

Executive Summary – Enforcement Matter – Case No. 42908
Vance Jackson Retail, LLC dba Big Star Food Mart
RN102352788
Docket No. 2011-2053-PST-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Big Star Food Mart, 2803 Vance Jackson Road, San Antonio, Bexar 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 25, 2012

Comments Received: No

Penalty Information

Total Penalty Assessed: \$9,729

Amount Deferred for Expedited Settlement: \$1,945

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$224

Total Due to General Revenue: \$7,560

Payment Plan: 35 payments of \$216 each

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Poor

Site/RN - Poor

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

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Docket No. 2011-2053-PST-E

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: March 7, 2011 and October 28, 2011

Date(s) of NOE(s): October 28, 2011

Violation Information

1. Failed to provide proper corrosion protection for the underground storage tank ("UST") system [30 TEX. ADMIN. CODE § 334.49(a)(1) and TEX. WATER CODE § 26.3475(d)].
2. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].
3. Failed to provide release detection for the piping associated with the USTs. Specifically, the Respondent did not conduct the annual piping tightness test [30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a)].
4. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require the Respondent to:

- a. Immediately, begin maintaining all UST records and ensure they are made immediately available for inspection upon request by agency personnel;
- b. Within 30 days:
 - i. Install a corrosion protection system and test the system;
 - ii. Implement a release detection method for all USTs at the Facility and conduct the annual piping tightness test; and
- c. Within 45 days, submit written certification demonstrating compliance.

Executive Summary – Enforcement Matter – Case No. 42908
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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: Lanae Foard, Enforcement Division,
Enforcement Team 1, MC 169, (512) 239-2554; Debra Barber, Enforcement Division,
MC 219, (512) 239-0412.
TCEQ SEP Coordinator: N/A
Respondent: Sherali Ali, President, Vance Jackson Retail, LLC, 2803 Vance Jackson
Road, San Antonio, Texas 78213
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	31-Oct-2011	Screening	3-Nov-2011	EPA Due	
	PCW	7-Nov-2011				

RESPONDENT/FACILITY INFORMATION

Respondent	Vance Jackson Retail, LLC dba Big Star Food Mart		
Reg. Ent. Ref. No.	RN102352788		
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	42908	No. of Violations	3
Docket No.	2011-2053-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Lanae Foard
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

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/similar violations, one order containing a denial of liability, repeat violator and 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
 Approx. Cost of Compliance *Capped at the Total EB \$ Amount

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 Recommended enhancement to capture avoided costs associated with Violation No. 2.

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Notes Deferral offered for expedited settlement.

PAYABLE PENALTY

Screening Date 3-Nov-2011

Docket No. 2011-2053-PST-E

PCW

Respondent Vance Jackson Retail, LLC dba Big Star Food Mart

Policy Revision 2 (September 2002)

Case ID No. 42908

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102352788

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Lanae Foard

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 order containing a denial of liability, repeat violator and poor performer classification.

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

Screening Date 3-Nov-2011

Docket No. 2011-2053-PST-E

PCW

Respondent Vance Jackson Retail, LLC dba Big Star Food Mart

Policy Revision 2 (September 2002)

Case ID No. 42908

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102352788

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Lanae Foard

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.49(a)(1) and Tex. Water Code § 26.3475(d)

Violation Description Failed to provide proper corrosion protection for the underground storage tank ("UST") system.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Table with columns: 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 Number of violation days 6

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

Violation Base Penalty \$2,500

One monthly event is recommended based on documentation of the violation during the October 28, 2011 record review to the November 3, 2011 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 \$571

Violation Final Penalty Total \$4,054

This violation Final Assessed Penalty (adjusted for limits) \$4,054

Economic Benefit Worksheet

Respondent Vance Jackson Retail, LLC dba Big Star Food Mart
Case ID No. 42908
Reg. Ent. Reference No. RN102352788
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	\$6,000	7-Mar-2011	15-Jul-2012	1.36	\$27	\$544	\$571
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 install a corrosion protection system and test the system. The Date Required is the initial 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	\$6,000	TOTAL	\$571
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Screening Date 3-Nov-2011

Docket No. 2011-2053-PST-E

PCW

Respondent Vance Jackson Retail, LLC dba Big Star Food Mart

Policy Revision 2 (September 2002)

Case ID No. 42908

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102352788

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Lanae Foard

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A) and (b)(2), and Tex. Water Code § 26.3475(a) and (c)(1)

Violation Description

Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Also, failed to provide release detection for the piping associated with the USTs. Specifically, the Respondent did not conduct the annual piping tightness test.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

6 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$2,500

One monthly event is recommended based on documentation of the violation during the October 28, 2011 record review to the November 3, 2011 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 \$231

Violation Final Penalty Total \$4,054

This violation Final Assessed Penalty (adjusted for limits) \$4,054

Economic Benefit Worksheet

Respondent Vance Jackson Retail, LLC dba Big Star Food Mart
Case ID No. 42908
Reg. Ent. Reference No. RN102352788
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
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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)	\$1,500	7-Mar-2011	15-Jul-2012	1.36	\$102	n/a	\$102

Notes for DELAYED costs

Estimated cost to monitor the USTs for releases. The Date Required is the initial 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]	\$118	7-Mar-2010	7-Mar-2011	1.92	\$11	\$118	\$129
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost for conducting the annual piping tightness test. The Date Required is one year prior to the initial investigation date and the Final Date is the investigation date.

Approx. Cost of Compliance

\$1,618

TOTAL

\$231

Screening Date 3-Nov-2011

Docket No. 2011-2053-PST-E

PCW

Respondent Vance Jackson Retail, LLC dba Big Star Food Mart

Policy Revision 2 (September 2002)

Case ID No. 42908

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102352788

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Lanae Foard

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.10(b)

Violation Description Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	x			10%

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 6

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
Single event	x	

Violation Base Penalty \$1,000

One single event is recommended.

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 \$32

Violation Final Penalty Total \$1,622

This violation Final Assessed Penalty (adjusted for limits) \$1,622

Economic Benefit Worksheet

Respondent Vance Jackson Retail, LLC dba Big Star Food Mart
Case ID No. 42908
Reg. Ent. Reference No. RN102352788
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	7-Mar-2011	15-Jun-2012	1.28	\$32	n/a	\$32
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 UST records. The Date Required is the initial 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

\$32

Compliance History

Customer/Respondent/Owner-Operator: CN603430976 Vance Jackson Retail, LLC Classification: POOR Rating: 273.00
Regulated Entity: RN102352788 BIG STAR FOOD MART Classification: POOR Site Rating: 273.00
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 5932
REGISTRATION
Location: 2803 VANCE JACKSON RD, SAN ANTONIO, TX, 78213
TCEQ Region: REGION 13 - SAN ANTONIO
Date Compliance History Prepared: November 03, 2011
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: November 03, 2006 to November 03, 2011
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Jaime Geil Phone: 512-239-5717

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? Vance Jackson Retail, LLC
4. If Yes, who was/were the prior owner(s)/operator(s)? Naide Enterprises, Inc.
5. When did the change(s) in owner or operator occur? 10/14/2008 Naide Enterprises, Inc.
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.

N/A Effective Date: 06/29/2007

ADMINORDER 2005-1562-PST-E

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(A)(iii)

Description: Failing to post the delivery certificate in a location that is clearly visible at all times.

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(C)

Description: Failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST at the Facility.

Classification: Moderate

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

Rqmt Prov: OP 2.a.iii. ORDER

Description: Failing to notify the Commission within 30 days from the date of the occurrence of any change or addition to the UST system.

Classification: Major

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)

30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)

Rqmt Prov: OP 2.a.i., 2.b.ii. ORDER

Description: Failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).

Classification: Major

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(2)

30 TAC Chapter 334, SubChapter C 334.51(b)(2)(C)

Rqmt Prov: OP 2.b.i. ORDER

Description: Failing to equip each tank with a valve or other appropriate device designed to either automatically shut off the flow or restrict the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level.

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 11/03/2008 (150764)

2 04/24/2008 (616367)

3 10/28/2011 (919688)

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

N/A Date: 02/20/2008

(616367)CN603430976

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(A)(iii)

Description: Failing to post the delivery certificate in a location that is clearly visible at all times.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(C)

Description: Failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST at the Facility.

Self Report? NO

Classification: Moderate

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

OP 2.a.iii. ORDER

Description: Failing to notify the Commission within 30 days from the date of the occurrence of any change or addition to the UST system.

Self Report? NO

Classification: Major

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)

30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)

OP 2.a.i., 2.b.ii. ORDER

Description: Failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).

Self Report? NO

Classification: Major

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(2)

30 TAC Chapter 334, SubChapter C 334.51(b)(2)(C)

OP 2.b.i. ORDER

Description: Failing to equip each tank with a valve or other appropriate device designed to either automatically shut off the flow or restrict the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level.

Self Report? NO

Classification: Major

Citation: 2.a.-2.c. ORDER

2A TWC Chapter 7, SubChapter A 7.051(a)(1)(B)

Description: Failure to comply with the ordering provisions of Commission Order Docket No. 2005-1562-PST-E.

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	§	BEFORE THE
ENFORCEMENT ACTION	§	
CONCERNING	§	TEXAS COMMISSION ON
VANCE JACKSON RETAIL, LLC	§	
DBA BIG STAR FOOD MART	§	
RN102352788	§	ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2011-2053-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 Vance Jackson Retail, LLC dba Big Star Food Mart ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a convenience store with retail sales of gasoline located at 2803 Vance Jackson Road in San Antonio, Bexar County, Texas (the "Facility").
2. The Respondent's two underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about November 2, 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 Nine Thousand Seven Hundred Twenty-Nine Dollars (\$9,729) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Hundred Twenty-Four Dollars (\$224) of the administrative penalty and One Thousand Nine Hundred Forty-Five Dollars (\$1,945) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Seven Thousand Five Hundred Sixty Dollars (\$7,560) of the administrative penalty shall be payable in 35 monthly payments of Two Hundred Sixteen Dollars (\$216) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to provide proper corrosion protection for the UST system, in violation of 30 TEX. ADMIN. CODE § 334.49(a)(1) and TEX. WATER CODE § 26.3475(d), as documented during

an investigation conducted on March 7, 2011, and a record review conducted on October 28, 2011.

2. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on March 7, 2011, and a record review conducted on October 28, 2011.
3. Failed to provide release detection for the piping associated with the USTs, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a), as documented during an investigation conducted on March 7, 2011, and a record review conducted on October 28, 2011. Specifically, the Respondent did not conduct the annual piping tightness test.
4. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 334.10(b), as documented during an investigation conducted on March 7, 2011, and a record review conducted on October 28, 2011.

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: Vance Jackson Retail, LLC dba Big Star Food Mart, Docket No. 2011-2053-PST-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, begin maintaining all UST records and ensure they are made immediately available for inspection upon request by agency personnel, in accordance with 30 TEX. ADMIN. CODE § 334.10;

- b. Within 30 days after the effective date of this Agreed Order:
 - i. Install a corrosion protection system and test the system, in accordance with 30 TEX. ADMIN. CODE § 334.49;
 - ii. Implement a release detection method for all USTs at the Facility and conduct the annual piping tightness test, in accordance with 30 TEX. ADMIN. CODE § 334.50; and

- c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.b.ii. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Waste Section Manager
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Road
San Antonio, Texas 78233-4480

- 3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
- 4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes

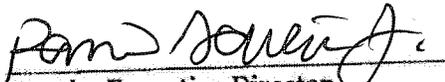
aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

11/16/12
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

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

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

10-30-2012
Date

SHER ALI ALI
Name (Printed or typed)
Authorized Representative of
Vance Jackson Retail, LLC dba Big Star Food Mart

President
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.