

Executive Summary – Enforcement Matter – Case No. 62424
MSCS, Ltd.
RN101434439
Docket No. 2022-0662-WQ-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

WQ

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Magic Mart, 2100 East Price Road, Brownsville, Cameron County

Type of Operation:

Gasoline service station

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: July 26, 2024

Comments Received: No

Penalty Information

Total Penalty Assessed: \$11,382

Amount Deferred for Expedited Settlement: \$2,276

Total Paid to General Revenue: \$9,106

Total Due to General Revenue: \$0

Payment Plan: N/A

Compliance History Classifications:

Person/CN - High

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: March 14, 2022

Date(s) of NOE(s): May 5, 2022

Executive Summary – Enforcement Matter – Case No. 62424
MSCS, Ltd.
RN101434439
Docket No. 2022-0662-WQ-E

Violation Information

Failed to submit monitoring results at intervals specified in the permit. Specifically, the monthly discharge monitoring reports for August 2021 through December 2021, were not submitted by the 20th day of the following month [30 TEX. ADMIN. CODE §§ 305.125(1) and (17) and 319.7(d) and Texas Pollutant Discharge Elimination System (“TPDES”) General Permit No. TXG830757, Part III, Section A, Permit Requirements No.1; and Part IV, Standard Permit Conditions No. 7.f].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

By January 17, 2023, the Respondent terminated authorization under TPDES General Permit No. TXG830757 and ceased operation.

Technical Requirements:

N/A

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Megan Crinklaw, Enforcement Division, Enforcement Team 1, MC 219, (512) 239-1129; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

Respondent: Mark Spenrath, Manager, MSCS, Ltd., 109 Shooting Club Road, Suite A, Boerne, Texas 78006

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	16-May-2022			
	PCW	3-Jun-2022	Screening	26-May-2022	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	MSCS, Ltd.				
Reg. Ent. Ref. No.	RN101434439				
Facility/Site Region	15-Harlingen	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	62424	No. of Violations	1		
Docket No.	2022-0662-WQ-E	Order Type	1660		
Media Program(s)	Water Quality	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Megan Crinklaw		
		EC's Team	Enforcement Team 1		
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000		

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$12,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	-10.0%	Adjustment	Subtotals 2, 3, & 7	-\$1,250
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Notes	Reduction for High Performer Classification.			
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Culpability	No	0.0%	Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.			
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0%	Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$132	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$126	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$11,250
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OTHER FACTORS AS JUSTICE MAY REQUIRE	1.2%	Adjustment	\$132
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Recommended enhancement to capture the avoided cost of compliance associated with the violation.		
Final Penalty Amount			\$11,382

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$11,382
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DEFERRAL	20.0%	Reduction	Adjustment	-\$2,276
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes	Deferral offered for expedited settlement.		
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PAYABLE PENALTY	\$9,106
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Screening Date

26-May-2022

Docket No.

2022-0662-WQ-E

PCW

Respondent

MSCS, Ltd.

Case ID No.

62424

Reg. Ent. Reference No.

RN101434439

Media

Water Quality

Enf. Coordinator

Megan Crinklaw

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)

NoAdjustment Percentage (Subtotal 3)0%

>> Compliance History Person Classification (Subtotal 7)

High PerformerAdjustment Percentage (Subtotal 7)-10%

>> Compliance History Summary

Compliance History Notes

Reduction for High Performer Classification.

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

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100%-10%

Screening Date

26-May-2022

Docket No.

2022-0662-WQ-E

PCW

Respondent

MSCS, Ltd.

Case ID No.

62424

Reg. Ent. Reference No.

RN101434439

Media

Water Quality

Enf. Coordinator

Megan Crinklaw

Violation Number

1

Rule Cite(s)

30 Tex. Admin. Code §§ 305.125(1) and (17) and 319.7(d) and Texas Pollutant Discharge Elimination System General Permit No. TXG830757, Part III, Section A, Permit Requirements No.1; and Part IV, Standard Permit Conditions No. 7.f

Violation Description

Failed to submit monitoring results at intervals specified in the permit. Specifically, the monthly discharge monitoring reports ("DMRs") for August 2021 through December 2021 were not submitted by the 20th day of the following month.

Base Penalty

\$25,000

>> Environmental, Property and Human Health Matrix

OR

Release

Major

Moderate

Minor

Actual

Potential

Percent

0.0%

>>Programmatic Matrix

Falsification

Major

Moderate

Minor

x

Percent

10.0%

Matrix Notes

100% of the rule requirements were not met.

Adjustment

\$22,500

\$2,500

Violation Events

Number of Violation Events

5

248

Number of violation days

daily

weekly

monthly

quarterly

semiannual

annual

single event

x

Violation Base Penalty

\$12,500

Five single events are recommended, one for each missing report.

Good Faith Efforts to Comply

0.0%

Reduction

\$0

Before NOE/NOV

NOE/NOV to EDPRP/Settlement Offer

Extraordinary

Ordinary

N/A

x

Notes

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

Violation Subtotal

\$12,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

\$132

Violation Final Penalty Total

\$11,382

This violation Final Assessed Penalty (adjusted for limits)

\$11,382

Economic Benefit Worksheet

Respondent Case ID No. Reg. Ent. Reference No. Media Violation No.

MSCS, Ltd. 62424 RN101434439 Water Quality 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)				0.00	\$0	n/a	\$0
Notes for DELAYED costs							

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	\$126	20-Jan-2022	17-Jan-2023	0.99	\$6	\$126	\$132
Other (as needed)				0.00	\$0	\$0	\$0
Notes for AVOIDED costs	Estimated avoided cost to submit the DMRs for the missed monitoring periods (\$25 per report) and associated interest. The Date Required is the due date for the December 2021 DMR, and the Final Date is the date TPDES General Permit No. TXG830757 was terminated.						

Approx. Cost of Compliance	\$126	TOTAL	\$132
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Compliance History Report

Compliance History Report for CN602899171, RN101434439, Rating Year 2023 which includes Compliance History (CH) components from September 1, 2018, through August 31, 2023.

Customer, Respondent, or Owner/Operator: CN602899171, MSCS, Ltd.

Classification: HIGH

Rating: 0.00

Regulated Entity: RN101434439, MAGIC MART

Classification: HIGH

Rating: 0.00

Complexity Points: 3

Repeat Violator: NO

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

Location: 2100 East Price Road, Brownsville, Cameron County, Texas

TCEQ Region: REGION 15 - HARLINGEN

ID Number(s):

PETROLEUM STORAGE TANK REGISTRATION
REGISTRATION 55471

Compliance History Period: September 01, 2018 to August 31, 2023

Rating Year: 2023

Rating Date: 09/01/2023

Date Compliance History Report Prepared: April 24, 2024

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: April 24, 2019 to April 24, 2024

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

Name: Megan Crinklaw

Phone: (512) 239-1129

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?
CJR RETAIL, LLC OWNER since 7/28/2007
7-Eleven, Inc. OWNER OPERATOR since 8/2/2021
MSCS, Ltd. OWNER OPERATOR since 4/1/2021
- 4) Who was/were the prior owner(s)/operator(s)? DRASH, JAMES A, OPERATOR, 7/28/2007 to 3/2/2021

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	July 07, 2022	(1838490)
Item 2	September 28, 2022	(1852124)
Item 3	January 11, 2023	(1878675)
Item 4	February 23, 2023	(1866235)
Item 5	February 28, 2023	(1893321)

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
MSCS, LTD.
RN101434439

§ BEFORE THE
§ TEXAS COMMISSION ON
§ ENVIRONMENTAL QUALITY
§

AGREED ORDER DOCKET NO. 2022-0662-WQ-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 MSCS, Ltd. (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 together stipulate that:

1. The Respondent owned and operated a gasoline service station located at 2100 East Price Road in Brownsville, Cameron County, Texas (the "Site"). The Site is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
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. WATER CODE ch. 26 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 \$11,382 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid \$9,106 of the penalty and \$2,276 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 by January 17, 2023, the Respondent terminated authorization under Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXG830757 and ceased operation.

II. ALLEGATIONS

During a record review for the Site conducted on March 14, 2022, an investigator documented that the Respondent failed to submit monitoring results at intervals specified in the permit, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1) and (17) and 319.7(d) and TPDES General Permit No. TXG830757, Part III, Section A, Permit Requirements No.1; and Part IV, Standard Permit Conditions No. 7.f. Specifically, the monthly discharge monitoring reports for August 2021 through December 2021, were not submitted by the 20th day of the following month.

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: MSCS, Ltd., Docket No. 2022-0662-WQ-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.

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

7/22/2024

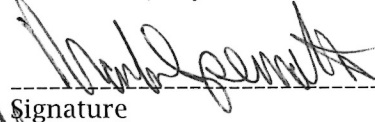
Date

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 OAG 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 OAG of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

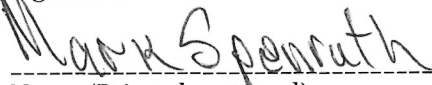
In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

6/20/24

Date



Name (Printed or typed)
Authorized Representative of
MSCS, Ltd.

Manager

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.