforts to Comply

Reduction

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	(mark with x)

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent John Platis dba South Main Diamond
Case ID No. 37836
Reg. Ent. Reference No. RN103961546
Media Violation No. 1
Media Petroleum Storage Tank

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	9-May-2010	1-Nov-2011	2.40	\$60	\$500	\$560
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost of annual testing to verify proper operation of the Stage II equipment. The Date Required is the order effective date and the Final Date is the investigation date.

Approx. Cost of Compliance \$500

TOTAL \$560

Screening Date	1-Mar-2012	Docket No.	2012-0556-PST-E	PCW
Respondent	John Platis dba South Main Diamond			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	37836			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN103961546			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Michael Meyer			

Violation Number

Rule Cite(s) TCEQ Agreed Order Docket No. 2009-0963-PST-E, Ordering Provision No. 2.b.ii., 30 Tex. Admin. Code § 115.242(1)(C) and (3), Tex. Health & Safety Code § 382.085(b)

Violation Description
 Failed to upgrade the Stage II equipment to onboard refueling vapor recovery ("ORVR") compatible systems. Also, failed to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or applicable California Air Resources Board ("CARB") Executive Order, and free of defects that would impair the effectiveness of the system. Specifically, swivel adaptors were not installed, the vapor caps were loose on the fill ports, and the vapor cap was missing on the regular tank dry break.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Harm				Percent <input type="text" value="25%"/>
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent <input type="text" value="0%"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

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

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input checked="" type="text" value="x"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Eight quarterly events are recommended from the May 9, 2010 order effective date to the March 1, 2012 screening date.

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	(mark with x)

Notes
 The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount **Violation Final Penalty Total**

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent John Platis dba South Main Diamond
Case ID No. 37836
Reg. Ent. Reference No. RN103961546
Media Violation No. Petroleum Storage Tank
 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	\$3,000	9-May-2010	15-Oct-2012	2.44	\$24	\$488	\$512
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 upgrade the Stage II equipment to ORVR compatible systems and to install swivel adaptors and repair or replace the vapor caps. The Date Required is the order effective 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 \$3,000

TOTAL \$512

Screening Date	1-Mar-2012	Docket No.	2012-0556-PST-E	PCW
Respondent	John Platis dba South Main Diamond			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	37836			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN103961546			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Michael Meyer			

Violation Number

Rule Cite(s) TCEQ Agreed Order Docket No. 2009-0963-PST-E, Ordering Provision No. 2.a., 30 Tex. Admin. Code §§ 115.246(6) and (7)(A), and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to maintain Stage II records at the Station. Specifically, the daily inspection log, maintenance log, CARB Executive Order, and copies of previous Stage II results were not available for review.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="25%"/>

Matrix Notes

100% of the rule requirement was not met.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="text" value="x"/>

Violation Base Penalty

One single event is recommended.

Good Faith Efforts to Comply

Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	(mark with x)

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent John Platis dba South Main Diamond
Case ID No. 37836
Reg. Ent. Reference No. RN103961546
Media Violation No. Petroleum Storage Tank
 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	9-May-2010	15-Sep-2012	2.36	\$59	n/a	\$59
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 at the Station. The Date Required is the order effective 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	\$59
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Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	13-Feb-2012	Screening	1-Mar-2012	EPA Due	
	PCW	29-Mar-2012				

RESPONDENT/FACILITY INFORMATION

Respondent	John Platis dba South Main Diamond				
Reg. Ent. Ref. No.	RN103961546				
Facility/Site Region	12-Houston	Major/Minor Source	Major		

CASE INFORMATION

Enf./Case ID No.	37836	No. of Violations	1
Docket No.	2012-0556-PST-E	Order Type	Findings
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Michael Meyer
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement **Subtotals 2, 3, & 7**

Notes: Enhancement for one NOV with same or similar violations, one agreed order with a denial of liability, a repeat violator and a poor performer classification.

Culpability Enhancement **Subtotal 4**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit Enhancement* **Subtotal 6**

Total EB Amounts *Capped at the Total EB \$ Amount
Approx. Cost of Compliance

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

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Notes

No deferral is recommended for Findings Orders.

PAYABLE PENALTY

Screening Date 1-Mar-2012 **Docket No.** 2012-0556-PST-E
Respondent John Platis dba South Main Diamond
Case ID No. 37836
Reg. Ent. Reference No. RN103961546
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Michael Meyer

PCW

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

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	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<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) 25%

>> Repeat Violator (Subtotal 3)

Yes

Adjustment Percentage (Subtotal 3) 25%

>> Compliance History Person Classification (Subtotal 7)

Poor Performer

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same or similar violations, one agreed order with a denial of liability, a repeat violator and a poor performer classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 60%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 60%

Screening Date	1-Mar-2012	Docket No.	2012-0556-PST-E	PCW
Respondent	John Platis dba South Main Diamond			<i>Policy Revision 3 (September 2011)</i>
Case ID No.	37836			<i>PCW Revision August 3, 2011</i>
Reg. Ent. Reference No.	RN103961546			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Michael Meyer			

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0.0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
	<input type="text"/>	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="15.0%"/>
<input type="text" value="100% of the rule requirement was not met."/>					

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text" value="x"/>

Violation Base Penalty

Good Faith Efforts to Comply

Reduction

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	(mark with x)

Notes

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent John Platis dba South Main Diamond
Case ID No. 37836
Reg. Ent. Reference No. RN103961546
Media Violation No. 1
Media Petroleum Storage Tank

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)	\$50	1-Nov-2011	15-Oct-2012	0.96	\$2	n/a	\$2

Notes for DELAYED costs
 Estimated cost to post a delivery certificate at the Station. 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	\$50	TOTAL	\$2
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Compliance History Report

Customer/Respondent/Owner-Operator:	CN602510265 PLATIS, JOHN	Classification: POOR	Rating: 216.33
Regulated Entity:	RN103961546 SOUTH MAIN DIAMOND	Classification: POOR	Site Rating: 216.33
ID Number(s):	PETROLEUM STORAGE TANK	REGISTRATION	71362
Location:	14647 MAIN ST, HOUSTON, TX, 77035		
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	February 27, 2012		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	February 27, 2007 to February 27, 2012		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Michael Meyer	Phone:	(512) 239-4492

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. If YES, when did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2011 Repeat Violator: YES

Components (Multimedia) for the Site:

A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.

Effective Date: 05/09/2010

ADMINORDER 2009-0963-PST-E

Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(6)
5C THSC Chapter 382 382.085(b)

Description: Failure to maintain Stage II records at the Station. Specifically, Stage II daily inspection records were not available for review.

Classification: Major

Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)
5C THSC Chapter 382 382.085(b)

Description: Failure to verify proper operation of the Stage II equipment at least once every 12 months. Specifically, the Stage II annual compliance testing had not been conducted.

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(1)(C)
30 TAC Chapter 115, SubChapter C 115.242(3)
5C THSC Chapter 382 382.085(b)

Description: Failure to upgrade the Stage II equipment to onboard refueling vapor recovery (ORVR) compatible systems. Also, by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system. Specifically, swivel adaptors were not installed.

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 05/30/2009 (747218)

2 06/03/2011 (922774)

3 02/06/2012 (977057)

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

Date: 06/01/2011 (922774)

CN602510265

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(6)
5C THSC Chapter 382 382.085(b)

Description: Failure to maintain Stage II records at the Station. Specifically, Stage II daily inspection records were not available for review.

Self Report? NO

Classification: Major

Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)
5C THSC Chapter 382 382.085(b)

Description: Failure to verify proper operation of the Stage II equipment at least once every 12 months. Specifically, the Stage II annual compliance testing had not been conducted.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(1)(C)
30 TAC Chapter 115, SubChapter C 115.242(3)
5C THSC Chapter 382 382.085(b)

Description: Failure to upgrade the Stage II equipment to onboard refueling vapor recovery (ORVR) compatible systems. Also, by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system. Specifically, swivel adaptors were not installed.

- 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
JOHN PLATIS D/B/A
SOUTH MAIN DIAMOND;
RN103961546**

**§
§
§
§
§**

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2012-0556-PST-E

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 John Platis d/b/a South Main Diamond ("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 presented this Agreed Order to the Commission.

Respondent understands that he has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

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 14647 Main Street in Houston, Harris 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. During an investigation conducted on November 1, 2011, a TCEQ Houston Regional Office investigator documented that Respondent:
 - a. Failed to verify proper operation of the Stage II equipment at least once every 12 months. Specifically, annual testing of the Stage II equipment was not conducted;
 - b. Failed to upgrade the Stage II equipment to onboard refueling vapor recovery ("ORVR") compatible systems; and failed to maintain the Stage II vapor recovery

system in proper operating condition, as specified by the manufacturer and/or applicable California Air Resources Board ("CARB") Executive Order, and free of defects that would impair the effectiveness of the system. Specifically, swivel adaptors were not installed, the vapor caps were loose on the fill ports, and the vapor cap was missing on the regular tank dry break;

- c. Failed to maintain Stage II records at the Station. Specifically, the daily inspection log, maintenance log, CARB Executive Order, and copies of previous Stage II results were not available for review; and
 - d. Failed to post a current delivery certificate at a location where it is clearly visible at all times.
3. Respondent received notice of the violations on or about February 11, 2012.
 4. The Executive Director recognizes that Respondent implemented the following corrective measures at the Station:
 - a. Verified proper operation of the Stage II equipment on June 23, 2012 (Finding of Fact No. 2.a.);
 - b. Upgraded the Stage II system to ORVR compatible equipment and installed swivel adaptors, installed new seals on the vapor caps for the fill ports, and replaced the vapor cap on the regular tank dry break as of September 2, 2012 (Finding of Fact No. 2.b.);
 - c. Began maintaining Stage II records at the Station as of September 2, 2012 (Finding of Fact No. 2.c.); and
 - d. Posted a current delivery certificate at a location where it is clearly visible at all times as of August 29, 2012 (Finding of Fact No. 2.d.).

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to verify proper operation of the Stage II equipment at least once every 12 months, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b), 30 TEX. ADMIN. CODE § 115.245(2), and TCEQ Agreed Order Docket No. 2009-0963-PST-E, Ordering Provision No. 2.b.i.
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to upgrade the Stage II equipment to ORVR compatible systems. Also, failed to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or applicable CARB Executive Order, and free of defects that would impair the effectiveness of the system, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b), 30 TEX. ADMIN. CODE § 115.242(1)(C) and (3), and TCEQ Agreed Order Docket No. 2009-0963-PST-E, Ordering Provision No. 2.b.ii.
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to maintain Stage II records at the Station, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b), 30 TEX. ADMIN. CODE §§ 115.246(6) and (7)(A), and TCEQ Agreed Order Docket No. 2009-0963-PST-E, Ordering Provision No. 2.a.

5. As evidenced by Finding of Fact No. 2.d., Respondent failed to post a current delivery certificate at a location where it is clearly visible at all times, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii).
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within the Commission=s jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of fifty-eight thousand five hundred sixty dollars (\$58,560.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Respondent paid one thousand six hundred eighty-five dollars (\$1,685.00) of the administrative penalty. The remaining amount of fifty-six thousand eight hundred seventy-five dollars (\$56,875.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of one thousand six hundred twenty-five dollars (\$1,625.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, 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, Respondent's failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Agreed Order.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Respondent is assessed an administrative penalty as set forth in Conclusion of Law No. 7, above, for violations of state statutes and rules of the TCEQ. 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 matters set forth by this Agreed Order in this action. 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: John Platis d/b/a South Main Diamond, Docket No. 2012-0556-PST-E" to:

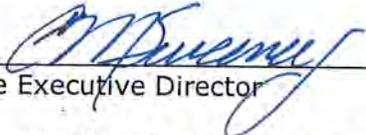
Financial Administration Division, Revenues Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088
2. All relief not expressly granted in this Agreed Order is denied.
3. The provisions of this Agreed Order shall apply to and be binding 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.
4. 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.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director.
 6. The determination of what constitutes good cause rests solely with the Executive Director.
 7. 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.
 8. 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.
 9. 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.
 10. 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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

12/17/12
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 John Platis d/b/a South Main Diamond, 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 Agreed 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 - John Platis

9-28-12
Date

[click to add date]