EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-0985-PST-E **TCEQ ID:** RN102230679 **CASE NO.:** 36063

RESPONDENT NAME: Meheboob Momin dba M & S Grocery

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: M & S Grocery, 10876 Farm-to-Market Road 1130, Orange, Orange 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 November 24, 2008. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Mr. Thomas Greimel, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-5690; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171

Respondent: Mr. Meheboob Momin, Owner, M & S Grocery, 10876 Farm-to-Market Road 1130, Orange, Texas 77632

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:** April 1, 2008 **Date of NOV/NOE Relating to this Case:** May 30, 2008 (NOE) **Background Facts:** This was a routine investigation. **WASTE** 1) Failure to maintain Stage II records at the Station and make them immediately available for review upon request by a TCEQ representative. Specifically, a copy of the applicable California Air Resource Board ("CARB") Executive Order was not available for inspection [30 TEX. ADMIN. CODE § 115.246(1) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. 2) Failure to verify proper operation of the Stage II equipment at least once every 12 months. Specifically, annual testing of the Stage II equipment had not been conducted [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b]. 3) Failure to upgrade the Stage II equipment to onboard refueling vapor recovery ("ORVR") compatible systems [30 TEX. ADMIN. CODE § 115.242(1)(C) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. 4) Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and applicable CARB Executive Order, and free of defects that would impair the effectiveness of the system including, but not limited to, absence or disconnection of any component that is part of the approved system. Specifically, the hose on dispenser	**Total Assessed:** $5,327 **Total Deferred:** $1,065 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid (Due) to General Revenue:** $132 (remaining $4,130 due in 35 monthly payments of $118 each) **Site Compliance History Classification** ___ **High** _X_ **Average** ___ **Poor** **Person Compliance History Classification** ___ **High** _X_ **Average** ___ **Poor** **Major Source:** ___ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Station: a. Began maintaining all Stage II records including the CARB Executive Order on June 12, 2008; b. Successfully conducted the required annual testing of the Stage II equipment on May 14, 2008; c. Upgraded the Stage II equipment to an ORVR compatible system on June 12, 2008; and d. Installed a new hose on dispenser number 2 on June 12, 2008. **Ordering Provisions:** The Order will require the Respondent to: a. Within 30 days after the effective date of this Agreed Order, post operating instructions in front of each dispenser equipped with a Stage II system; and b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.

number 2 was kinked and was splitting apart [30 TEX. ADMIN. CODE § 115.242(3)(B) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. 5) Failure to post operating instructions in front of each dispenser equipped with a Stage II system. Specifically, operating instructions were either unreadable or missing from the dispenser [30 TEX. ADMIN. CODE § 115.242(9) and TEX. HEALTH & SAFETY CODE § 382.085(b)].		

Additional ID No(s).: 47248

Penalty Calculation Worksheet (PCW)

TCEQ

Policy Revision 2 (September 2002) — *PCW Revision June 12, 2008*

DATES					
Assigned	2-Jun-2008				
PCW	13-Jun-2008	Screening	17-Jun-2008	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Meheboob Momin dba M & S Grocery		
Reg. Ent. Ref. No.	RN102230679		
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	36063	No. of Violations	3
Docket No.	2008-0985-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Thomas Greimel
		EC's Team	Enforcement Team 6

Admin. Penalty $ Limit Minimum $0 Maximum $10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* **$4,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 10.0% Enhancement — *Subtotals 2, 3, & 7* **$450**

Notes: Enhancement for two NOVs with same or similar violations.

Culpability No 0.0% Enhancement — *Subtotal 4* **$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments — *Subtotal 5* **$725**

Economic Benefit 0.0% Enhancement* — *Subtotal 6* **$0**

Total EB Amounts $1,155
Approx. Cost of Compliance $4,350

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal* **$4,225**

OTHER FACTORS AS JUSTICE MAY REQUIRE 26.1% — *Adjustment* **$1,102**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with Violation No. 2.

Final Penalty Amount **$5,327**

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* **$5,327**

DEFERRAL 20.0% Reduction — *Adjustment* **$1,065**

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 **$4,262**

Screening Date	17-Jun-2008	**Docket No.** 2008-0985-PST-E	**PCW**
Respondent	Meheboob Momin dba M & S Grocery		*Policy Revision 2 (September 2002)*
Case ID No.	36063		*PCW Revision June 12, 2008*
Reg. Ent. Reference No.	RN102230679		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Thomas Greimel		

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*)	2	10%
	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) 10%

>> 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 two NOVs with same or similar violations.

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

PCW

Policy Revision 2 (September 2002)
PCW Revision June 12, 2008

Screening Date	17-Jun-2008
Docket No.	2008-0985-PST-E
Respondent	Meheboob Momin dba M & S Grocery
Case ID No.	36063
Reg. Ent. Reference No.	RN102230679
Media [Statute]	Petroleum Storage Tank
Enf. Coordinator	Thomas Greimel
Violation Number	1
Rule Cite(s)	30 Tex. Admin. Code § 115.246(1) and Tex. Health & Safety Code § 382.085(b)
Violation Description	Failed to maintain Stage II records at the Station and make them immediately available for review upon request by a TCEQ representative. Specifically, a copy of the applicable California Air Resources Board (CARB) Executive Order was not available for inspection.

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: 1

77 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $1,000

One single event is recommended based on documentation of the violation during the April 1, 2008 investigation.

Good Faith Efforts to Comply

10.0% Reduction — $100

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

Notes: The Respondent came into compliance on June 12, 2008.

Violation Subtotal $900

Economic Benefit (EB) for this violation

Estimated EB Amount $1

Statutory Limit Test

Violation Final Penalty Total $1,261

This violation Final Assessed Penalty (adjusted for limits) $1,261

Economic Benefit Worksheet

Respondent Meheboob Momin dba M & S Grocery
Case ID No. 36063
Reg. Ent. Reference No. RN102230679
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				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System	$100	1-Apr-2008	12-Jun-2008	0.20	$1	n/a	$1
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)				0.00	$0	n/a	$0
Notes for DELAYED costs	Estimated cost to maintain required Stage II records. The Date Required is the date of the investigation and the Final Date is the date of compliance.						
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Notes for AVOIDED costs							

Approx. Cost of Compliance $100

TOTAL $1

Screening Date 17-Jun-2008 **Docket No.** 2008-0985-PST-E **PCW**

Respondent Meheboob Momin dba M & S Grocery

Policy Revision 2 (September 2002)

Case ID No. 36063

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN102230679

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 115.245(2) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to verify proper operation of the Stage II equipment at least once every 12 months. Specifically, annual testing of the Stage II equipment had not been conducted.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment 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 $7,500

$2,500

Violation Events

Number of Violation Events: 1

365 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	x
single event	

Violation Base Penalty $2,500

One annual event is recommended for the 12-month period preceding the April 1, 2008 investigation date.

Good Faith Efforts to Comply

25.0% Reduction $625

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

Notes: The Respondent came into compliance on May 14, 2008.

Violation Subtotal $1,875

Economic Benefit (EB) for this violation

Estimated EB Amount $1,102

Statutory Limit Test

Violation Final Penalty Total $2,680

This violation Final Assessed Penalty (adjusted for limits) $2,680

Economic Benefit Worksheet

Respondent Meheboob Momin dba M & S Grocery
Case ID No. 36063
Reg. Ent. Reference No. RN102230679
Media 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
	No commas or $						
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)				0.00	$0	n/a	$0
Notes for DELAYED costs							
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]	$1,000	1-Apr-2007	14-May-2008	2.04	$102	$1,000	$1,102
Other (as needed)				0.00	$0	$0	$0
Notes for AVOIDED costs	Estimated cost for annual testing to verify proper operation of the Stage II equipment. The Date Required is one year prior to the investigation date and the Final Date is the date of compliance.						

Approx. Cost of Compliance $1,000

TOTAL $1,102

Screening Date 17-Jun-2008 **Docket No.** 2008-0985-PST-E **PCW**

Respondent Meheboob Momin dba M & S Grocery *Policy Revision 2 (September 2002)*

Case ID No. 36063 *PCW Revision June 12, 2008*

Reg. Ent. Reference No. RN102230679

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 115.242(1)(C), (3)(B), and (9) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to upgrade the Stage II equipment to onboard refueling vapor recovery ("ORVR") compatible systems. Also, failed to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system including, but not limited to absence or disconnection of any component that is part of the approved system. Specifically, the hose on dispenser number 2 was kinked and was splitting apart. Also, failed to post operating instructions in front of each dispenser equipped with a Stage II system. Specifically, operating instructions were either unreadable or missing from the dispensers.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential		x	

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

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

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 1 — 77 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $1,000

One quarterly event is recommended from the April 1, 2008 investigation date to the June 17, 2008 screening date.

Good Faith Efforts to Comply

0.0% Reduction — $0

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

Notes: The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal $1,000

Economic Benefit (EB) for this violation

Estimated EB Amount $52

Statutory Limit Test

Violation Final Penalty Total $1,387

This violation Final Assessed Penalty (adjusted for limits) $1,387

Economic Benefit Worksheet

Respondent Meheboob Momin dba M & S Grocery
Case ID No. 36063
Reg. Ent. Reference No. RN102230679
Media Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment	$3,000	1-Apr-2008	12-Jun-2008	0.20	$2	$39	$41
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)	$250	1-Apr-2008	31-Jan-2009	0.84	$10	n/a	$10

Notes for DELAYED costs: Estimated cost to upgrade the Stage II equipment to ORVR compatible systems, to install a new hose on dispenser number 2, and post legible operating instructions on all dispensers with a Stage II system. The Dates Required are the investigation date. The Final Date for the ORVR hose is the compliance date. The Final Date for the Operating Instructions is the expected compliance date.

Avoided Costs							
	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0

Notes for AVOIDED costs:

Approx. Cost of Compliance $3,250

TOTAL $52

Compliance History

Customer/Respondent/Owner-Operator:	CN601676273	MOMIN, MEHEBOOB	Classification: AVERAGE	Rating: 6.25
Regulated Entity:	RN102230679	M & S GROCERY	Classification: AVERAGE	Site Rating: 6.25
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	47248	
Location:	10876 FM 1130, ORANGE, TX, 77632		Rating Date: 9/1/2007	Repeat Violator: NO
TCEQ Region:	REGION 10 - BEAUMONT			
Date Compliance History Prepared:	June 17, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	June 17, 2003 to June 17, 2008			

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

Name: Thomas Greimel Phone: (512) 239-5690

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

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 11/30/2004 (337135)
2 03/15/2005 (348716)
3 02/16/2007 (539144)
4 05/30/2008 (653492)

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

Date: 11/30/2004 (337135)

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 for the vapor recovery system, and insure that they are available for review.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)
Description: Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s), and free of defects that would impair the effectiveness of the system.
Failure to maintain the Stage II vapor recovery system in proper operating conditi

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.45(c)(3)(A)
Description: Failure to have the shear valve securely anchored on the dispenser product piping.

Date: 02/16/2007 (539144)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.244(3)
Description: Failure to conduct monthly inspections of the Stage II vapor recovery equipment.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.244(1)
Description: Failure to conduct daily inspections of the Stage II vapor recovery equipment.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.246(4)
Description: Failure to maintain proof of attendance and completion of the training specified in §115.248 of this title (relating to Training Requirements), with the documentation of all Stage II training for each employee to be maintained as long as that employee continues to work at the facility.
Self Report? NO Classification: Moderate
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(s) 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 115.245(2)
Description: Failure to verify proper operation of the Stage II equipment at least once every 12 months, and the Stage II Vapor Space Manifolding and Dynamic Pressure Performance at least once every 36 months.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(B)
Description: Failure to maintain the Stage II vapor recovery system in proper operating condition

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 MEHEBOOB MOMIN DBA M & S GROCERY RN102230679	§ § § § §	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2008-0985-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 Meheboob Momin dba M & S Grocery ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a convenience store with retail sales of gasoline at 10876 Farm-to-Market Road 1130 in Orange, Orange County, Texas (the "Station").

2. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).

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

4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about June 4, 2008.

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

6. An administrative penalty in the amount of Five Thousand Three Hundred Twenty-Seven Dollars ($5,327) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Hundred Thirty-Two Dollars ($132) of the

administrative penalty and One Thousand Sixty-Five Dollars ($1,065) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Four Thousand One Hundred Thirty Dollars ($4,130) of the administrative penalty shall be payable in 35 monthly payments of One Hundred Eighteen Dollars ($118) 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 the Respondent 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 the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent 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 the Respondent 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 the Respondent has implemented the following corrective measures at the Station:

   a. Began maintaining all Stage II records including the California Air Resources Board ("CARB") Executive Order on June 12, 2008.

   b. Successfully conducted the required annual testing of the Stage II equipment on May 14, 2008.

   c. Upgraded the Stage II equipment to an onboard refueling vapor recovery ("ORVR") compatible system on June 12, 2008.

   d. Installed a new hose on dispenser number 2 on June 12, 2008.

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 the Respondent 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 Station, the Respondent is alleged to have:

1. Failed to maintain Stage II records at the Station and make them immediately available for review upon request by a TCEQ representative, in violation of 30 TEX. ADMIN. CODE § 115.246(1) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on April 1, 2008. Specifically, a copy of the applicable CARB Executive Order was not available for inspection.

2. Failed to verify proper operation of the Stage II equipment at least once every 12 months, in violation of 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on April 1, 2008. Specifically, annual testing of the Stage II equipment had not been conducted.

3. Failed to upgrade the Stage II equipment to ORVR compatible systems, in violation of 30 TEX. ADMIN. CODE § 115.242(1)(C) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on April 1, 2008.

4. Failed to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and applicable CARB Executive Order, and free of defects that would impair the effectiveness of the system including, but not limited to absence or disconnection of any component that is part of the approved system, in violation of 30 TEX. ADMIN. CODE § 115.242(3)(B) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on April 1, 2008. Specifically, the hose on dispenser number 2 was kinked and was splitting apart.

5. Failed to post operating instructions in front of each dispenser equipped with a Stage II system, in violation of 30 TEX. ADMIN. CODE § 115.242(9) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on April 1, 2008. Specifically, operating instructions were either unreadable or missing from the dispenser.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent'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: Meheboob Momin dba M & S Grocery, Docket No. 2008-0985-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. It is further ordered that the Respondent shall undertake the following technical requirements:

   a. Within 30 days after the effective date of this Agreed Order, post operating instructions in front of each dispenser equipped with a Stage II system, in accordance with 30 TEX. ADMIN. CODE § 115.242; and

   b. Within 45 days after the effective date of this Agreed Order, 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.a. 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

   with a copy to:

   Waste Section Manager
   Beaumont Regional Office
   Texas Commission on Environmental Quality
   3870 Eastex Freeway
   Beaumont, Texas 77703-1892

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Station operations referenced in this Agreed Order.

4. If the Respondent 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, the Respondent's failure to comply is not a violation of this Agreed Order. The

Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. 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 the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent 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.

7. 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.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, 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

_____ 10/30/2008
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 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 failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- 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;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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

Meheboob Momin _____ 09-08-08
Signature Date

MEHEBOOB MOMIN _____ President
Name (Printed or typed) Title
Authorized Representative of
Meheboob Momin dba M & S Grocery

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.