EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1202-PST-E **TCEQ ID:** RN101431542 **CASE NO.:** 36220

RESPONDENT NAME: Shy Investment, Inc. dba Times Market 52

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: Times Market 52, 5459 Farm-to-Market Road 624, Robstown, Nueces County

TYPE OF OPERATION: Gas station

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

OTHER SIGNIFICANT MATTERS: A complaint was received April 13, 2008, alleging that the integrity of the underground storage tank ("UST") system at the Facility was compromised. The complainant stated that he had to change the fuel filters on his vehicle three times due to rust particles in the fuel. Documentation was not available during the investigation to determine that the integrity of the UST system was compromised. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.

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. Ross Fife, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-2541; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171

Respondent: Mr. Sung Kyo Kim, Owner, Times Market 52, 5459 Farm-to-Market Road 624, Robstown, Texas 78380

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: _X_ Complaint __ Routine __ Enforcement Follow-up __ Records Review **Date(s) of Complaints Relating to this Case:** April 13, 2008 **Date of Investigation Relating to this Case:** April 28, 2008 **Date of NOV/NOE Relating to this Case:** June 16, 2008 (NOE) **Background Facts:** This was a complaint investigation. **WASTE** 1) Failure to ensure that all USTs are properly identified as listed on the Facility's UST registration and self-certification form by a legible tag, label, or marking that is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube [30 TEX. ADMIN. CODE § 334.8(c)(5)(C)]. 2) Failure to provide a method of release detection capable of detecting a release from any portion of the UST system which contains regulated substances including the tanks, piping, and other ancillary equipment [30 TEX. ADMIN. CODE § 334.50(a)(1)(A)]. 3) Failure to conduct effective manual or automatic inventory control procedures for all UST systems at retail service stations [30 TEX. ADMIN. CODE §§ 334.48(c), 334.50(d)(1)(B)(ii), and 334.50(d)(1)(B)(iii)(I)].	**Total Assessed:** $4,150 **Total Deferred:** $830 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $3,320 **Site Compliance History Classification** _X_ **High** __ **Average** __ **Poor** **Person Compliance History Classification** _X_ **High** __ **Average** __ **Poor** **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that on April 30, 2008, the Respondent implemented a release detection method and an inventory control method for all USTs. **Ordering Provisions:** The Order will require the Respondent to: a. Within 30 days after the effective date of this Agreed Order, mark the top of the fill tube or a nonremovable point in the immediate area of the fill tube for each UST; 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.

Additional ID No(s).: 23871

Penalty Calculation Worksheet (PCW)

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

TCEQ

DATES					
Assigned	23-Jun-2008				
PCW	31-Jul-2008	Screening	16-Jul-2008	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Shy Investment, Inc. dba Times Market 52		
Reg. Ent. Ref. No.	RN101431542		
Facility/Site Region	14-Corpus Christi	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	36220	No. of Violations	3
Docket No.	2008-1202-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Ross Fife
		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* — $6,000

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* — -$600

Notes: Reduction due to high performer classification.

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* — $1,250

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

Total EB Amounts	$17
Approx. Cost of Compliance	$3,250

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal* — $4,150

OTHER FACTORS AS JUSTICE MAY REQUIRE — 0.0% — *Adjustment* — $0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount — $4,150

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* — $4,150

DEFERRAL — 20.0% Reduction — *Adjustment* — -$830

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 — $3,320

Screening Date	16-Jul-2008	**Docket No.** 2008-1202-PST-E	**PCW**
Respondent	Shy Investment, Inc. dba Times Market 52		*Policy Revision 2 (September 2002)*
Case ID No.	36220		*PCW Revision June 12, 2008*
Reg. Ent. Reference No.	RN101431542		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Ross Fife		

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which notices were submitted*)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%

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

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Reduction due to high performer classification.

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

PCW

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

Screening Date 16-Jul-2008 **Docket No.** 2008-1202-PST-E
Respondent Shy Investment, Inc. dba Times Market 52
Case ID No. 36220
Reg. Ent. Reference No. RN101431542
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Ross Fife

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(C)

Violation Description Failed to ensure that all USTs are properly identified as listed on the Facility's UST registration and self-certification form by a legible tag, label, or marking that is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube.

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 — 79 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 the April 28, 2008 investigation.

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 $16

Statutory Limit Test

Violation Final Penalty Total $900

This violation Final Assessed Penalty (adjusted for limits) $900

Economic Benefit Worksheet

Respondent Shy Investment, Inc. dba Times Market 52
Case ID No. 36220
Reg. Ent. Reference No. RN101431542
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)	$250	28-Apr-2008	31-Mar-2009	0.92	$1	$15	$16
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	Estimated cost to permanently label USTs. The date required is the date of the investigation and the final date is the estimated 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 $250

TOTAL $16

Screening Date 16-Jul-2008 **Docket No.** 2008-1202-PST-E **PCW**

Respondent Shy Investment, Inc. dba Times Market 52

Policy Revision 2 (September 2002)

Case ID No. 36220

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN101431542

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Ross Fife

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.50(a)(1)(A)

Violation Description Failed to provide a method of release detection capable of detecting a release from any portion of the UST system which contains regulated substances including the tanks, piping, and other ancillary equipment.

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: Failing to monitor the UST system for releases could expose human health or the environment 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 | 2 Number of violation days

mark only one with an x

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $2,500

One monthly event is recommended based on the April 28, 2008 investigation date to the April 30, 2008 compliance 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 April 30, 2008.

Violation Subtotal $1,875

Economic Benefit (EB) for this violation

Estimated EB Amount $0

Statutory Limit Test

Violation Final Penalty Total $1,625

This violation Final Assessed Penalty (adjusted for limits) $1,625

Economic Benefit Worksheet

Respondent Shy Investment, Inc. dba Times Market 52
Case ID No. 36220
Reg. Ent. Reference No. RN101431542
Media Petroleum Storage Tank
Violation No. 2

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				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)	$1,500	28-Apr-2008	30-Apr-2008	0.01	$0	n/a	$0

Notes for DELAYED costs: The estimated cost to provide a method of release detection for the UST. The date required is the investigation date and the final date is the date of compliance.

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Avoided Costs (ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs))							
Disposal				0.00	$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 $1,500

TOTAL $0

Screening Date 16-Jul-2008 **Docket No.** 2008-1202-PST-E **PCW**

Respondent Shy Investment, Inc. dba Times Market 52

Policy Revision 2 (September 2002)

Case ID No. 36220

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN101431542

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Ross Fife

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 334.48(c), 334.50(d)(1)(B)(ii), and 334.50(d)(1)(B)(iii)(I)

Violation Description Failed to conduct effective manual or automatic inventory control procedures for all UST systems at retail service stations.

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 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

$2,500

Violation Events

Number of Violation Events 1

2 Number of violation days

mark only one with an x

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $2,500

One monthly event is recommended based on the April 28, 2008 investigation date to the April 30, 2008 compliance 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 April 30, 2008.

Violation Subtotal $1,875

Economic Benefit (EB) for this violation

Estimated EB Amount $0

Statutory Limit Test

Violation Final Penalty Total $1,625

This violation Final Assessed Penalty (adjusted for limits) $1,625

Economic Benefit Worksheet

Respondent Shy Investment, Inc. dba Times Market 52
Case ID No. 36220
Reg. Ent. Reference No. RN101431542
Media Petroleum Storage Tank
Violation No. 3

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				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)	$1,500	28-Apr-2008	30-Apr-2008	0.01	$0	n/a	$0

Notes for DELAYED costs: Estimated cost to monitor UST for releases and conduct monthly reconciliation of inventory control records. The date required is the date of the investigation and the final date is the 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 $1,500

TOTAL $0

Compliance History

Customer/Respondent/Owner-Operator:	CN603067620	Shy Investment, Inc.	Classification: HIGH	Rating: 0.00
Regulated Entity:	RN101431542	TIMES MARKET 52	Classification: HIGH	Site Rating: 0.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	23871
Location:	5459 FM 624, ROBSTOWN, TX, 78380		Rating Date: September 01 07	Repeat Violator: NO

TCEQ Region: REGION 14 - CORPUS CHRISTI

Date Compliance History Prepared: June 24, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 24, 2003 to June 24, 2008

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

Name: Ross Fife Phone: 512-239-2541

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? Shy Investment, Inc.
4. if Yes, who was/were the prior owner(s)? Country Center, Inc.
5. When did the change(s) in ownership occur? 06/01/2006

Components (Multimedia) for the Site :

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

N/A

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

N/A

C. Chronic excessive emissions events.

N/A

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

N/A

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

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 SHY INVESTMENT, INC. DBA TIMES MARKET 52 RN101431542	§ § § § §	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2008-1202-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 Shy Investment, Inc. dba Times Market 52 ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. 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 gas station at 5459 Farm-to-Market Road 624 in Robstown, Nueces County, Texas (the "Facility").

2. The Respondent's four underground storage tanks ("USTs") are not exempt or excluded from regulation under the TEX. WATER CODE or the rules of the Commission.

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 enforcement alleged in Section II ("Allegations") on or about June 21, 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 Four Thousand One Hundred Fifty Dollars ($4,150) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Three Thousand Three Hundred Twenty Dollars ($3,320) of the

administrative penalty and Eight Hundred Thirty Dollars ($830) 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.

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 on April 30, 2008, the Respondent implemented a release detection method and an inventory control method for all USTs.

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 Facility, the Respondent is alleged to have:

1. Failed to ensure that all USTs are properly identified as listed on the Facility's UST registration and self-certification form by a legible tag, label, or marking that is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(C), as documented during an investigation conducted on April 28, 2008.

2. Failed to provide a method of release detection capable of detecting a release from any portion of the UST system which contains regulated substances including the tanks, piping, and other ancillary equipment, in violation of 30 TEX. ADMIN. CODE § 334.50(a)(1)(A), as documented during an investigation conducted on April 28, 2008.

3. Failed to conduct effective manual or automatic inventory control procedures for all UST systems at retail service stations, in violation of 30 TEX. ADMIN. CODE §§ 334.48(c), 334.50(d)(1)(B)(ii), and 334.50(d)(1)(B)(iii)(I), as documented during an investigation conducted on April 28, 2008.

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: Shy Investment, Inc. dba Times Market 52, Docket No. 2008-1202-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, mark the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each UST, in accordance with 30 TEX. ADMIN. CODE § 334.8;

   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
Corpus Christi Regional Office
Texas Commission on Environmental Quality
6300 Ocean Drive, Suite 1200
Corpus Christi, Texas 78412-5503

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 Facility 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.

_____ 09-01-08
Signature Date

SUNG KYO KIM OWNER
Name (Printed or typed) Title
Authorized Representative of
Shy Investment, Inc. dba Times Market 52

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.