

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Docket SCUPA 2023 IM002

Kennedy's Market
70 East Main Street
Heber, CA 92249

CONSENT ORDER

Health and Safety Code
Section 25187 and 25404.1.1

EPA I.D. No. CAL000282757

Respondent.

1. INTRODUCTION

1.1. Parties. The State Department of Toxic Substances Control (Department) and Kennedy's Market (Respondent) enter into this Consent Order (Order) and agree as follows:

1.2. Site. Respondent operates a gas station, dispensing gasoline, and diesel fuel at the following site: 70 East Main Street, Heber, CA, 92249 (Site).

1.3. Inspection. The Department inspected the Site on September 12, 2022 Annual Monitoring Certification (AMC) and November 15, 2022 AMC.

1.4. Authorization Status. Respondent has a permit to operate underground storage tanks as well as a certificate to manage hazardous materials and hazardous waste at the Site.

1.5. Jurisdiction. Section 25187 and 25404.1.1 of the Health and Safety Code authorizes the Department to order action necessary to correct violations and assess a penalty when the Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

1.6. Full Settlement. This Order shall constitute full settlement of the violations alleged below. The Parties, and each of them, agree that this Order, and all of the terms contained herein, are fair, reasonable, and in the public interest. By agreeing to this Order, the Department does not waive any right to take other enforcement actions except as specifically provided in this Order.

1.7. Hearing. Respondent waives any and all rights to a hearing in this matter.

1.8. Admissions. Respondent admits the violations as alleged in Section 2 below.

2. VIOLATIONS ALLEGED

2.1. The Department alleges the following violations:

2.1.1. Respondent violated Health and Safety Code section 25299(a)(9), in that on or about September 12, 2022, Respondent tampered with the following sensors to prevent the monitoring system from detecting and/or alerting the Respondent of a leak:

1. Under Dispenser Containment (UDC) dispenser #5/6, sensor #208 was raised approximately 36 inches above the lowest point of the sump. It was observed sitting on top of the strut;
2. #208 sensor of the Diesel STP sump was raised 8 " above the lowest point in the sump. It was hanging from the turbine and not located to detect a leak at the earliest opportunity.

2.1.2. Respondent violated Health and Safety Code section 25290.1(c)(1), 25290.2(c)(1), and 25291(a)(1) and California Code of Regulations, title 23, section 2631(a), in that on or about September 12, 2022, Respondent UST system primary containment was not constructed, operated, and maintained product tight. Respondent had fuel filters located in each of the three dispensers leaking fuel into their respective dispenser containment

structures: Dispenser 1/2, Dispenser 5/6, and Dispenser 7/8.

2.1.3. Respondent violated Health and Safety Code section 25290.1(c)(1), 25290.2(c)(1), and 25291(a)(1) and California Code of Regulations, title 23, section 2631(a), in that on or about November 15, 2022, Respondent UST system primary containment was not constructed, operated, and maintained product tight. Respondent had a fuel filter located in dispenser 5/6 leaking fuel into the dispenser containment structures.

2.1.4. Respondent violated California Code of Regulations, title 23, section 2712(f), in that on or about October 13, 2022, and continuing to at least the date of this Order, Respondent failed to provide a written response to the violation(s) cited on September 12, 2022 Monitoring Certification (cold start).

2.1.5. Respondent violated California Code of Regulations, title 23, section 2712(f), in that on or about December 16, 2022, and continuing to at least the date of this Order, Respondent has failed to provide a written response to the violation(s) cited on November 15, 2022 Annual Monitoring Certification inspection.

3. SCHEDULE FOR COMPLIANCE

3.1. Respondent shall comply with the following:

3.1.1. Respondent shall immediately relocate #208 sensors to the lowest point in the Under Dispenser Containment (UDC) #5/6 and Diesel STP sump. Respondent shall provide supporting written and photographic documentation that UDC #5/6 and Diesel STP sump are free of liquids and the #208 sensors are at the lowest point. Respondent shall explain in writing why the #208 sensor was raised in UDC #5/6 and Diesel STP sump. The written response shall be mailed to the Department within 30 days of the effective date of this Order.

3.1.2. Respondent shall provide written and photographic documentation that the fuel filters leaking on September 12, 2022 in dispenser 1/2, dispenser 5/6, and dispenser 7/8 have been repaired and are currently product tight.

3.1.3. Respondent shall provide written and photographic documentation that the fuel filter observed leaking during the November 15, 2022 Annual Monitoring Certification in dispenser 5/6, has been repaired and is currently product tight.

3.1.4. Respondent shall provide a written response to the satisfaction of the Department, to all of the violation(s) cited during the September 12, 2022 Monitoring Certification (cold start), within 30 days of the effective date of this Consent Order.

3.1.5. Respondent shall provide a written response to the satisfaction of the Department, to all of the violation(s) cited during the November 15, 2022 Annual Monitoring Certification inspection, within 30 days of the effective date of this Consent Order.

3. 2. Respondent shall make all payments at the time(s) and in accordance with any other conditions set forth in Section 5 (Penalty) below.

4. OTHER PROVISIONS

4.1. Liability. Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Order. Notwithstanding compliance with the terms of this Order, Respondent may be required to take such further actions as are necessary to protect public health or welfare or the environment.

4.2. Penalties for Noncompliance. Failure to comply with the terms of this Order may subject Respondent to costs, penalties and/or damages, as provided by Health and Safety Code, section 25188, and other applicable provisions of law.

4.3. Parties Bound. This Order shall apply to and be binding upon Respondent and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Order.

4.4. Integration. This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this Order.

5. PENALTY

5.1. Respondent shall pay the Department a total penalty of \$7,250.

5.2. Respondent's check(s) for the penalty shall be made payable to the Department of Toxic Substances Control, shall identify the Respondent and Docket Number, as shown in the caption of this case, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Robert Krug
Senior Hazardous Substance Scientist (Supervisor)
DTSC Imperial CUPA
627 Wake Avenue
El Centro, CA 92243

5.3. If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code, section 25360.1,

and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

6. EFFECTIVE DATE

6.1. The effective date of this Order is the date it is signed by the Department.

ORIGINAL SIGNED by Raj Kakkar

Dated: 3-6-23

Raj Kakkar
Respondent

ORIGINAL SIGNED by Robert Krug

Dated: 3/6/2023

Robert Krug
Department of Toxic Substances Control