

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2006-1001-PST-E TCEQ ID: RN102030186 CASE NO.: 30327
RESPONDENT NAME: SHALYNAH, INC. DBA SAMMYS 3

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

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

SITE WHERE VIOLATION(S) OCCURRED: 1601 West Fairmont Parkway, La Porte, Harris County

TYPE OF OPERATION: Convenience store with retail sales of gasoline

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility 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 July 14, 2008. No comments were received.

CONTACTS AND MAILING LIST:
TCEQ Attorney: Ms. Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019
TCEQ Enforcement Coordinator: Mr. Rajesh Acharya, Waste Enforcement Section, MC 128, (512) 239-0577
TCEQ Regional Contact: Ms. Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623
Respondent: Mr. Ashiff Bhanji, President and Registered Agent, Shalynah, Inc. dba Sammys 3, 9700 Spenser Highway, Pasadena, Texas 77571-4072
Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: May 15, 2006</p> <p>Date of NOE Relating to this Case: June 21, 2006</p> <p>Background Facts:</p> <p>The EDPRP was filed on May 18, 2007. A Default Order was set for the May 21, 2008, agenda but was remanded when the Respondent signed an Agreed Order on May 19, 2008.</p> <p>Current Compliance Status:</p> <p>The Respondent no longer owns the Facility as of August 1, 2008.</p> <p>PST:</p> <p>1. Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances as a motor fuel [30 TEX. ADMIN. CODE § 334.8(c)].</p> <p>2. Failed to test the line leak detectors at least once per year for performance and operational reliability, failed to provide release detection for the piping associated with the USTs, failed to provide release detection for the USTs by failing to conduct inventory volume measurements in conjunction with automatic tank gauging, and failed to put the ATG into mode to perform an automatic test for substance loss capable of detecting a release of .2 gallon per hour from any portion of the tank containing regulated substances [30 TEX. ADMIN. CODE §§ 334.50(b)(2)(A)(i)(III), (b)(2)(A)(ii), (d)(4)(A)(i), and (d)(4)(A)(ii)(II), and TEX. WATER CODE § 26.3475(a) and (c)(1)].</p> <p>3. Failed to equip each UST with a valve or other device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level no higher than the 95% capacity level of the tank [30 TEX. ADMIN. CODE § 334.51(b) and TEX. WATER CODE § 26.3475(c)(2)].</p>	<p>Total Assessed: \$11,790</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid/Due to General Revenue: \$415/\$11,375</p> <p>The Respondent has paid \$415 of the administrative penalty. The remaining amount of \$11,375 of the administrative penalty shall be payable in 35 monthly payments of \$325 each.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Technical Requirements</p> <p>The Respondent shall undertake the following technical requirements:</p> <p>1. Immediately, begin conducting effective manual or automatic inventory control procedures for all USTs.</p> <p>2. Within 30 days:</p> <p>a. Implement a release detection method for all USTs at the Facility, perform testing of the line leak detectors at least once per year for performance and operational reliability, and conduct annual piping test;</p> <p>b. Equip the UST system with overflow prevention equipment; and</p> <p>c. Submit documentation that demonstrates 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>3. Within 45 days, submit written certification to demonstrate compliance with these Ordering Provisions.</p>

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>4. 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>		



Policy Revision 2 (September 2002)

PCW Revision May 19, 2005

DATES	Assigned 10-Jul-2006	PCW 04-Nov-2006	Screening 18-Jul-2006	EPA Due
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RESPONDENT/FACILITY INFORMATION	
Respondent	Shalynah, Inc. dba Sammys 3
Reg. Ent. Ref. No.	RN102030186
Facility/Site Region	12-Houston
Major/Minor Source	Minor Source

CASE INFORMATION			
Enf./Case ID No.	30327	No. of Violations	4
Docket No.	2006-1001-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Deana Holland
Multi-Media		EC's Team	Enforcement Team 7
Admin. Penalty \$	Limit Minimum \$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$9,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	31% Enhancement	Subtotal 2, 3, & 7	\$2,790
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Notes: Enhancement due to one NOV with same or similar violations, three NOVs without same or similar violations, and one 1660 Order.

Culpability	No <input checked="" type="checkbox"/>	0% Enhancement	Subtotal 4	\$0
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Notes: The respondent does not meet the culpability criteria

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>
Ordinary	<input type="checkbox"/>	<input type="checkbox"/>
N/A	<input checked="" type="checkbox"/>	(mark with a small x)

Notes: The respondent does not meet the good faith criteria

Economic Benefit	0% Enhancement	Subtotal 6	\$0
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Total EB Amounts	\$2,139	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$4,200	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$11,790
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OTHER FACTORS AS JUSTICE MAY REQUIRE	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

Final Penalty Amount \$11,790

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$11,790
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DEFERRAL	Reduction	Adjustment	\$0
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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.

PAYABLE PENALTY		\$11,790
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Screening Date: 11-2006
 Respondent: Shalynah, Inc. dba Sammys 3
 Case ID No: 30327
 Reg. Ent. Reference No: RN102030186
 Media (Statute): Petroleum Storage Tank
 Enf. Coordinator: Deana Holland

PCW
 Policy Revision 2 (September 2002)
 PCW Revision May 19, 2005

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)	1	5%
	Other written NOVs	3	6%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	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 disclosed)	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%
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 31%

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History/Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes: Enhancement due to one NOV with same or similar violations, three NOVs without same or similar violations, and one 1660 Order

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

Screening Date: 11/04/06
 Respondent: Shalynah, Inc. dba Sammys 3
 Case ID No.: 30327
 Reg. Ent. Reference No.: RN102030186
 Media (Statute): Petroleum Storage Tank
 Enf. Coordinator: Deana Holland
 Violation Number: 1
 Primary Rule Cite(s): 30 Tex. Admin. Code § 334.48(c)
 Secondary Rule Cite(s):
 Violation Description: Failure to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances as a motor fuel.

PCW
 Policy Revision 2 (September 2002)
 PCW Revision May 19, 2005

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	X		

Percent 25%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor

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 -\$7,500

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 4

mark only one use a small x

daily	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty \$2,500

One quarterly event is recommended from the May 15, 2006 investigation date to the July 18, 2006 screening date.

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount \$18

Violation Final Penalty Total \$3,275

This violation Final Assessed Penalty (adjusted for limits) \$3,275

Division Cases\LD\Sammys\Revised PCW\wb3
Economic Benefit Worksheet

Respondent: Shalynah, Inc. dba Sammys 3
 Case ID No: 30327
 Reg. Ent. Reference No: RN102030186
 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	IEB 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)	\$500	15-May-2006	01-Feb-2007	0.7	\$18	n/a	\$18

Notes for DELAYED costs: Estimated cost of conducting proper inventory control procedures. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

Item Description	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)	Yrs	Interest Saved	Onetime Costs	IEB Amount
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: n/a

Approx. Cost of Compliance TOTAL

Screening Date 11/04/06 Division\Cases\LD\Sammys\Revised PCW.wb3 Docket No: 2006-1001-P

PCW

Respondent Shalynah, Inc. dba Sammys 3

Policy Revision 2 (September 2002)

Case ID No. 30327

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN102030186

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Deana Holland

Violation Number 2

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(2)(A)(i)(II), 334.50(b)(2)(A)(ii), 334.50(d)(4)(A)(i), and 334.50(d)(4)(A)(ii)(II)

Secondary Rule Cite(s) Tex. Water Code § 26.3475(a) and (c)(1)

Violation Description Failed to test the line leak detectors at least once per year for performance and operational reliability. Specifically, the line leak detectors had not been performance tested annually. Failed to provide release detection for the piping associated with the USTs. Specifically, the respondent did not conduct monthly monitoring or annual piping tightness test. Failed to provide release detection for the USTs by failing to conduct inventory volume measurements in conjunction with automatic tank gauging, and failed to put the A.T.G. into test mode to perform an automatic test for substance loss capable of detecting a release of 0.2 gallon per hour from any portion of the tank containing regulated substances.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

		Harm			
		Major	Moderate	Minor	
OR	Actual				Percent 25%
	Potential	X			

>> Programmatic Matrix

		Major	Moderate	Minor	
Falsification					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 -\$7,500

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 1

mark only one use a small x

daily	
monthly	
quarterly	X
semiannual	
annual	
single event	

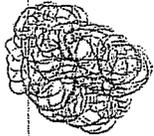
Violation Base Penalty \$2,500

One quarterly event is recommended from the May 15, 2006 investigation date to the July 18, 2006 screening date.

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount \$60 Violation Final Penalty Total \$3,275

This violation Final Assessed Penalty (adjusted for limits) \$3,275



Economic Benefit Worksheet

Respondent: Shalynah, Inc. dba Sammys 3
 Case ID No: 30327
 Reg. Ent. Reference No: RN102030186
 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	One-time Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0		\$0
Buildings				0.0	\$0		\$0
Other (as needed)				0.0	\$0		\$0
Engineering/construction				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	15-May-2006	01-Mar-2007	0.8	\$60	n/a	\$60

Notes for DELAYED costs: Estimated cost to provide release detection for the USTs and the piping associated with the USTs. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

Item Description	Item Cost	Date Required	Final Date	Yrs.	Interest Saved	One-time Costs	EB Amount
Avoided Costs							
Disposal				0.0	\$0		\$0
Personnel				0.0	\$0		\$0
Inspection/Reporting/Sampling				0.0	\$0		\$0
Supplies/equipment				0.0	\$0		\$0
Financial Assurance [2]				0.0	\$0		\$0
ONE-TIME avoided costs [3]				0.0	\$0		\$0
Other (as needed)				0.0	\$0		\$0

Notes for AVOIDED costs: n/a

Approx. Cost of Compliance **\$1,500** TOTAL **\$60**

Screening Date 1 -2006 Division\Cases\LD\Sammys Revised PCW.wb3
 Docket No: 2006-1001-Pc

PCW

Policy Revision 2 (September 2002)

PCW Revision May 19, 2005

Respondent Shalynah, Inc. dba Sammys 3
 Case ID No. 30327
 Reg. Ent. Reference No. RN102030186
 Media [Statute] Petroleum Storage Tank
 Ent. Coordinator Deana Holland

Violation Number
 Primary Rule Cite(s) 30 Tex. Admin. Code §.334.51(b)
 Secondary Rule Cite(s) Tex. Water Code §.26.3475(c)(2)

Violation Description Failed to equip each UST with a valve or other device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level no higher than the 95% capacity level for the tank. Specifically, the respondent did not install overfill prevention equipment.

Base Penalty

Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text" value="10%"/>
Potential	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

Programmatic Matrix

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

Matrix Notes Human health or the environment will or 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

Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one use a small x

daily	<input type="checkbox"/>
monthly	<input type="checkbox"/>
quarterly	<input checked="" type="checkbox"/>
semiannual	<input type="checkbox"/>
annual	<input type="checkbox"/>
single event	<input type="checkbox"/>

Violation Base Penalty

One quarterly event is recommended from the May 15, 2006 investigation date to the July 18, 2006 screening date.

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: Shalynah, Inc. dba Sammys 3
 Case ID No: 30327
 Reg. Ent. Reference No: RN102030186
 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	\$250	15-May-2006	01-Mar-2007	0.8	\$1	\$13	\$14
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 install a valve or other appropriate device for overfill prevention. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

Item Description	ANNUALIZE (1) avoided costs before entering item (except for one-time avoided costs)	Yrs	Interest Saved	Onetime Costs	EB Amount
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: n/a

Approx. Cost of Compliance **\$250** **TOTAL** **\$14**

Screening Date: 1-2006
 Respondent: Shalynah, Inc. dba Sammys 3
 Case ID No: 30327
 Reg. Ent. Reference No: RN102030186
 Media (Statute): Petroleum Storage Tank
 Enf. Coordinator: Deana Holland

PCW
 Policy Revision 2 (September 2002)
 PCW Revision May 19, 2005

Violation Number: 4
 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: 3

mark only one use a small x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty: \$3,000

Three single events (one per tank) are recommended based upon the investigation conducted on May 15, 2006.

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount: \$2,048

Violation Final Penalty Total: \$3,930

This violation Final Assessed Penalty (adjusted for limits): \$3,930

Economic Benefit Worksheet

Respondent: Shalynah, Inc. dba Sammys 3
 Case ID No: 30327
 Reg. Ent. Reference No: RN102030186
 Media (Statute): Petroleum Storage Tank
 Violation No: 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Mrs. Interest Saved	One-time Costs	EB Amount
Delayed Costs						
Equipment				0.0	\$0	\$0
Buildings				0.0	\$0	\$0
Other (as needed)				0.0	\$0	\$0
Engineering/construction				0.0	\$0	\$0
Land				0.0	\$0	\$0
Record Keeping System				0.0	\$0	\$0
Training/Sampling				0.0	\$0	\$0
Remediation/Disposal				0.0	\$0	\$0
Permit Costs				0.0	\$0	\$0
Other (as needed)				0.0	\$0	\$0
Notes for DELAYED costs	n/a					

Item Description	ANNUALIZED (1) avoided costs before entering item (except for one-time avoided costs)	Item Cost	Date Required	Final Date	Mrs. Interest Saved	One-time Costs	EB Amount
Avoided Costs							
Disposal					0.0	\$0	\$0
Personnel					0.0	\$0	\$0
Inspection/Reporting/Sampling					0.0	\$0	\$0
Supplies/equipment					0.0	\$0	\$0
Financial Assurance [2]	\$1,950	15-May-2005	15-May-2006	1.0	\$98	\$1,950	\$2,048
ONE-TIME avoided costs [3]					0.0	\$0	\$0
Other (as needed)					0.0	\$0	\$0
Notes for AVOIDED costs	The estimated cost (\$650 per tank) to provide financial assurance for three petroleum USTs. The Date Required is one year prior to the investigation date. The Final Date is the investigation date.						

Approx. Cost of Compliance **\$1,950**

TOTAL \$2,048

Compliance History

Customer/Respondent/Owner-Operator:	CN602720492 Shalynah, Inc.	Classification: AVERAGE	Rating: 3.41
Regulated Entity:	RN102030186 SAMMYS 3	Classification: AVERAGE	Site Rating: 9.17
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	69277
Location:	1601 W FAIRMONT PKWY, LA PORTE, TX, 77571 Rating Date: September 09/01/ 2005 Repeat Violator: NO		
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	July 23, 2006		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	July 23, 2001 to July 23, 2006		

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

Name: Deana Holland Phone: (512) 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? | Yes |
| 3. If Yes, who is the current owner? | <u>Shalynah, Inc.</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>Sampri Investments, LLC</u> |
| 5. When did the change(s) in ownership occur? | <u>December 31, 2005</u> |

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 Effective Date: 06/27/2005 ADMINORDER 2004-1108-PST-E
- Classification: Moderate
- Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)
 30 TAC Chapter 37, SubChapter I 37.815(b)
- 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.
- 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.)
- | | | | |
|-----|---|------------|----------|
| N/A | 1 | 09/27/2002 | (275197) |
| | 2 | 11/15/2002 | (16359) |
| | 3 | 02/26/2003 | (25976) |
| | 4 | 04/30/2003 | (35351) |
| | 5 | 07/08/2004 | (279049) |
| | 6 | 01/30/2006 | (451818) |
| | 7 | 06/20/2006 | (461498) |
| | 8 | 06/21/2006 | (466287) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | |
|--------------|--|----------|--------------------------|
| Date: | 09/27/2002 | (275197) | |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 37, SubChapter I 37.815(a)
30 TAC Chapter 37, SubChapter I 37.815(b) | | |
| Description: | Failure to provide acceptable financial assurance. | | |
| Date: | 11/15/2002 | (16359) | |
| Self Report? | NO | | Classification: Minor |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.246(3) | | |

Description: Failure to maintain a maintenance log for all repair/replacements conducted at the facility.

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 according to 115.245 (Testing Requirements).

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.245(3)

Description: Failure to successfully conduct five year Stage II testing to verify proper operation of the system. The testing shall include all functional tests that were required for the initial system test.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.248(2)

Description: Failure to ensure that if the facility representative who received the approved training is no longer employed at that facility, another facility representative must successfully complete approved training within three months of the departure of the previously trained employee.

Self Report? NO Classification: Minor

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

Description: Failure to maintain proof of attendance and completion of training as specified in 115.248 (state approved Stage II training course) and documentation of all Stage II training for each employee.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(B)

Description: Failure to maintain hose in a manner that the hose is not crimped, kinked, or flattened such that the vapor passage is blocked, or the back-pressure through the vapor system exceeds the value as certified in the approved system's CARB Executive Order(s).

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(K)

Description: Failure to maintain all components of the Stage II Vapor Recovery system to an approved condition free of defects that would impair the effectiveness of the system

Date: 01/30/2006 (451818)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)

Description: Failure to develop and maintain all UST records.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)

Description: Failure to provide amended registration for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first became aware of the change or addition, as applicable.

Date: 06/20/2006 (461498)

Self Report? NO Classification: Moderate

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

Description: No daily Stage II inspection records available for review.
No daily Stage II inspection records available for review.

Self Report? NO Classification: Moderate

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

Description: At the time of the investigation, the facility did not have documentation for a Stage II trained facility representative

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)

Description: No current Stage II test results.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(9)

Description: No operating instructions posted on each dispenser.

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
SHALYNAH, INC. DBA SAMMYS 3
RN102030186

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER

DOCKET NO. 2006-1001-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Shalynah, Inc. dba Sammys 3 ("Shalynah, Inc.") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Shalynah, Inc. appear before the Commission and together stipulate that:

1. Shalynah, Inc. owns and operates a convenience store located at 1601 West Fairmont Parkway in La Porte, Harris County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and Shalynah, Inc. agree that the Commission has jurisdiction to enter this Agreed Order, and that Shalynah, Inc. is subject to the Commission's jurisdiction.
4. Shalynah, Inc. received notice of the violations alleged in Section II ("Allegations") on or about June 26, 2006.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Shalynah, Inc. of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of eleven thousand seven hundred ninety dollars (\$11,790.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Shalynah, Inc. has paid four hundred fifteen dollars (\$415.00) of the

administrative penalty. The remaining amount of eleven thousand three hundred seventy-five dollars (\$11,375.00) of the administrative penalty shall be payable in 35 monthly payments of three hundred twenty-five dollars (\$325.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment.

If Shalynah, Inc. fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his 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, Shalynah, Inc.'s failure to meet the payment schedule of this Agreed Order constitutes the failure by Shalynah, Inc. to timely and satisfactorily comply with all of 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 Shalynah, Inc. have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. 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 Shalynah, Inc. has not complied with one or more of the terms or conditions in this Agreed Order.
10. 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.
11. 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

1. As documented during an investigation on May 15, 2006 Shalynah, Inc. is alleged to have violated:
 - a. 30 TEX. ADMIN. CODE § 334.8(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances as a motor fuel.

b. 30 TEX. ADMIN. CODE §§ 334.50(b)(2)(A)(i)(III), 334.50(b)(2)(A)(ii), 334.50(d)(4)(A)(i), 334.50(d)(4)(A)(ii)(II) and TEX WATER CODE § 26.3475(a) and (c)(1), by failing to test the line leak detectors at least once per year for performance and operational reliability. Specifically, the line leak detectors had not been performance tested annually. Failed to provide release detection for the piping associated with the USTs. Specifically, the respondent did not conduct monthly monitoring or annual piping tightness test. Failed to provide release detection for the USTs by failing to conduct inventory volume measurements in conjunction with automatic tank gauging, and failed to put the ATG into mode to perform an automatic test for substance loss capable of detecting a release of .2 gallon per hour from any portion of the tank containing regulated substances.

c. 30 TEX. ADMIN. CODE § 334.51(b) and TEX WATER CODE § 26.3475(c)(2), by failing to equip each UST with a valve or other device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level no higher than the 95% capacity level of the tank. Specifically, Shalynah, Inc. did not install overfill prevention equipment.

d. 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.

III. DENIALS

Shalynah, Inc. generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Shalynah, Inc. pay an administrative penalty as set forth in Section I, Paragraph 6, above. The payment of this administrative penalty and Shalynah, Inc.'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 considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Shalynah, Inc. dba Sammys 3, Docket No. 2006-1001-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. Shalynah, Inc. shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, Shalynah, Inc. shall begin conducting effective manual or automatic inventory control procedures for all USTs, in accordance with 30 TEX. ADMIN. CODE § 334.48.
 - b. Within 30 days after the effective date of this Agreed Order, Shalynah, Inc. shall:
 - i. Implement a release detection method for all USTs at the Facility, perform testing of the line leak detectors at least once per year for performance and operational reliability, and conduct annual piping test, in accordance with 30 TEX. ADMIN. CODE § 334.50;
 - ii. Equip the UST system with overfill prevention equipment, in accordance with 30 TEX. ADMIN. CODE § 334.51; and
 - iii. Submit documentation that demonstrates 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 accordance with 30 TEX. ADMIN. CODE § 37.815 to:

Mr. Rob Norris, Senior Financial Analyst
Financial Assurance Unit, MC 184
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
 - c. Within 45 days after the effective date of this Order, Shalynah, Inc. shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos.

2.a. through 2.b.iii. 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.”

Shalynah, Inc. shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.b.iii. 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
Texas Commission on Environmental Quality
Houston Regional Office
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

3. The provisions of this Agreed Order shall apply to and be binding upon Shalynah, Inc.. Shalynah, Inc. is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Shalynah, Inc. 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, Shalynah, Inc.'s failure to comply is not a violation of this Agreed Order. Shalynah, Inc. shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Shalynah, Inc. shall notify the Executive Director within seven days after Shalynah, Inc. 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 Shalynah, Inc. shall be made in writing to the Executive Director. Extensions are not effective until Shalynah, Inc. 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 Shalynah, Inc. 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) and TEX. GOV'T. CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Shalynah, Inc., or three days after the date on which the Commission mails notice of the Order to Shalynah, Inc., whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Shalynah, Inc. dba Sammys 3
DOCKET NO. 2006-1001-PST-E
Page 7

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

[Signature]

7/10/2008

For the Executive Director

Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that 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 Shalynah, Inc.'s failure to timely pay the penalty amount, may result in:

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

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution

[Signature]
Signature

05/19/08
Date

Ameena Bharji
Name (Printed or typed)

Secretary
Title

Authorized representative of
Shalynah, Inc. dba Sammys 3