

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2004-1286-PST-E TCEQ ID NO.: RN102795689 CASE NO.: 18455

RESPONDENT NAME: AZMAN INCORPORATED DBA SHOPPERS MART 1

| | | |
|--|---|--|
| ORDER TYPE: | | |
| <input type="checkbox"/> 1660 AGREED ORDER | <input type="checkbox"/> FINDINGS AGREED ORDER | <input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING |
| <input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER | <input type="checkbox"/> SHUTDOWN ORDER | <input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER |
| <input type="checkbox"/> AMENDED ORDER | <input type="checkbox"/> EMERGENCY ORDER | |
| CASE TYPE: | | |
| <input type="checkbox"/> AIR | <input type="checkbox"/> MULTI-MEDIA (check all that apply) | <input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE |
| <input type="checkbox"/> PUBLIC WATER SUPPLY | <input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS | <input type="checkbox"/> OCCUPATIONAL CERTIFICATION |
| <input type="checkbox"/> WATER QUALITY | <input type="checkbox"/> SEWAGE SLUDGE | <input type="checkbox"/> UNDERGROUND INJECTION CONTROL |
| <input type="checkbox"/> MUNICIPAL SOLID WASTE | <input type="checkbox"/> RADIOACTIVE WASTE | <input type="checkbox"/> DRY CLEANER REGISTRATION |

SITE WHERE VIOLATION(S) OCCURRED: 5032 Pinemont Drive, Houston, Harris County

TYPE OF OPERATION: Convenience store with retail sales of gasoline

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on August 13, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Robert R. Mosley, Litigation Division, MC 175, (512) 239-0627
 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873

TCEQ Enforcement Coordinator: Ms. Rebecca Johnson, Houston Regional Office, MC R-12, (713) 422-8931

TCEQ Regional Contact: Ms. Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623

Respondent: Mr. Aziz Abdullah, Registered Agent, Azman Incorporated dba Shoppers Mart 1, Wilcrest Drive #1805, Houston, Texas 77099 and 5032 Pinemont Drive, Houston, Texas 77092-3534

Respondent's Attorney: Not represented by counsel.

VIOLATION SUMMARY CHART:

| VIOLATION INFORMATION | PENALTY CONSIDERATIONS | CORRECTIVE ACTIONS TAKEN/REQUIRED |
|--|--|--|
| <p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Dates of Complaints Relating to this Case: None</p> <p>Dates of Investigations Relating to this Case: November 7, 2002, January 5, 2005 and March 7, 2005</p> <p>Dates of NOVs/NOEs Relating to this Case: February 25, 2003 (NOV) and July 30, 2004 (NOE)</p> <p>Background Facts:</p> <p>An EDPRP was filed March 28, 2005. The Respondent received the EDPRP on March 30, 2005 as evidenced by the signature on the green card. The Respondent has not filed an answer, requested a hearing or scheduled a settlement conference.</p> <p>The Respondent owes a \$750 administrative penalty related to Agreed Order Docket No. 2002-0522-PST-E.</p> <p>PST:</p> <p>1. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].</p> <p>2. Failed to make timely penalty payments [TEX. WATER CODE § 7.101 and Commission Order Docket Number 2002-0522-PST-E].</p> | <p>Total Assessed: \$3,930</p> <p>Total Deferred: \$0</p> <p>SEP Conditional Offset: \$0</p> <p>Total Due General Revenue: \$3,930</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> | <p>The Respondent no longer owns or operates the Facility.</p> <p>Ordering Provisions</p> <p>Within 15 days, submit the penalty amount of \$750 as specified in Agreed Order Docket No. 2002-0522-PST-E, Section IV (Order), Paragraph No. 1.</p> |

Penalty Calculation Worksheet (PCW)
 Policy Revision 2 (September 2002) PCW Revision May 17, 2004

| | | | | | | |
|--------------|-------------|-----------|-------------|--------------|-------------|---------|
| DATES | | | | | | |
| PCW | 30-Apr-2007 | Screening | 09-Aug-2004 | Priority Due | 07-Nov-2004 | EPA Due |

| | |
|--|---|
| RESPONDENT/FACILITY INFORMATION | |
| Respondent | Azman Incorporated dba Shoppers Mart 1 |
| Reg. Ent. Ref. No. | RN102795689 |
| Additional ID No(s). | PST Facility ID No. 25209 |
| Facility/Site Region | 12-Houston <input checked="" type="checkbox"/> Major/Minor Source <input type="checkbox"/> Minor Source <input checked="" type="checkbox"/> |

| | | | |
|---------------------------------|--|-------------------|---|
| CASE INFORMATION | | | |
| Enf./Case ID No. | 18455 | No. of Violations | 2 |
| Docket No. | 2004-1286-PST-E | Order Type | 1660 without deferral <input checked="" type="checkbox"/> |
| Case Priority | 3 <input checked="" type="checkbox"/> | Enf. Coordinator | Rebecca Johnson |
| Media Program(s) | Petroleum Storage Tank <input checked="" type="checkbox"/> | EC's Team | Enforcement Team 7 <input checked="" type="checkbox"/> |
| Multi-Media | | | |
| Admin. Penalty \$ Limit Minimum | \$0 | Maximum | \$10,000 |

Penalty Calculation Section

| | | |
|---|-------------------|----------------|
| TOTAL BASE PENALTY (Sum of violation base penalties) | Subtotal 1 | \$3,000 |
|---|-------------------|----------------|

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

| | | | |
|---------------------------|-----------------|--------------------------------|--------------|
| Compliance History | 31% Enhancement | Subtotals 2, 3, & 7 | \$930 |
|---------------------------|-----------------|--------------------------------|--------------|

Notes
 The respondent received an NOV with same or similar violations on February 25, 2003 and three NOVs with other violations on October 27, 2000, March 5, 2004, and February 27, 2004. The respondent also received an Administrative Order with other violations on February 17, 2003.

| | | | | |
|--------------------|--|----------------|-------------------|------------|
| Culpability | No <input checked="" type="checkbox"/> | 0% Enhancement | Subtotal 4 | \$0 |
|--------------------|--|----------------|-------------------|------------|

Notes
 The respondent does not meet the culpability criteria.

| | | | |
|------------------------------------|--------------|-------------------|------------|
| Good Faith Effort to Comply | 0% Reduction | Subtotal 5 | \$0 |
|------------------------------------|--------------|-------------------|------------|

| | | |
|---------------|------------|------------------------------|
| | Before NOV | NOV to EDRP/Settlement Offer |
| Extraordinary | | |
| Ordinary | | |
| N/A | X | (mark with a small x) |

Notes
 This enforcement action does not meet the food faith criteria.

| | | | |
|-------------------------|-----------------|-------------------|------------|
| Economic Benefit | 0% Enhancement* | Subtotal 6 | \$0 |
|-------------------------|-----------------|-------------------|------------|

| | | |
|----------------------------|---------|-----------------------------------|
| Total EB Amounts | \$3,150 | *Capped at the Total EB \$ Amount |
| Approx. Cost of Compliance | \$3,000 | |

| | | |
|-----------------------------|-----------------------|----------------|
| SUM OF SUBTOTALS 1-7 | Final Subtotal | \$3,930 |
|-----------------------------|-----------------------|----------------|

| | | |
|---|-------------------|------------|
| OTHER FACTORS AS JUSTICE MAY REQUIRE | Adjustment | \$0 |
|---|-------------------|------------|

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

| | |
|-----------------------------|----------------|
| Final Penalty Amount | \$3,930 |
|-----------------------------|----------------|

| | | |
|-----------------------------------|-------------------------------|----------------|
| STATUTORY LIMIT ADJUSTMENT | Final Assessed Penalty | \$3,930 |
|-----------------------------------|-------------------------------|----------------|

| | | | |
|-----------------|-----------|-------------------|------------|
| DEFERRAL | Reduction | Adjustment | \$0 |
|-----------------|-----------|-------------------|------------|

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

Notes
 No deferral is offered with non-expedited cases.

| | |
|------------------------|----------------|
| PAYABLE PENALTY | \$3,930 |
|------------------------|----------------|

| | | | | |
|--------------------------------|--|---------------------------|------------------------------------|------------|
| Screening Date | 09-Aug-2004 | Docket No. | 2004-1286-PST-E | PGW |
| Respondent | Azman Incorporated dba Shoppers Mart 1 | | Policy Revision 2 (September 2002) | |
| Case ID No. | 18455 | PCW Revision May 17, 2004 | | |
| Reg. Ent. Reference No. | RN102795689 | | | |
| Additional ID No(s) | PST Facility ID No. 25209 | | | |
| Media [Statute] | Petroleum Storage Tank | | | |
| Enf. Coordinator | Rebecca Johnson | | | |
| Site Address | 5032 Pinemont, Houston, Harris County | | | |

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

| Component | Number of... | Enter Number Here | Adjust. |
|-------------------------------|--|-------------------|---------|
| NOVs | Written 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 | 3 | 6% |
| 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% |
| 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% |
| | 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% |
| Convictions | Any criminal convictions of this state or the federal government <i>(number of counts)</i> | | 0% |
| Emissions | Chronic excessive emissions events <i>(number of events)</i> | | 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)</i> | | 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% |
| <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) 31%

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The respondent received an NOV with same or similar violations on February 25, 2003 and three NOVs with other violations on October 27, 2000, March 5, 2004, and February 27, 2004. The respondent also received an Administrative Order with other violations on February 17, 2003.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 31%

| | | | | |
|--------------------------------|--|-------------------|---|------------|
| Screening Date | 09-Aug-2004 | Docket No. | 2004-1286-PST-E | PCW |
| Respondent | Azman Incorporated dba Shoppers Mart 1 | | <i>Policy Revision 2 (September 2002)</i> | |
| Case ID No. | 18455 | | <i>PCW Revision May 17, 2004</i> | |
| Reg. Ent. Reference No. | RN102795689 | | | |
| Additional ID No(s) | PST Facility ID No. 25209 | | | |
| Media [Statute] | Petroleum Storage Tank | | | |
| Enf. Coordinator | Rebecca Johnson | | | |
| Violation Number | <input type="text" value="1"/> | | | |
| Primary Rule Cite(s) | <input type="text" value="30 Tex. Admin. Code § 37.815(a) and (b)"/> | | | |
| Secondary Rule Cite(s) | <input type="text"/> | | | |
| Violation Description | <input type="text" value="Failure to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs."/> | | | |
| Base Penalty | <input type="text" value="\$10,000"/> | | | |

>> **Environmental, Property and Human Health Matrix**

| | | | | | |
|-----------|----------------------|----------------------|----------------------|----------------------|------------------------------|
| OR | Harm | | | | Percent <input type="text"/> |
| | Release | Major | Moderate | Minor | |
| | Actual | <input type="text"/> | <input type="text"/> | <input type="text"/> | |
| Potential | <input type="text"/> | <input type="text"/> | <input type="text"/> | | |

>> **Programmatic Matrix**

| | | | | | |
|--|----------------------|-------------------------------------|----------------------|----------------------|--|
| | Falsification | Major | Moderate | Minor | Percent <input type="text" value="10%"/> |
| | <input type="text"/> | <input checked="" type="checkbox"/> | <input type="text"/> | <input type="text"/> | |

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

| | | |
|--------------------------------|--------------|-------------------------------------|
| mark only one use a small x | daily | <input type="text"/> |
| | monthly | <input type="text"/> |
| | quarterly | <input type="text"/> |
| | semiannual | <input type="text"/> |
| | annual | <input type="text"/> |
| | single event | <input checked="" type="checkbox"/> |

Violation Base Penalty

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount **Violation Final Penalty Total**

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent: Azman Incorporated dba Shoppers Mart 1
Case ID No.: 18455
Reg. Ent. Reference No.: RN102795689
Additional ID No(s): PST Facility ID No. 25209
Media [Statute]: Petroleum Storage Tank
Violation No.: 1

| | |
|-------------------------|------------------------------|
| Percent Interest | Years of Depreciation |
| 5.0 | 15 |

| Item Description | Item Cost <small>No commas or \$</small> | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|------------------|---|---------------|------------|-----|----------------|---------------|-----------|
|------------------|---|---------------|------------|-----|----------------|---------------|-----------|

| Delayed Costs | | | | | | | |
|--------------------------|--|--|--|-----|-----|-----|-----|
| Equipment | | | | 0.0 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |
| Engineering/construction | | | | 0.0 | \$0 | \$0 | \$0 |
| Land | | | | 0.0 | \$0 | n/a | \$0 |
| Record Keeping System | | | | 0.0 | \$0 | n/a | \$0 |
| Training/Sampling | | | | 0.0 | \$0 | n/a | \$0 |
| Remediation/Disposal | | | | 0.0 | \$0 | n/a | \$0 |
| Permit Costs | | | | 0.0 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | n/a | \$0 |
| Notes for DELAYED costs | | | | | | | |

| Avoided Costs | | | | | | | |
|--|---------|-------------|-------------|-----|-------|---------|---------|
| ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs) | | | | | | | |
| Disposal | | | | 0.0 | \$0 | \$0 | \$0 |
| Personnel | | | | 0.0 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling | | | | 0.0 | \$0 | \$0 | \$0 |
| Supplies/equipment | | | | 0.0 | \$0 | \$0 | \$0 |
| Financial Assurance [2] | \$3,000 | 07-Nov-2001 | 07-Nov-2002 | 1.0 | \$150 | \$3,000 | \$3,150 |
| ONE-TIME avoided costs [3] | | | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |
| Notes for AVOIDED costs | | | | | | | |
| Estimated cost to provide financial assurance for the petroleum UST, calculated for the one year period prior to the initial letter requesting proof of financial assurance. | | | | | | | |

Approx. Cost of Compliance \$3,000

TOTAL \$3,150

| | | | | |
|--------------------------------|--|----------------------------------|---|------------|
| Screening Date | 09-Aug-2004 | Docket No. | 2004-1286-PST-E | PCW |
| Respondent | Azman Incorporated dba Shoppers Mart 1 | | <i>Policy Revision 2 (September 2002)</i> | |
| Case ID No. | 18455 | <i>PCW Revision May 17, 2004</i> | | |
| Reg. Ent. Reference No. | RN102795689 | | | |
| Additional ID No(s). | PST Facility ID No. 25209 | | | |
| Media [Statute] | Petroleum Storage Tank | | | |
| Enf. Coordinator | Rebecca Johnson | | | |
| Violation Number | 2 | | | |
| Primary Rule Cite(s) | Texas Water Code § 7.101 and Agreed Order 2002-0522-PST-E, Section IV(Order) paragraph 1 | | | |
| Secondary Rule Cite(s) | | | | |
| Violation Description | Respondent failed to pay administrative penalty as ordered in Agreed Order, Docket No. 2002-0522-PST-E, as documented during a record review conducted on March 7, 2005. | | | |
| Base Penalty | \$10,000 | | | |

>> **Environmental, Property and Human Health Matrix**

| Release | Harm | | | Percent |
|-----------|-------|----------|-------|---------|
| | Major | Moderate | Minor | |
| Actual | | | | |
| Potential | | | | |

>> **Programmatic Matrix**

| Falsification | Major | Moderate | Minor | Percent |
|---------------|-------|----------|-------|---------|
| | X | | | 10% |

Matrix Notes: The respondent failed to comply with 100% of the rule requirement.

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

Violation Events

Number of Violation Events

| | | |
|--------------------------------|--------------|---|
| mark only one use a small x | daily | |
| | monthly | |
| | quarterly | |
| | semiannual | |
| | annual | |
| | single event | X |

Violation Base Penalty \$1,000

One single event is recommended, based on the record review conducted on March 7, 2005.

| Economic Benefit (EB) for this violation | Statutory Limit Test |
|--|--|
| Estimated EB Amount \$0 | Violation Final Penalty Total \$1,310 |
| This violation Final Assessed Penalty (adjusted for limits) \$1,310 | |

Economic Benefit Worksheet

Respondent: Azman Incorporated dba Shoppers Mart 1
Case ID No.: 18455
Reg. Ent. Reference No.: RN102795689
Additional ID No(s): PST Facility ID No. 25209
Media [Statute]: 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 |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|

| Delayed Costs | | | | | | | |
|--------------------------|--|--|--|-----|-----|-----|-----|
| Equipment | | | | 0.0 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |
| Engineering/construction | | | | 0.0 | \$0 | \$0 | \$0 |
| Land | | | | 0.0 | \$0 | n/a | \$0 |
| Record Keeping System | | | | 0.0 | \$0 | n/a | \$0 |
| Training/Sampling | | | | 0.0 | \$0 | n/a | \$0 |
| Remediation/Disposal | | | | 0.0 | \$0 | n/a | \$0 |
| Permit Costs | | | | 0.0 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | n/a | \$0 |

Notes for DELAYED costs: There is no economic benefit with this violation.

| Avoided Costs | | | | | | | |
|--|--|--|--|-----|-----|-----|-----|
| ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs) | | | | | | | |
| Disposal | | | | 0.0 | \$0 | \$0 | \$0 |
| Personnel | | | | 0.0 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling | | | | 0.0 | \$0 | \$0 | \$0 |
| Supplies/equipment | | | | 0.0 | \$0 | \$0 | \$0 |
| Financial Assurance [2] | | | | 0.0 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3] | | | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs:

Approx. Cost of Compliance \$0

TOTAL \$0

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 115, SubChapter C 115.246(4)
Description: Failure to have the Stage II facility representative training certificate available for review.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 115, SubChapter C 115.246(6)
Description: Failure to maintain complete Stage II daily inspection documentation.

Date: 02/27/2004 (264165)

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.245(1)[G]
Description: Failure to successfully complete the Stage II initial compliance test.

Date: 02/25/2003 (275940)

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)[G]
30 TAC Chapter 37, SubChapter I 37.815(b)[G]
Description: Failure to provide acceptable financial assurance.

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
AZMAN INCORPORATED DBA
SHOPPERS MART 1,
RN102795689

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2004-1286-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty against the respondent. The respondent made the subject of this Order is Azman Incorporated dba Shoppers Mart 1 ("Azman").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Azman owned and operated a convenience store with retail sales of gasoline located at 5032 Pinemont Dr., Houston, Harris County, Texas (the "Facility").
2. Azman's two underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Azman's USTs contain a regulated substance as defined in the rules of the Commission.
3. During an inspection on November 7, 2002, a TCEQ Houston Regional Office investigator documented that Azman failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.
4. Azman received notice of the violation on or about March 4, 2003.
5. During a record review conducted on January 5, 2005, TCEQ Enforcement Division Staff documented that Azman violated Commission Order Docket Number 2002-0522-PST-E by failing to make timely penalty payments.

6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Azman Incorporated" (the "EDPRP") in the TCEQ Chief Clerk's office on March 28, 2005.
7. By letter dated March 28, 2005, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Azman with notice of the EDPRP. According to the return receipt "green card," Azman received notice of the EDPRP on March 30, 2005, as evidenced by the signature on the card.
8. More than 20 days have elapsed since Azman received notice of the EDPRP, provided by the Executive Director. Azman failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Azman is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE §§ 7.002 and 5.013 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Azman failed to demonstrate acceptable financial assurance for taking correction action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operations of petroleum USTs, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b).
3. As evidenced by Finding of Fact No. 5, Azman violated TEX. WATER CODE § 7.101 and Commission Order Docket Number 2002-0522-PST-E by failing to make timely penalty payments.
4. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director has timely served Azman with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
5. As evidenced by Finding of Fact No. 8, Azman has failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Azman and assess the penalty recommended by the Executive Director.
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Azman for violations of the Texas Water Code and the Texas

Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.

7. An administrative penalty in the amount of three thousand nine hundred thirty dollars (\$3,930.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Azman is assessed an administrative penalty in the amount of three thousand nine hundred thirty dollars (\$3,930.00) for violations of TEX. WATER CODE ch. 26. The payment of this administrative penalty and Azman's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Azman Incorporated dba Shoppers Mart 1; Docket No. 2004-1286-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. Within 15 days after the effective date of this Commission Order, Azman shall submit the penalty amount of seven hundred fifty dollars (\$750.00), as specified in Agreed Order Docket No. 2002-0522-PST-E, Section IV. (Order), paragraph 1., with the notation, "Re: Azman, Incorporated dba Shoppers Mart 1, Docket No. 2002-0522-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

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Azman. Azman is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility's operations referenced in this Order.
5. If Azman fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Azman's failure to comply is not a violation of this Order. Azman shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Azman shall notify the Executive Director within seven days after Azman becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. 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 Azman shall be made in writing to the Executive Director. Extensions are not effective until Azman receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Azman if the Executive Director determines that Azman has not complied with one or more of the terms or conditions in this Order.
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 Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF ROBERT R. MOSLEY

STATE OF TEXAS §
COUNTY OF TRAVIS §

“My name is Robert R. Mosley. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Azman Incorporated dba Shoppers Mart 1” (the “EDPRP”) was filed with the Office of the Chief Clerk on March 28, 2005.

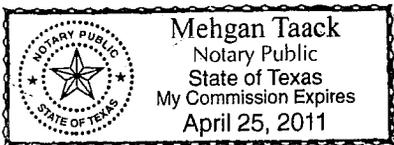
The EDPRP was sent to Azman at its last known address on March 28, 2005 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Azman received notice of the EDPRP on March 30, 2005, as evidenced by the signature on the card.

More than 20 days have elapsed since Azman received notice of the EDPRP. Azman failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”

Robert R. Mosley
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Robert R. Mosley, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 13th day of August, A.D., 2007.



Mehgan Taack
Notary Stamp