

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2005-0602-PST-E TCEQ ID: RN100861137 CASE NO.: 25174  
RESPONDENT NAME: MOHAMMED A. SWATI DBA SHELDON KING SAVERS FOOD**

<b>ORDER TYPE:</b>		
<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	
<b>CASE TYPE:</b>		
<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
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 11730 Green River Drive, Houston, Harris County</p> <p><b>TYPE OF OPERATION:</b> convenience store with retail sales of gasoline</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on December 8, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Ms. Anna M. Cox, Litigation Division, MC 175, (512) 239-0974                  Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019  <b>TCEQ Enforcement Coordinator:</b> Ms. Merrilee Hupp, Water Enforcement Section, MC 169, (512) 239-4490  <b>TCEQ Regional Contact:</b> Ms. Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623  <b>Respondent:</b> Mr. Mohammed A. Swati, Owner, Sheldon King Savers Food, 8146 9<sup>th</sup> Avenue, Port Arthur, Texas 77642-8014  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter.</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b>                      N/A</p> <p><b>Dates of Investigation Relating to this Case:</b>                      March 14, 2005; July 17, 2006</p> <p><b>Date of NOE Relating to this Case:</b>                      March 17, 2005</p> <p><b>Background Facts:</b>                      The EDPRP was filed on July 31, 2006 and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on August 2, 2006, as evidenced by the signature on the card. The Respondent has failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Current Compliance Status:</b>                      The Respondent self-certified that its financial assurance is current through February 2009. The Respondent's delivery certificate is valid through February 2009.</p> <p><b>PST:</b>                      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><b>Total Assessed:</b> \$4,280</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$4,280</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><b>Site Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Action(s) Taken:</b></p> <p>The Executive Director recognizes that on January 6, 2007, the Respondent obtained 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.</p> <p><b>Technical Requirements:</b>                      The Respondent's delivery certificate is revoked immediately.</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. Within 10 days, send its UST Delivery Certificate to TCEQ.</li> </ol>



Policy Revision 2 (September 2002)

# Penalty Calculation Worksheet (PCW)

PCW Revision December 7, 2004

Assigned PCW	28-Mar-2005 12-Jul-2005	Screening	05-Apr-2005	Priority Due	27-May-2005	EPA Due	
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<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	Mohammed A. Swati dba Sheldon King Savers Food
Reg. Ent. Ref. No.	RN100861137
Additional ID No(s)	Petroleum Storage Tank Facility ID No. 46246
Facility/Site Region	12-Houston
Major/Minor Source	Minor Source

<b>CASE INFORMATION</b>			
Enf./Case ID No.	25174	No. of Violations	1
Docket No.	2005-0602-PST-E	Order Type	1660
Case Priority	3	Enf. Coordinator	Deana Holland
Media Program(s)	Petroleum Storage Tank	EC's Team	Enforcement Team 3
Multi-Media			
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

<b>Penalty Calculation Section</b>	
<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	Subtotal 1 <b>\$4,000</b>
<b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>	
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.	
<b>Compliance History</b>	7% Enhancement <b>Subtotals 2, 3, &amp; 7 \$280</b>
Notes	Enhancement for one NOV with same or similar violations and one NOV without same or similar violations.
<b>Culpability</b>	0% Enhancement <b>Subtotal 4 \$0</b>
Notes	The respondent does not meet the culpability criteria.
<b>Good Faith Effort to Comply</b>	0% Reduction <b>Subtotal 5 \$0</b>
	Before NOV    NOV to EDPRP/Settlement Offer
Extraordinary	
Ordinary	
N/A	X (mark with a small x)
Notes	The respondent is not yet in compliance.
<b>Economic Benefit</b>	0% Enhancement* <b>Subtotal 6 \$0</b>
	*Capped at the Total EB \$ Amount
Total EB Amounts	\$2,730
Approx. Cost of Compliance	\$2,600
<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal \$4,280</b>
<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	Adjustment <b>\$0</b>
Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)	
Notes	
	<b>Final Penalty Amount \$4,280</b>
<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty \$4,280</b>
<b>DEFERRAL</b>	Reduction <b>Adjustment \$0</b>
Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)	
Notes	This is not an expedited case.
<b>PAYABLE PENALTY</b>	<b>\$4,280</b>

Backup\Revised PCW Agenda.opw

**Screening Date** 05-Apr-2005 **Docket No.** 2005-0602-PST-E **PCW**

**Respondent** Mohammed A. Swati dba Sheldon King Savers Food *Policy Revision 2 (September 2002)*

**Case ID No.** 25174 *PCW Revision December 7, 2004*

**Reg. Ent. Reference No.** RN100861137

**Additional ID No(s).** Petroleum Storage Tank Facility ID No. 46246

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** Deana Holland

**Site Address** 11730 Green River Drive, Houston, Harris County

### Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	<i>Enter Number Here</i>	<b>Adjust.</b>
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	1	2%
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 (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 <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)** 7%

>> **Repeat Violator (Subtotal 3)**

No

**Adjustment Percentage (Subtotal 3)** 0%

>> **Compliance History Person Classification (Subtotal 7)**

Average Performer

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

>> **Compliance History Summary**

**Compliance History Notes** Enhancement for one NOV with same or similar violations and one NOV without same or similar violations.

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

Screening Date 05-Apr-2005 Backup\Revised PCW Agenda.gpw Docket No. 2005-0602-PST-E PCW

Respondent Mohammed A. Swati dba Sheldon King Savers Food Policy Revision 2 (September 2002)

Case ID No. 25174 PCW Revision December 7, 2004

Reg. Ent. Reference No. RN100861137

Additional ID No(s) Petroleum Storage Tank Facility ID No. 46246

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Deana Holland

Violation Number 1

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

Secondary Rule Cite(s)

Violation Description 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 \$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 100% of the rule requirement was not met.

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

Violation Events

Number of Violation Events 4

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

Violation Base Penalty \$4,000

Four single events (one per tank) are recommended based upon the record review conducted on March 14, 2005.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2,730

Violation Final Penalty Total \$4,280

This violation Final Assessed Penalty (adjusted for limits) \$4,280

Backup Revised PCW-wb3

### Economic Benefit Worksheet

**Respondent** Mohammed A. Swati dba Sheldon King Savers Food  
**Case ID No.** 25174  
**Reg. Ent. Reference No.** RN100861137  
**Additional ID No(s).** Petroleum Storage Tank Facility ID No. 46246  
**Media [Statute]** Petroleum Storage Tank  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
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	n/a						

<b>Avoided Costs</b>		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]	\$2,600	04-Aug-2002	04-Aug-2003	1.0	\$130	\$2,600	\$2,730
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Notes for AVOIDED costs	The estimated cost (\$650 per tank) to provide financial assurance for four petroleum USTs for one year prior to August 4, 2003 request for financial assurance documentation.						

Approx. Cost of Compliance **\$2,600**

**TOTAL \$2,730**

# Compliance History

Customer/Respondent/Owner-Operator:	CN600968424 Mohammed A. Swati	Classification: AVERAGE	Rating: 1.50
Regulated Entity:	RN100861137 SHELDON KING SAVERS FOOD	Classification: AVERAGE	Site Rating: 1.50
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	46246
Location:	11730 GREEN RIVER DR, HOUSTON, TX, 77044	Rating Date: September 01 05	Repeat Violator: NO
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	March 29, 2005		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	March 29, 2000 to March 29, 2005		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Deana Holland	Phone:	239-2504

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

### Components (Multimedia) for the Site :

- 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 | 03/17/2005 | (374066) |
| 2 | 10/20/2003 | (293096) |
| 3 | 10/30/2002 | (13422)  |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |                  |   |                          |
|------------------|---|--------------------------|
| Date: 10/30/2002 | (13422)   | Classification: Moderate |
| Self Report?     | NO  |                          |
| Citation:        | 30 TAC Chapter 115, SubChapter C 115.245(3)[G]  |                          |
| Description:     | Five year testing not successfully conducted to verify proper operation of the Stage II system. |                          |
|                  |   |                          |
| Date: 10/20/2003 | (293096)  | Classification: Moderate |
| Self Report?     | NO  |                          |
| 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  
MOHAMMAD A. SWATI DBA  
SHELDON KING SAVERS FOOD,  
RN100861137

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BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**DEFAULT ORDER  
DOCKET NO. 2005-0602-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 and corrective action of the respondent. The respondent made the subject of this Order is Mohammad A. Swati dba Sheldon King Savers Food ("Mr. Swati").

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

**FINDINGS OF FACT**

1. Mr. Swati owns a convenience store with retail sales of gasoline located at 11730 Green River Drive, Houston, Harris County, Texas (the "Facility").
2. Mr. Swati's underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Swati's USTs contain a regulated substance as defined in the rules of the Commission.
3. During record review investigations conducted on March 14, 2005, a TCEQ Central Office investigator documented that Mr. Swati violated 30 TEX. ADMIN. CODE § 37.815(a) and (b) by failing 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. Mr. Swati received notices of the violation described in paragraph 3 on or about March 22, 2005.
5. The Executive Director recognizes that on January 6, 2007, Mr. Swati obtained 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.

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 Mohammad A. Swati dba Sheldon King Savers Food" (the "EDPRP") in the TCEQ Chief Clerk's office on July 31, 2006.
7. By letter dated July 31, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Swati with notice of the EDPRP. According to the return receipt "green card", Mr. Swati received notice of the EDPRP on August 2, 2006, as evidenced by the signature on the card.
8. More than 20 days have elapsed since Mr. Swati received notice of the EDPRP, provided by the Executive Director. Mr. Swati 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, Mr. Swati is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Swati 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).
3. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director has timely served Mr. Swati with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No.8, Mr. Swati 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 Mr. Swati and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Swati 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 issued under such statute.

7. An administrative penalty in the amount of four thousand two hundred eighty dollars (\$4,280.00) 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.
9. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Mr. Swati's UST delivery certificate if the Commission finds that good cause exists.
10. Good cause for revocation of Mr. Swati's UST delivery certificate exists as justified by Findings of Fact Nos. 3, 5, 6, 7, and 8 and Conclusions of Law Nos. 2 through 4.

### ORDERING PROVISIONS

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

1. Mr. Swati is assessed an administrative penalty in the amount of four thousand two hundred eighty dollars (\$4,280.00) for violations of TEX. WATER CODE ch. 26, rules of the TCEQ, and a commission order. The payment of this administrative penalty and Mr. Swati'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: Mohammad A. Swati dba Sheldon King Savers Food; Docket No. 2005-0602-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. Mr. Swati's UST delivery certificate is revoked immediately upon the effective date of this Order. Mr. Swati may submit an application for a new delivery certificate only after Mr. Swati has complied with all of the requirements of this Order.
3. Within 10 days after the effective date of this Order, Mr. Swati shall send his UST delivery certificate to:

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

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Mr. Swati. Mr. Swati is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
6. If Mr. Swati 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, Mr. Swati's failure to comply is not a violation of this Order. Mr. Swati shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Swati shall notify the Executive Director within seven days after Mr. Swati becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. 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 Mr. Swati shall be made in writing to the Executive Director. Extensions are not effective until Mr. Swati receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
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 Mr. Swati if the Executive Director determines that Mr. Swati 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 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

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For the Commission

**AFFIDAVIT OF ANNA M. COX**

STATE OF TEXAS §

COUNTY OF TRAVIS §

“My name is Anna M. Cox. 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 and Requiring Certain Actions of Mohammad A. Swati dba Sheldon King Savers Food” (the “EDPRP”) was filed with the Office of the Chief Clerk on July 31, 2006.

The EDPRP was sent to Mr. Swati at his last known address on July 31, 2006 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card”, Mr. Swati received notice of the EDPRP on August 2, 2006, as evidenced by the signature on the card.

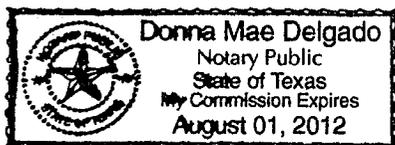
More than 20 days have elapsed since Mr. Swati received notice of the EDPRP. Mr. Swati failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”



\_\_\_\_\_  
Anna M. Cox  
Attorney  
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 23<sup>rd</sup> day of October A.D., 2008.



\_\_\_\_\_  
Notary Signature