

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NUMBER: 2005-0162-PST-E TCEQ ID NO: RN102784410 ENF ID: 24046
RESPONDENT NAME: HENNA ENTERPRISES, INC. DBA CLARK STORE

ORDER TYPE:

<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> SHUTDOWN ORDER	<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> EMERGENCY ORDER	

CASE TYPE:

<input type="checkbox"/> AGRICULTURE	<input type="checkbox"/> AIR	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE	<input type="checkbox"/> MUNICIPAL SOLID WASTE
<input type="checkbox"/> OCCUPATIONAL CERTIFICATION	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> RADIOACTIVE WASTE
<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL	<input type="checkbox"/> USED OIL
<input type="checkbox"/> USED OIL FILTER	<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> DRY CLEANER REGISTRATION	

SITE WHERE VIOLATION(S) OCCURRED: 12298 Beechnut Street, Houston, Harris County

TYPE OF OPERATION: Convenience store with retail sales of gasoline

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no previous 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 April 9, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Shawn Slack, Litigation Division, MC 175, (512) 239-0063; Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873

TCEQ Enforcement Coordinator: Mr. J. Craig Fleming, Enforcement Division, Section II, MC 219, (512) 239-0321

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

Respondent: Mr. Mubarak Ali, Registered Agent, Henna Enterprises, Inc. dba Clark Store, 1995 Highway 87, Gilchrist, Texas 77617

Respondent's Attorney: Not represented by counsel.

RESPONDENT'S NAME: HENNA ENTERPRISES, INC. DBA CLARK STORE
DOCKET NO.: 2005-0162-PST-E

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date(s) of Investigation(s) Relating to this Case: October 27, 2004</p> <p>Date(s) of NOV(s)/NOE(s) Relating to this Case: January 8, 2005 and February 18, 2005 (NOVs)</p> <p>Background Facts: An EDRP was filed on December 22, 2005, and on March 13, 2006; however, service was not obtained. An EDFARP was filed on June 21, 2006, and the Respondent received notice of the EDFARP on or about June 26, 2006. The Respondent did not enter into an Agreed Order, nor file an answer or request a hearing.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to equip the Super Unleaded UST with automatic line leak detectors and failed to conduct annual performance tests on the line leak detectors for the remaining two USTs [30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i), and (b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a) and (c)]. Failed to maintain UST records on-site at the Station during business hours [30 TEX. ADMIN. CODE §§ 334.10(b) and 334.48(g)]. Failed to ensure that permanent tags, labels, or markings were applied or affixed to the immediate area of the UST fill tube [30 TEX. ADMIN. CODE § 334.8(c)(5)(C)]. Failed to maintain the Stage II vapor recovery system in proper operating condition [30 TEX. ADMIN. CODE § 115.242(3) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. 	<p>Total Assessed: \$5,500</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>Total Due to General Revenue: \$5,500</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 the Order.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Avg. <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Avg. <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>Corrective Actions Taken</p> <p>The Executive Director recognizes that the Respondent has taken the following corrective actions at the Facility:</p> <ol style="list-style-type: none"> Installed automatic line leak detectors on the Super Unleaded UST on or about November 8, 2004. Additionally, the Respondent conducted an annual performance test on the line leak detectors for the remaining two USTs on or about November 12, 2004. Submitted updated UST records to the TCEQ and certified that records are currently being kept on-site. Installed swivel adaptors on the UST systems on or about November 8, 2004. <p>Ordering Provisions</p> <p>The Respondent's UST delivery certificate is revoked immediately upon the effective date of this Order. The Respondent may submit an application for a new delivery certificate only after the Respondent has complied with all requirements.</p> <p>The Respondent shall undertake the following requirements:</p> <ol style="list-style-type: none"> Within 30 days, tag, label, or mark all USTs. Within 60 days, submit written certification and include detailed supporting documentation including photographs, receipts and/or other records to demonstrate compliance.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) PCW Revision December 10, 2004

DATES	Assigned 18-Jan-2005	PCW 03-Feb-2006	Screening 24-Jan-2005	Priority Due 19-Mar-2005	EPA Due
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RESPONDENT/FACILITY INFORMATION	
Respondent Henna Enterprises, Inc. dba Clark Store	
Reg. Ent. Ref. No. RN102784410	
Additional ID No(s) Petroleum Storage Tank Registration No. 35356	
Facility/Site Region 12-Houston	Major/Minor Source Minor Source

CASE INFORMATION	
Enf./Case ID No. 24046	No. of Violations 4
Docket No. 2005-0162-PST-E	Order Type 1660 without deferral
Case Priority 3	Enf. Coordinator J. Craig Fleming
Media Program(s) Petroleum Storage Tank	EC's Team Enforcement Team 7
Multi-Media	
Admin. Penalty \$ Limit Minimum \$0	Maximum \$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1 \$5,000
ADJUSTMENTS (+/-) TO SUBTOTAL 1	
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>	
Compliance History 10% Enhancement	Subtotals 2, 3, & 7 \$500
Notes The site has received 2 NOVs with same or similar violations.	
Culpability No <input 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
<small>Before NOV NOV to EDRP/Settlement Offer</small>	
Extraordinary 	
Ordinary 	
N/A <input checked="" type="checkbox"/> <small>(mark with a small x)</small>	
Notes The Respondent is not yet in compliance.	
Economic Benefit 0% Enhancement*	Subtotal 6 \$0
<small>Total EB Amounts Approx. Cost of Compliance</small>	<small>*Capped at the Total EB \$ Amount</small>
\$12	\$1,830
SUM OF SUBTOTALS 1-7	Final Subtotal \$5,500
OTHER FACTORS AS JUSTICE MAY REQUIRE	Adjustment \$0
<small>Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)</small>	
Notes 	
	Final Penalty Amount \$5,500
STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty \$5,500
DEFERRAL 0% Reduction	Adjustment \$0
<small>Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)</small>	
Notes No deferral because this is a non-expedited case.	
PAYABLE PENALTY	\$5,500

Screening Date	24-Jan-2005	Docket No.	2005-0162-PST-E	PCW
Respondent	Henna Enterprises, Inc. dba Clark Store			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	24046			<i>PCW Revision December 10, 2004</i>
Reg. Ent. Reference No.	RN102784410			
Additional ID No(s)	Petroleum Storage Tank Registration No. 35356			
Media (Statute)	Petroleum Storage Tank			
Env. Coordinator	J. Craig Fleming			
Site Address	12298 Beechnut Street, Houston, Harris County, Texas 77027			

Compliance History Worksheet

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>	2	10%
	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 judgements 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)</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) 10%

No **Adjustment Percentage (Subtotal 3) 0%**

Average Performer **Adjustment Percentage (Subtotal 7) 0%**

Compliance History Notes The site has received 2 NOVs with same or similar violations.

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

Screening Date 24-Jan-2005

Docket No. 2005-0162-PST-E

PCW

Respondent Henna Enterprises, Inc. dba Clark Store

Policy Revision 2 (September 2002)

Case ID No. 24046

PCW Revision December 10, 2004

Reg. Ent. Reference No. RN102784410

Additional ID No(s). Petroleum Storage Tank Registration No. 35356

Media [Statute] Petroleum Storage Tank

Enf. Coordinator J. Craig Fleming

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description
 The Respondent failed to maintain the Stage II vapor recovery system in proper operating condition. Specifically the swivel (vapor and fill) adaptors were not installed on the UST systems, as documented during an investigation conducted on October 27, 2004.

Base Penalty

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

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="5%"/>
Potential	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>				

Matrix Notes
 Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

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

One single event is recommended based on the investigation date of October 27, 2004.

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 Henna Enterprises, Inc. dba Clark Store
 Case ID No. 24046
 Reg. Ent. Reference No. RN102784410
 Additional ID No(s). Petroleum Storage Tank Registration No. 35356
 Media [Statute] 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
Delayed Costs							
Equipment	\$100	27-Oct-2004	08-Nov-2004	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: Estimated cost to purchase and install a swivel vapor adapter from the investigation date until the date of compliance.

Item	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 TOTAL

Screening Date 24-Jan-2005

Docket No. 2005-0162-PST-E

PCW

Respondent Henna Enterprises, Inc. dba Clark Store

Policy Revision 2 (September 2002)

Case ID No. 24046

PCW Revision December 10, 2004

Reg. Ent. Reference No. RN102784410

Additional ID No(s). Petroleum Storage Tank Registration No. 35356

Media [Statute] Petroleum Storage Tank

Enf. Coordinator J. Craig Fleming

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

The Respondent failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Specifically, the Respondent failed to equip the Super Unleaded UST with automatic line leak detectors and to conduct annual performance tests on the line leak detectors for the remaining two USTs, as documented in an investigation conducted on October 27, 2004.

Base Penalty

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

		Harm		
Release		Major	Moderate	Minor
OR	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Percent

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

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 checked="" type="checkbox"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

One quarterly event is recommended based on the inspection date of October 27, 2004 to the date of the compliance. The automatic line leak detectors were installed on November 8, 2004, and the annual performance test was performed on November 12, 2004.

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 Henna Enterprises, Inc. dba Clark Store
Case ID No. 24046
Reg. Ent. Reference No. RN102784410
Additional ID No(s). Petroleum Storage Tank Registration No. 35356
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)	\$1,500	27-Oct-2004	12-Nov-2004	0.0	\$3	n/a	\$3

Notes for DELAYED costs: Estimated cost for installation of 3 UST Automatic Line Leak Detectors and test pressurized underground product piping for USTs from the investigation date until the date of compliance.

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 \$1,500

TOTAL \$3

Screening Date 24-Jan-2005

Docket No. 2005-0162-PST-E

PCW

Respondent Henna Enterprises, Inc. dba Clark Store

Policy Revision 2 (September 2002)

Case ID No. 24046

PCW Revision December 10, 2004

Reg. Ent. Reference No. RN102784410

Additional ID No(s). Petroleum Storage Tank Registration No. 35356

Media [Statute] Petroleum Storage Tank

Enf. Coordinator J. Craig Fleming

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Base Penalty

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

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

>> **Programmatic Matrix**

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

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

<i>mark only one use a small x</i>	<i>daily</i>	<input type="text"/>
	<i>monthly</i>	<input type="text"/>
	<i>quarterly</i>	<input type="text"/>
	<i>semiannual</i>	<input type="text"/>
	<i>annual</i>	<input type="text"/>
	<i>single event</i>	<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 Henna Enterprises, Inc. dba Clark Store
 Case ID No. 24046
 Reg. Ent. Reference No. RN102784410
 Additional ID No(s). Petroleum Storage Tank Registration No. 35356
 Media [Statute] Petroleum Storage Tank
 Violation No. 3

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	\$200	29-Oct-2004	25-Jun-2005	0.7	\$7	n/a	\$7
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: Estimated cost to establish a record keeping system to maintain UST records from the investigation date until the date of compliance.

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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 **\$200** **TOTAL \$7**

Screening Date 24-Jan-2005 **Docket No.** 2005-0162-PST-E **PCW**

Respondent Henna Enterprises, Inc. dba Clark Store *Policy Revision 2 (September 2002)*

Case ID No. 24046 *PCW Revision December 10, 2004*

Reg. Ent. Reference No. RN102784410

Additional ID No(s). Petroleum Storage Tank Registration No. 35356

Media [Statute] Petroleum Storage Tank

Enf. Coordinator J. Craig Fleming

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Base Penalty

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

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

>> **Programmatic Matrix**

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

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 Henna Enterprises, Inc. dba Clark Store
 Case ID No. 24046
 Reg. Ent. Reference No. RN102784410
 Additional ID No(s). Petroleum Storage Tank Registration No. 35356
 Media [Statute] Petroleum Storage Tank
 Violation No. 4

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)	\$30	27-Oct-2004	27-Oct-2005	1.0	\$2	n/a	\$2

Notes for DELAYED costs

Estimated cost to have the USTs marked with permanent paint from the investigation date until the expected date of compliance.

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

TOTAL

Compliance History

Customer/Respondent/Owner-Operator:	CN602649121 HENNA ENTERPRISES, INC	Classification: AVERAGE	Rating: 3.000
Regulated Entity:	RN102784410 CLARK STORE	Classification: AVERAGE	Site Rating: 3.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	35356
Location:	12298 BEECHNUT ST, HOUSTON, TX, 77072	Rating Date: 9/1/04 Repeat Violator: NO	
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	January 20, 2005		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	January 20, 2000 to January 20, 2005		

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Steven Lopez Phone: 512-239-1896

Site Compliance History Components

- | | |
|--|-----|
| 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 of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |
| 6. Comments: | |

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

- 1 11/24/2003 (254887)
- 2 10/20/2003 (278772)
- 3 06/29/2000 (57449)
- 4 10/31/2003 (252393)

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

Date: 10/31/2003 (252393)

Self Report? NO

Citation: 30 TAC Chapter 115, SubChapter C 115.246(7)(A)

Description: Failure to maintain records on-site at facilities during business hours, and made immediately available for review upon request by the local air program with jurisdiction.

Classification: Minor

Self Report? NO

Citation: 30 TAC Chapter 115, SubChapter C 115.246(6)

Description: Failure to maintain a record of daily inspections

Classification: Minor

Self Report? NO

Citation: 30 TAC Chapter 115, SubChapter C 115.246(4)

Description: Failure to maintain documentation of all Stage II training for each employee.

Classification: Minor

Self Report? NO

Citation: 30 TAC Chapter 115, SubChapter C 115.246(3)

Description: Failure to maintain a maintenance log for all repair/replacements conducted anywhere on the stage II system.

Classification: Minor

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(5)

Description: Failure to maintain a record of the results of testing conducted at the facility.

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(1)

Description: Failure to maintain a copy of the California Air Resources Board (CARB) Executive Order for the Stage II vapor recovery system and any related components installed at the facility.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.244(3)

Description: Failure to conduct a monthly inspection of the components listed in 115.242(3)(J) (pressure/vacuum relief valves, vapor check valves, or Stage I dry breaks that are inoperative or defective).

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.248(1)(G)

Description: Failure to ensure at least one facility representative receive training and instruction in the operation and maintenance of the Stage-II vapor recovery system by successfully completing a training course approved by the Texas Commission on Environmental Quality (TCEQ). (278772)

Date: 10/20/2003

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

Description:

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
AGAINST HENNA ENTERPRISES,
INC. DBA CLARK STORE;
RN102784410**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2005-0162-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's First Amended Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the TCEQ, which requests appropriate relief, including the revocation of the Henna Enterprises, Inc. dba Clark Store's ("Henna" or "Respondent") underground storage tank delivery certificate, the imposition of an administrative penalty, and corrective action of the Respondent.

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

FINDINGS OF FACT

1. Henna owns and operates a convenience store with retail sales of gasoline located at 12298 Beechnut Street, Houston, Harris County, Texas (the "Station").
2. Henna's three USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Henna's USTs contain a regulated petroleum substance as defined in the rules of the Commission. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. During an inspection on October 27, 2004, a TCEQ Houston Regional Office investigator documented that Henna:
 - a. Failed to equip the Super Unleaded UST with automatic line leak detectors and failed to conduct annual performance tests on the line leak detectors for the remaining two USTs.
 - b. Failed to maintain UST records on-site at the Station during business hours.

- c. Failed to ensure that permanent tags, labels, or markings were applied or affixed to the immediate area of the UST fill tube.
 - d. Failed to maintain the Stage II vapor recovery system in proper operating condition. Specifically, the swivel vapor adaptors were not installed on the UST systems.
4. Henna received notice of the violations on or about February 22, 2005, and January 13, 2005.
5. The Executive Director recognizes that Henna has taken the following corrective actions at the Facility:
 - a. Henna installed automatic line leak detectors on the Super Unleaded UST on or about November 8, 2004. Additionally, Henna conducted an annual performance test on the line leak detectors for the remaining two USTs on or about November 12, 2004.
 - b. Henna submitted updated UST records to the TCEQ and certified that records are currently being kept on-site.
 - c. Henna installed swivel adaptors on the UST systems on or about November 8, 2004.
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 and Requiring Certain Actions of Henna Enterprises, Inc. dba Clark Store" (the "EDPRP") in the TCEQ Chief Clerk's office on December 22, 2005, and on March 13, 2006; however, the Executive Director was unable to serve the respondent with notice of the EDPRP within 10 days of filing the EDPRP.
7. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Henna Enterprises, Inc. dba Clark Store" (the "EDFARP") in the TCEQ Chief Clerk's office on June 21, 2006.
8. By letter dated June 21, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Henna with notice of the EDFARP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Henna received notice of the EDFARP.

9. More than 20 days have elapsed since Henna received notice of the EDFARP, provided by the Executive Director. Henna failed to file an answer to the EDPRP or the EDFARP, 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, Henna's USTs are subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE § 382.003(12), and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Henna failed to equip the Super Unleaded UST with automatic line leak detectors and failed to conduct annual performance tests on the line leak detectors for the remaining two USTs, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i), and (b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a) and (c).
3. As evidenced by Finding of Fact No. 3.b., Henna failed to maintain UST records on-site at the Station during business hours, in violation of 30 TEX. ADMIN. CODE §§ 334.10(b) and 334.48(g).
4. As evidenced by Finding of Fact No. 3.c., Henna failed to ensure that permanent tags, labels, or markings were applied or affixed to the immediate area of the UST fill tube in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(C).
5. As evidenced by Finding of Fact No. 3.d., Henna failed to maintain the Stage II vapor recovery system in proper operating condition, in violation of 30 TEX. ADMIN. CODE § 115.242(3) and TEX. HEALTH & SAFETY CODE § 382.085(b).
6. As evidenced by Finding of Fact Nos. 7 and 8, the Executive Director has timely served Henna with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
7. As evidenced by Finding of Fact No. 9, Henna has failed to file a timely answer to the EDFARP, 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 Henna and assess the penalty recommended by the Executive Director.
8. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Henna for violations of the Texas Water Code within the

Commission's jurisdiction; for violations of rules adopted under such statute; or for violations of orders or permits issued under such statute.

9. An administrative penalty in the amount of five thousand five hundred dollars (\$5,500.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
10. 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.
11. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Henna's UST delivery certificate if the Commission finds that good cause exists.
12. Good cause for revocation of Henna's UST delivery certificate exists as justified by Findings of Fact Nos. 3 through 9 and Conclusions of Law Nos. 2 through 7 and 11.

ORDERING PROVISIONS

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

1. Henna is assessed an administrative penalty in the amount of five thousand five hundred dollars (\$5,500.00) for violations of TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 382, and rules of the TCEQ. The payment of this administrative penalty and Henna'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: Henna Enterprises, Inc. dba Clark Store; Docket No. 2005-0162-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 30 days of the effective date of this Order, Henna shall tag, label, or mark all USTs, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(C).

3. Within 60 days of the effective date of this Order, Henna shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts and/or other records to demonstrate compliance with Ordering Provision No. 2.

The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

and

Nicole Bealle, Waste Section Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

4. Henna's UST delivery certificate is revoked immediately upon the effective date of this Order. Henna may submit an application for a new delivery certificate only after Henna has complied with all of the requirements of this Order.
5. Within 10 days after the effective date of this Order, Henna shall send its UST delivery certificate to:

Order Compliance Team
Enforcement Division, MC 149A

Texas Commission on Environmental Quality
P. O. Box 13087
Austin, Texas 78711-3087

6. All relief not expressly granted in this Order is denied.
7. The provisions of this Order shall apply to and be binding upon Henna. Henna is ordered to give notice of this Order to personnel who maintain day-to-day control over the Station operations referenced in this Order.
8. 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 Henna if the Executive Director determines that Henna has not complied with one or more of the terms or conditions in this Order.
9. 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.
10. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order is the date this decision was rendered pursuant to the Administrative Procedure Act, TEX. GOV'T CODE § 2001.144(a)(3).

Henna Enterprises, Inc. dba Clark Stores
Docket No. 2005-0162-PST-E
Page 7

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF SHAWN A. SLACK

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Shawn A. Slack. 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, I 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 and Requiring Certain Actions of Henna Enterprises, Inc. dba Clark Store” (the “EDPRP”) with the Office of the Chief Clerk on December 22, 2005, and on March 13, 2006; however, I was unable to serve the respondent with notice of the EDPRP within 10 days of filing the EDPRP.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the “Executive Director’s First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Henna Enterprises, Inc. dba Clark Store” (the “EDFARP”) in the TCEQ Chief Clerk’s office on June 21, 2006.

I sent the EDFARP to Henna at its last known address June 21, 2006, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Henna received notice of the EDFARP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

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



Shawn A. Slack
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Shawn A. Slack, 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.