

Executive Summary – Enforcement Matter – Case No. 51134
J. F. PRESLEY OIL COMPANY
RN103934394
Docket No. 2015-1258-PST-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

J F Presley Oil, 516 South Eastman Road, Longview, Gregg County and Blue Diamond Convenience Store, 711 Pinecrest Drive, Marshall, Harrison County

Type of Operation:

Common carrier

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: December 25, 2015

Comments Received: No

Penalty Information

Total Penalty Assessed: \$15,860

Amount Deferred for Expedited Settlement: \$3,172

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$544

Total Due to General Revenue: \$12,144

Payment Plan: 23 payments of \$528 each

Supplemental Environmental Project ("SEP") Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Unclassified

Site/RN - Unclassified

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: June 18, 2015

Date(s) of NOE(s): August 8, 2015

**Executive Summary – Enforcement Matter – Case No. 51134
J. F. PRESLEY OIL COMPANY
RN103934394
Docket No. 2015-1258-PST-E**

Violation Information

Alleged to have deposited a regulated substance into a regulated underground storage tank system that was not covered by a valid, current TCEQ delivery certificate. Specifically, the Respondent made 49 fuel deposits at the Facility between May 23, 2014 and June 2, 2015. At the time of the fuel deposits, the Facility did not possess a valid, current TCEQ delivery certificate [30 TEX. ADMIN. CODE § 334.5(b)(1)(A) and TEX WATER CODE § 26.3467(d)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

On September 1, 2015, the Respondent implemented a procedure to ensure that no fuel deposits are made without verification that the facility possesses a valid, current TCEQ delivery certificate.

Technical Requirements:

N/A

Litigation Information

Date Petition(s) Filed: N/A

Date Answer(s) Filed: N/A

SOAH Referral Date: N/A

Hearing Date(s): N/A

Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Tiffany Maurer, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-2696; Candy Garrett, Enforcement Division, MC 219, (512) 239-1456

TCEQ SEP Coordinator: N/A

Respondent: James Presley, President, J. F. PRESLEY OIL COMPANY, P.O. Box 10, Diana, Texas 75640

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	17-Aug-2015	Screening	19-Aug-2015	EPA Due	
	PCW	20-Aug-2015				

RESPONDENT/FACILITY INFORMATION

Respondent	J. F. PRESLEY OIL COMPANY		
Reg. Ent. Ref. No.	RN103934394		
Facility/Site Region	5-Tyler	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	51134	No. of Violations	1
Docket No.	2015-1258-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Tiffany Maurer
		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** **\$17,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **0.0%** Enhancement **Subtotals 2, 3, & 7** **\$0**

Notes: No adjustment for compliance history.

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

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** **-\$1,750**

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

Total EB Amounts \$115
Estimated Cost of Compliance \$600
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$15,750**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0.7%** **Adjustment** **\$110**

Reduces or enhances the Final Subtotal by the indicated percentage.

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

Final Penalty Amount **\$15,860**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$15,860**

DEFERRAL **20.0%** Reduction **Adjustment** **-\$3,172**

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY **\$12,688**

Screening Date 19-Aug-2015

Docket No. 2015-1258-PST-E

PCW

Respondent J. F. PRESLEY OIL COMPANY

Policy Revision 4 (April 2014)

Case ID No. 51134

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN103934394

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Tiffany Maurer

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 judgments 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)

>> **Repeat Violator (Subtotal 3)**

Adjustment Percentage (Subtotal 3)

>> **Compliance History Person Classification (Subtotal 7)**

Adjustment Percentage (Subtotal 7)

>> **Compliance History Summary**

Compliance History Notes

No adjustment for compliance history.

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

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100%

Screening Date 19-Aug-2015

Docket No. 2015-1258-PST-E

PCW

Respondent J. F. PRESLEY OIL COMPANY

Policy Revision 4 (April 2014)

Case ID No. 51134

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN103934394

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Tiffany Maurer

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 334.5(b)(1)(A) and Tex Water Code § 26.3467(d)

Violation Description

The Respondent deposited a regulated substance into a regulated underground storage tank ("UST") system that was not covered by a valid, current TCEQ delivery certificate. Specifically, the Respondent made 49 fuel deposits at the Facility between May 23, 2014 and June 2, 2015. At the time of the fuel deposits, the Facility did not possess a valid, current TCEQ delivery certificate.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
	X		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 14

49 Number of violation days

mark only one with an x

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$17,500

Fourteen monthly events are recommended.

Good Faith Efforts to Comply

10.0%

Reduction \$1,750

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

Notes The Respondent achieved compliance on September 1, 2015, after the Notice of Enforcement dated August 8, 2015.

Violation Subtotal \$15,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$115

Violation Final Penalty Total \$15,860

This violation Final Assessed Penalty (adjusted for limits) \$15,860

Economic Benefit Worksheet

Respondent J. F. PRESLEY OIL COMPANY
Case ID No. 51134
Reg. Ent. Reference No. RN103934394
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$500	18-Jun-2015	1-Sep-2015	0.21	\$5	n/a	\$5

Notes for DELAYED costs

Estimated delayed cost to develop and implement a procedure for fuel delivery personnel to verify that a Facility possesses a valid, current TCEQ delivery certificate prior to depositing a regulated substance into a UST system. The date required is the investigation date, 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]				0.00	\$0	\$0	\$0
Other (as needed)	\$100	23-May-2014	18-Jun-2015	1.99	\$10	\$100	\$110

Notes for AVOIDED costs

Estimated avoided cost to verify that the Facility had a valid, current fuel delivery certificate. The date required is the date of the first fuel delivery, and the final date is the investigation date.

Approx. Cost of Compliance \$600	TOTAL	\$115
---	--------------	-------

The TCEQ is committed to accessibility.
To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



TCEQ Compliance History Report

PUBLISHED Compliance History Report for CN601351455, RN103934394, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

Customer, Respondent, or Owner/Operator: CN601351455, J. F. PRESLEY OIL COMPANY **Classification:** UNCLASSIFIED **Rating:** -----

Regulated Entity: RN103934394, J F PRESLEY OIL **Classification:** UNCLASSIFIED **Rating:** -----

Complexity Points: 3 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 516 S EASTMAN RD LONGVIEW, TX 75602-1708, GREGG COUNTY

TCEQ Region: REGION 05 - TYLER

ID Number(s):

Compliance History Period: September 01, 2009 to August 31, 2014 **Rating Year:** 2014 **Rating Date:** 09/01/2014

Date Compliance History Report Prepared: August 19, 2015

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: August 19, 2010 to August 19, 2015

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Tiffany Maurer

Phone: (512) 239-2696

Site and Owner/Operator History:

- 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** for #2, who is the current owner/operator? N/A
- 4) If **YES** for #2, 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

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees: N/A

B. Criminal convictions: N/A

C. Chronic excessive emissions events: N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.): N/A

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

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred. 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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
J. F. PRESLEY OIL COMPANY
RN103934394**

§ **BEFORE THE**
§
§ **TEXAS COMMISSION ON**
§
§ **ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2015-1258-PST-E**

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding J. F. PRESLEY OIL COMPANY ("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 together stipulate that:

1. The Respondent, a common carrier located at 516 South Eastman Road in Longview, Gregg County, Texas delivered fuel to the three underground storage tanks ("USTs") located at 711 West Pinecrest Drive in Marshall, Harrison County, Texas (the "Facility").
2. The three USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Executive Director 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 August 13, 2015.
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 Fifteen Thousand Eight Hundred Sixty Dollars (\$15,860) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Five Hundred Forty-Four Dollars

(\$544) of the administrative penalty and Three Thousand One Hundred Seventy-Two Dollars (\$3,172) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Twelve Thousand One Hundred Forty-Four Dollars (\$12,144) of the administrative penalty shall be payable in 23 monthly payments of Five Hundred Twenty-Eight Dollars (\$528) 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 and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director recognizes that on September 1, 2015, the Respondent implemented a procedure to ensure that no fuel deposits are made without verification that the facility possesses a valid, current TCEQ delivery certificate.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As a common carrier, the Respondent is alleged to have deposited a regulated substance into a regulated UST system that was not covered by a valid, current TCEQ delivery certificate, in violation of 30 TEX. ADMIN. CODE § 334.5(b)(1)(A) and TEX WATER CODE § 26.3467(d), as documented during an investigation conducted on June 18, 2015. Specifically, the Respondent made 49 fuel deposits at the Facility between May 23, 2014 and June 2, 2015. At the time of the fuel deposits, the Facility did not possess a valid, current TCEQ delivery certificate.

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: J. F. PRESLEY OIL COMPANY, Docket No. 2015-1258-PST-E" to:

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

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the fuel delivery operations referenced in this Agreed Order.
3. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not

effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
7. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

Ronnie Manie J

1/22/16

For the Executive Director

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.

James Presley
Signature

12-1-15
Date

James Presley
Name (Printed or typed)
Authorized Representative of
J. F. PRESLEY OIL COMPANY

President
Title

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