EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-2088-PST-E **TCEQ ID:** RN103937389 **CASE NO.:** 31879

RESPONDENT NAME: John Ali Hemati dba Mimbela Fuel & Oil

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	X PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Mimbela Fuel & Oil, 7500 Gateway Boulevard North, El Paso, El Paso County

TYPE OF OPERATION: Convenience store with retail sales of gasoline

SMALL BUSINESS: X **Yes** ___ **No**

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

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 May 7, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Mr. Rajesh Acharya, Enforcement Division, Enforcement Section IV, MC 128, (512) 239-0577; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896
Respondent: Mr. John Ali Hemati, Owner, Mimbela Fuel & Oil, 7500 Gateway Boulevard North, El Paso, Texas 79904
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: ___ Complaint _X_ Routine ___ Enforcement Follow-up ___ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** November 1, 2006 **Date of NOE Relating to this Case:** November 29, 2006(NOE) **Background Facts:** This was a routine investigation. **WASTE** 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 from the operation of petroleum underground storage tanks (USTs) [30 TEX. ADMIN. CODE § 37.815(a) and (b)].	**Total Assessed:** $1,500 **Total Deferred:** $300 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid (Due) to General Revenue:** $100 (the remaining $1,100 shall be paid in 11 monthly payments of $100 each) **Site Compliance History Classification** _X_ **High** __ **Average** __ **Poor** **Person Compliance History Classification** __ **High** __ **Average** __ **Poor** **Major Source:** ___ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that Mr. Hemati has obtained financial assurance for the USTs at the Facility on November 22, 2006.

Penalty Calculation Worksheet (PCW)

TCEQ

Policy Revision 2 (September 2002) — *PCW Revision November 15, 2006*

DATES					
Assigned	4-Dec-2006				
PCW	5-Dec-2006	Screening	5-Dec-2006	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	John Ali Hemati dba Mimbela Fuel & Oil		
Reg. Ent. Ref. No.	RN103937389		
Facility/Site Region	6-El Paso	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	31879	No. of Violations	1
Docket No.	2006-2088-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Rajesh Acharya
Multi-Media		EC's Team	EnforcementTeam 7
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* $2,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 0% Enhancement — *Subtotals 2, 3, & 7* $0

Notes: No adjustment for compliance history.

Culpability — No — 0% Enhancement — *Subtotal 4* $0

Notes: The respondent does not meet the culpability criteria.

Good Faith Effort to Comply — 25% Reduction — *Subtotal 5* $500

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	x	
N/A		(mark with x)

Notes: The respondent came into compliance on November 22, 2006.

0% Enhancement* — *Subtotal 6* $0

**Capped at the Total EB $ Amount*

Total EB Amounts	$0
Approx. Cost of Compliance	$1,300

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $1,500

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 $1,500

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $1,500

DEFERRAL — 20% Reduction — *Adjustment* -$300

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY $1,200

Screening Date	5-Dec-2006	**Docket No.** 2006-2088-PST-E	**PCW**
Respondent	John Ali Hemati dba Mimbela Fuel & Oil		*Policy Revision 2 (September 2002)*
Case ID No.	31879		*PCW Revision November 15, 2006*
Reg. Ent. Reference No.	RN103937389		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Rajesh Acharya		

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 (*number of NOVs meeting criteria*)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	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 (*number of judgements or consent decrees meeting criteria*)	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 (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	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 (*number of audits for which notices were submitted*)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%

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

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes: No adjustment for compliance history.

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

Screening Date	5-Dec-2006	**Docket No.** 2006-2088-PST-E	**PCW**
Respondent	John Ali Hemati dba Mimbela Fuel & Oil		*Policy Revision 2 (September 2002)*
Case ID No.	31879		*PCW Revision November 15, 2006*
Reg. Ent. Reference No.	RN103937389		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Rajesh Acharya		

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 37.815(a) and (b)

Violation Description 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.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 2

38 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $2,000

Two events (one event per tank) are recommended based on documentation of the violation during the November 1, 2006 investigation date.

Economic Benefit (EB) for this violation

Estimated EB Amount $0

Statutory Limit Test

Violation Final Penalty Total $1,500

This violation Final Assessed Penalty (adjusted for limits) $1,500

Economic Benefit Worksheet

Respondent: John Ali Hemati dba Mimbela Fuel & Oil
Case ID No.: 31879
Reg. Ent. Reference No.: RN103937389
Media: Petroleum Storage Tank
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	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							
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]	$1,300	3-Nov-2006	22-Nov-2006	0.0	$0	$0	$0
ONE-TIME avoided costs [3]				0.0	$0	$0	$0
				0.0	$0	$0	$0
Notes for AVOIDED costs	Estimated cost to provide financial assurance for two petroleum USTs ($650 per tank). The Date Required is the date the policy was cancelled and the Final Date is the compliance date.						

Approx. Cost of Compliance: $1,300

TOTAL: $0

Compliance History

Customer/Respondent/Owner-Operator:	CN603114232	ALI HEMATI, JOHN	Classification:	Rating:
Regulated Entity:	RN103937389	MIMBELA FUEL & OIL	Classification: HIGH	Site Rating: 0.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	17836	
Location:	7500 GATEWAY BLVD N, EL PASO, TX, 79904	Rating Date: September 01 06	Repeat Violator: NO	
TCEQ Region:	REGION 06 - EL PASO			
Date Compliance History Prepared:	December 18, 2006			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	December 18, 2001 to December 18, 2006			

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

Name: Patricia Chawla Phone: 512-239-0739

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?	Yes
3. If Yes, who is the current owner?	John Ali Hemati
4. if Yes, who was/were the prior owner(s)?	Mimbela Fuel & Oil Company, L.P.
5. When did the change(s) in ownership occur?	11/01/2006

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 10/24/2003 (250600)
2 07/12/2006 (485392)
3 10/25/2005 (432782)
4 06/30/2004 (278390)
5 06/24/2005 (397434)
6 10/18/2006 (512625)
7 12/07/2004 (343301)
8 10/27/2004 (338711)
9 10/24/2003 (249744)
10 11/29/2006 (518134)
11 11/10/2006 (516412)

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

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	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
JOHN ALI HEMATI	§	
DBA MIMBELA FUEL & OIL	§	**ENVIRONMENTAL QUALITY**
RN103937389		

AGREED ORDER
DOCKET NO. 2006-2088-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding John Ali Hemati dba Mimbela Fuel & Oil ("Mr. Hemati") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Mr. Hemati appear before the Commission and together stipulate that:

1. Mr. Hemati owns and operates a convenience store with retail sales of gasoline at 7500 Gateway Boulevard North in El Paso, El Paso County, Texas (the "Facility").

2. Mr. Hemati's two underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.

3. The Commission and Mr. Hemati agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Hemati is subject to the Commission's jurisdiction.

4. Mr. Hemati received notice of the violations alleged in Section II ("Allegations") on or about December 4, 2006.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Hemati of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of One Thousand Five Hundred Dollars ($1,500) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Hemati has paid One Hundred Dollars ($100) of the administrative penalty and Three Hundred Dollars ($300) is

deferred contingent upon Mr. Hemati's timely and satisfactory compliance with all the terms of this Agreed Order. If Mr. Hemati fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require Mr. Hemati to pay all or part of the deferred penalty.

The remaining amount of One Thousand One Hundred Dollars ($1,100) of the administrative penalty shall be payable in 11 monthly payments of One Hundred Dollars ($100) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If Mr. Hemati fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of Mr. Hemati to meet the payment schedule of this Agreed Order constitutes the failure by Mr. Hemati to timely and satisfactorily comply with all the terms of this Agreed Order.

7. 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.

8. The Executive Director of the TCEQ and Mr. Hemati have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. The Executive Director recognizes that Mr. Hemati has obtained financial assurance for the USTs at the Facility on November 22, 2006.

10. 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 Mr. Hemati has not complied with one or more of the terms or conditions in this Agreed Order.

11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, Mr. Hemati is alleged to have 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, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b), as documented during an investigation conducted on November 1, 2006.

III. DENIALS

Mr. Hemati generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Hemati pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Hemati's compliance with all the terms and conditions set forth in this Agreed 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. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: John Ali Hemati dba Mimbela Fuel & Oil, Docket No. 2006-2088-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. The provisions of this Agreed Order shall apply to and be binding upon Mr. Hemati. Mr. Hemati is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility the operations referenced in this Agreed Order.

3. If Mr. Hemati fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Hemati's failure to comply is not a violation of this Agreed Order. Mr. Hemati shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Hemati shall notify the Executive Director within seven days after Mr. Hemati becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Hemati shall be made in writing to the Executive Director. Extensions are not effective until Mr. Hemati receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

5. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Hemati in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed 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 agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Mr. Hemati, or three days after the date on which the Commission mails notice of the Order to Mr. Hemati, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

_____ 6/28/07
For the Executive Director Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, 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 my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

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

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

_____ 2/15/06
Signature Date

John Alihemati
Name (Printed or typed)
Authorized Representative of
John Ali Hemati dba Mimbela Fuel & Oil

_____
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.