

Executive Summary – Enforcement Matter – Case No. 62137

Circle K Stores Inc.

RN102438504

Docket No. 2022-0369-AIR-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

AIR

Small Business:

No

Location(s) Where Violation(s) Occurred:

Circle K Store 2741264, 9050 Gateway Boulevard North, El Paso, El Paso 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: August 12, 2022

Comments Received: No

Penalty Information

Total Penalty Assessed: \$8,438

Amount Deferred for Expedited Settlement: \$1,687

Total Paid to General Revenue: \$6,751

Total Due to General Revenue: \$0

Payment Plan: N/A

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - High

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: January 2021

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: February 18, 2022

Date(s) of NOE(s): March 14, 2022

**Executive Summary – Enforcement Matter – Case No. 62137
Circle K Stores Inc.
RN102438504
Docket No. 2022-0369-AIR-E**

Violation Information

Failed to comply with the minimum oxygen content of 2.7 percent ("%") by weight of gasoline during the control period of October 1, 2021 through March 31, 2022. Specifically, the Respondent dispensed 252.094 gallons of unleaded mid-grade non-ethanol gasoline that had an oxygen content of less than 2.7% by weight from October 1, 2021 through December 2, 2021 [30 TEX. ADMIN. CODE § 114.100(a) and TEX. HEALTH & SAFETY CODE § 382.085(b)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent implemented a corrective measure at the Site by shutting down all non-ethanol gasoline dispensers by December 2, 2021.

Technical Requirements:

N/A

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Kate Dacy, Enforcement Division, Enforcement Team 2, MC 219, (512) 239-4593; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

Respondent: Patrick Pallas, Finance Director, Circle K Stores Inc., 5500 South Quebec Street, Suite 100, Green Village, Colorado 80111
Mark Tate, Vice President - Operations, Circle K Stores Inc., 5500 South Quebec Street, Suite 100, Green Village, Colorado 80111

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	21-Mar-2022	Screening	28-Mar-2022	EPA Due	
	PCW	26-Apr-2022				

RESPONDENT/FACILITY INFORMATION

Respondent	Circle K Stores Inc.
Reg. Ent. Ref. No.	RN102438504
Facility/Site Region	6-El Paso
Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	62137	No. of Violations	1
Docket No.	2022-0369-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Kate Dacy
		EC's Team	Enforcement Team 4
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$11,250
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0.0%	Adjustment	Subtotals 2, 3, & 7	\$0
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Notes: No adjustment for compliance history.

Culpability	No	0.0%	Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	-\$2,812
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Economic Benefit	0.0%	Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$4
Estimated Cost of Compliance: \$500
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$8,438
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$8,438
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$8,438
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DEFERRAL	20.0%	Reduction	Adjustment	-\$1,687
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$6,751
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Screening Date	28-Mar-2022	Docket No.	2022-0369-AIR-E	PCW
Respondent	Circle K Stores Inc.			
Case ID No.	62137			
Reg. Ent. Reference No.	RN102438504			
Media	Air			
Enf. Coordinator	Kate Dacy			

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	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%
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 0%

Screening Date 28-Mar-2022		Docket No. 2022-0369-AIR-E		PCW
Respondent Circle K Stores Inc.		Policy Revision 5 (January 28, 2021)		
Case ID No. 62137		PCW Revision February 11, 2021		
Reg. Ent. Reference No. RN102438504				
Media Air				
Enf. Coordinator Kate Dacy				
Violation Number 1				
Rule Cite(s)		30 Tex. Admin. Code § 114.100(a) and Tex. Health & Safety Code § 382.085(b)		
Violation Description		Failed to comply with the minimum oxygen content of 2.7 percent ("%") by weight of gasoline during the control period of October 1, 2021 through March 31, 2022. Specifically, the Respondent dispensed 252.094 gallons of unleaded mid-grade non-ethanol gasoline that had an oxygen content of less than 2.7% by weight from October 1, 2021 through December 2, 2021.		
Base Penalty				\$25,000

>> Environmental, Property and Human Health Matrix

OR	Harm				Percent 15.0%
	Release	Major	Moderate	Minor	
	Actual			x	
	Potential				

>>Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent 0.0%
	Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of this violation.				

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events		3	62	Number of violation days	
	daily				
	weekly				
	monthly	x			
	quarterly				
	semiannual				
	annual				
	single event				

Violation Base Penalty \$11,250

Three monthly events are recommended for the period of non-compliance from October 1, 2021 through December 2, 2021.

Good Faith Efforts to Comply

25.0%		Reduction	\$2,812
	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer	
Extraordinary			
Ordinary	x		
N/A			
Notes	The Respondent completed the corrective actions by December 2, 2021, prior to the Notice of Enforcement dated March 14, 2022.		

Violation Subtotal \$8,438

Economic Benefit (EB) for this violation

Estimated EB Amount	\$4	Statutory Limit Test	
Violation Final Penalty Total		\$8,438	
This violation Final Assessed Penalty (adjusted for limits)		\$8,438	

Economic Benefit Worksheet

Respondent Circle K Stores Inc.
Case ID No. 62137
Reg. Ent. Reference No. RN102438504
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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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	1-Oct-2021	2-Dec-2021	0.17	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to shut down all non-ethanol gasoline dispensers. The Date Required is the date the control period started and the Final Date is the date of compliance.

Avoided Costs

ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$4

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.



Compliance History Report

Compliance History Report for CN600134456, RN102438504, Rating Year 2021 which includes Compliance History (CH) components from September 1, 2016, through August 31, 2021.

Customer, Respondent, or Owner/Operator: CN600134456, Circle K Stores Inc. **Classification:** SATISFACTORY **Rating:** 0.34

Regulated Entity: RN102438504, CIRCLE K STORE 2741264 **Classification:** HIGH **Rating:** 0.00

Complexity Points: 4 **Repeat Violator:** NO

CH Group: 01 - Gas Stations with convenience Stores and other Gas Stations

Location: 9050 GATEWAY BLVD N EL PASO, TX 79904-1312, EL PASO COUNTY

TCEQ Region: REGION 06 - EL PASO

ID Number(s):

AIR QUALITY NON PERMITTED ACCOUNT NUMBER EE1198L	LEAKING PETROLEUM STORAGE TANKS REMEDIATION ID NUMBER 121375
PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 46719	PETROLEUM STORAGE TANK NON REGISTERED ID NUMBER EE1198L

Compliance History Period: September 01, 2016 to August 31, 2021 **Rating Year:** 2021 **Rating Date:** 09/01/2021

Date Compliance History Report Prepared: March 28, 2022

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: March 28, 2017 to March 28, 2022

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

Name: Kate Dacy	Phone: (512) 239-4593
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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? YES
- 3) Who is the current owner/operator? Circle K Stores Inc. OWNER OPERATOR since 8/16/2021
- 4) Who was/were the prior owner(s)/operator(s)? Big Diamond, LLC, OWNER OPERATOR, 4/29/2013 to 8/15/2021

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.):

Item 1	August 17, 2017	(1430273)
Item 2	January 05, 2018	(1459157)
Item 3	March 19, 2019	(1548731)
Item 4	June 06, 2019	(1570327)
Item 5	July 22, 2019	(1579889)
Item 6	November 04, 2019	(1605701)
Item 7	July 24, 2020	(1664789)
Item 8	January 13, 2021	(1698920)

Item 9	March 08, 2021	(1704472)
Item 10	August 20, 2021	(1755794)

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
CIRCLE K STORES INC.
RN102438504

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BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2022-0369-AIR-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 Circle K Stores Inc. (the "Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a convenience store with retail sales of gasoline located at 9050 Gateway Boulevard North in El Paso, El Paso County, Texas (the "Site"). The Site consists or consisted of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
2. The Executive Director and the Respondent agree that the TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, and 7.073, and that the Respondent is subject to TCEQ's jurisdiction. The TCEQ has jurisdiction in this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 382 and the rules of the TCEQ.
3. The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of \$8,438 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid \$6,751 of the penalty and \$1,687 is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Order. The deferred amount shall be waived only upon full compliance with all the terms and conditions contained in this Order. If the Respondent fails to timely and satisfactorily comply with any of the terms or requirements contained in this Order, the Executive Director may demand payment of all or part of the deferred penalty amount.
5. 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). 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.

6. 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 Order.
7. This Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Executive Director recognizes that the Respondent implemented a corrective measure at the Site by shutting down all non-ethanol gasoline dispensers by December 2, 2021.

II. ALLEGATIONS

During a record review conducted on February 18, 2022, an investigator documented that the Respondent failed to comply with the minimum oxygen content of 2.7 percent ("%") by weight of gasoline during the control period of October 1, 2021 through March 31, 2022, in violation of 30 TEX. ADMIN. CODE § 114.100(a) and TEX. HEALTH & SAFETY CODE § 382.085(b). Specifically, the Respondent dispensed 252.094 gallons of unleaded mid-grade non-ethanol gasoline that had an oxygen content of less than 2.7% by weight from October 1, 2021 through December 2, 2021.

III. DENIALS

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

IV. ORDERING PROVISIONS

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

1. The Respondent is assessed a penalty as set forth in Section I, Paragraph No. 4. The payment of this penalty and the Respondent's compliance with all of the requirements set forth in this 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. Penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Circle K Stores Inc., Docket No. 2022-0369-AIR-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. All relief not expressly granted in this Order is denied.

3. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
4. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this 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 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 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 Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this 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 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


For the Executive Director

12/5/2022

Date

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

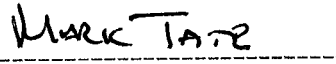
I also understand that failure to comply with the Ordering Provisions, if any, in this Order and/or failure to timely pay the penalty amount, may result in:

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

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

Signature

Date


Name (Printed or typed)
Authorized Representative of
Circle K Stores Inc.

11/15/22
VP OPERATIONS
Title

☐ If mailing address has changed, please check this box and provide the new address below:

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