EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-0285-PST-E **TCEQ ID:** RN102369261 **CASE NO.:** 32799

RESPONDENT NAME: Jong Hwan Oh dba J. C. Phillips

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: J. C. Phillips, 9220 Clearwood Drive, Houston, Harris 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 5, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Mr. Philip DeFrancesco, Enforcement Division, Enforcement Team 6, MC 128, (817) 588-5933; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171
Respondent: Mr. Jong Hwan Oh, Owner, J. C. Phillips, 9220 Clearwood Drive, Houston, Texas 77075
Respondent's Attorney: Not represented by counsel on this enforcement matter

RESPONDENT NAME: Jong Hwan Oh dba J. C. Phillips
DOCKET NO.: 2007-0285-PST-E

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:** February 7, 2007 **Date of NOV/NOE Relating to this Case:** February 19, 2007 (NOE) **Background Facts:** This was a routine investigation. Two violations were documented. **WASTE** 1) Failed to monitor the underground storge tank ("UST") system for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)]. 2) Failed to perform an automatic test for substance loss that can detect a release which equals or exceeds a rate of 0.2 gallon per hour from any portion of the UST system [30 TEX. ADMIN. CODE § 334.50(d)(4)(A)(ii)(II) and TEX. WATER CODE § 26.3475(c)(1)].	**Total Assessed:** $2,300 **Total Deferred:** $460 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid (Due) to General Revenue:** $140 (remaining $1,700 due in 17 monthly payments of $100 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 submitted documentation to the TCEQ Houston Regional Office verifying successful implementation of a method of release detection for the UST system on March 19, 2007

Additional ID No(s).: 0

Penalty Calculation Worksheet (PCW)

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

TCEQ

DATES					
Assigned	26-Feb-2007				
PCW	27-Feb-2007	Screening	27-Feb-2007	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Jong Hwan Oh dba J. C. Phillips		
Reg. Ent. Ref. No.	RN102369261		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	32799	No. of Violations	1
Docket No.	2007-0285-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Patricia Chawla
Multi-Media		EC's Team	EnforcementTeam 7
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* $2,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 2% Enhancement — *Subtotals 2, 3, & 7* $50

Notes: Enhancement for one NOV without same or similar violations.

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

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply — 10% Reduction — *Subtotal 5* $250

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

Notes: The Respondent came into compliance on March 19, 2007.

0% Enhancement* — *Subtotal 6* $0

Total EB Amounts	$1,102
Approx. Cost of Compliance	$2,200

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $2,300

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

Reduces or enhances the Final Subtotal by the indicated percentage. *(Enter number only; e.g. -30 for -30%.)*

Notes:

Final Penalty Amount $2,300

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $2,300

DEFERRAL — 20% Reduction — *Adjustment* -$460

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY $1,840

Screening Date	27-Feb-2007	**Docket No.** 2007-0285-PST-E	**PCW**
Respondent	Jong Hwan Oh dba J. C. Phillips		*Policy Revision 2 (September 2002)*
Case ID No.	32799		*PCW Revision November 15, 2006*
Reg. Ent. Reference No.	RN102369261		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Patricia Chawla		

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	1	2%
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) 2%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV without same or similar violations.

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

Screening Date	27-Feb-2007	**Docket No.** 2007-0285-PST-E	**PCW**
Respondent	Jong Hwan Oh dba J. C. Phillips		*Policy Revision 2 (September 2002)*
Case ID No.	32799		*PCW Revision November 15, 2006*
Reg. Ent. Reference No.	RN102369261		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Patricia Chawla		

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A) and 334.50(d)(4)(A)(ii)(II) and Tex. Water Code § 26.3475(c)(1)

Violation Description Failed to monitor the UST system for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Also, failed to perform an automatic test for substance loss that can detect a release which equals or exceeds a rate of 0.2 gallon per hour from any portion of the UST system.

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

20 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 from the February 7, 2007 investigation date to the February 27, 2007 screening date.

Economic Benefit (EB) for this violation

Estimated EB Amount $1,102

Statutory Limit Test

Violation Final Penalty Total $2,300

This violation Final Assessed Penalty (adjusted for limits) $2,300

Economic Benefit Worksheet

Respondent Jong Hwan Oh dba J. C. Phillips
Case ID No. 32799
Reg. Ent. Reference No. RN102369261
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	$0	$0	$0
Buildings				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Engineering/construction				0.0	$0	$0	$0
Land				0.0	$0	n/a	$0
Record Keeping System				0.0	$0	n/a	$0
Training/Sampling				0.0	$0	n/a	$0
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs				0.0	$0	n/a	$0
Other (as needed)	$1,200	7-Feb-2007	19-Mar-2007	0.1	$7	n/a	$7

Notes for DELAYED costs: Estimated cost to monitor USTs for releases. 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				0.0	$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]	$1,000	7-Feb-2006	7-Feb-2007	1.9	$96	$1,000	$1,096
				0.0	$0	$0	$0

Notes for AVOIDED costs: Avoided cost for tightness testing. The Date Required is one year prior to the investigation date and the Final Date is the investigation date.

Approx. Cost of Compliance $2,200

TOTAL $1,102

Compliance History

Customer/Respondent/Owner-Operator:	CN603130758	OH, JONG HWAN	Classification: AVERAGE	Rating: 1.00
Regulated Entity:	RN102369261	J C PHILLIPS	Classification: AVERAGE	Site Rating: 1.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	75112	
Location:	9220 CLEARWOOD DR, HOUSTON, TX, 77075		Rating Date: September 01 06	Repeat Violator: NO
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	February 26, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	February 26, 2002 to February 26, 2007			

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

Name: Patricia Chawla Phone: 512-239-0739

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
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? N/A
4. if Yes, who was/were the prior owner(s)? J.C. Phillips, Inc.
5. When did the change(s) in ownership occur? 07/01/2003

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 06/23/2004 (288471)
2 02/03/2005 (292774)
3 10/23/2006 (516444)
4 02/19/2007 (539904)

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

Date: 06/23/2004 (288471)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)[G]
30 TAC Chapter 37, SubChapter I 37.815(b)[G]
Description: FAILURE TO PROVIDE ACCEPTABLE FINANCIAL ASSURANCE.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
JONG HWAN OH DBA J. C. PHILLIPS	§	
RN102369261	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2007-0285-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 Jong Hwan Oh dba J. C. Phillips ("Mr. Oh") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Mr. Oh appear before the Commission and together stipulate that:

1. Mr. Oh owns and operates a convenience store with retail sales of gasoline at 9220 Clearwood Drive in Houston, Harris County, Texas (the "Facility").

2. Mr. Oh's one underground storage tank ("UST") is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.

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

4. Mr. Oh received notice of the violations alleged in Section II ("Allegations") on or about February 24, 2007.

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

6. An administrative penalty in the amount of Two Thousand Three Hundred Dollars ($2,300) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Oh has paid One Hundred Forty Dollars ($140) of the administrative penalty and Four

Hundred Sixty Dollars ($460) is deferred contingent upon Mr. Oh's timely and satisfactory compliance with all terms of this Agreed Order. If Mr. Oh fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require Mr. Oh to pay all or part of the deferred penalty.

The remaining amount of One Thousand Seven Hundred Dollars ($1,700) of the administrative penalty shall be payable in 17 monthly payments of One Hundred Dollars ($100) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If Mr. Oh fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of Mr. Oh to meet the payment schedule of this Agreed Order constitutes the failure by Mr. Oh to timely and satisfactorily comply with all terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

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

9. The Executive Director recognizes that Mr. Oh has submitted documentation to the TCEQ Houston Regional Office verifying successful implementation of a method of release detection for the UST system on March 19, 2007.

10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Mr. Oh has not complied with one or more of the terms or conditions in this Agreed Order.

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

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

II. ALLEGATIONS

As owner and operator of the Facility, Mr. Oh is alleged to have:

1. Failed to monitor the UST system for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of 30 TEX. ADMIN. CODE §334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on February 7, 2007.

2. Failed to perform an automatic test for substance loss that can detect a release which equals or exceeds a rate of 0.2 gallons per hour from any portion of the UST system, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(4)(A)(ii)(II) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on February 7, 2007.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Oh pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Oh'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: Jong Hwan Oh dba J. C. Phillips, Docket No. 2007-0285-PST-E" to:

   Financial Administration Division, Revenues Section
   Attention: Cashier's Office, MC 214
   Texas Commission on Environmental Quality
   P.O. Box 13088
   Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon Mr. Oh. Mr. Oh 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.

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

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

5. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Oh in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

6. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

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

For the Executive Director

12/03/2007
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

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

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

Signature

4/17/07
Date

Jong Hwan Oh
Name (Printed or typed)
Authorized Representative of
Jong Hwan Oh dba J. C. Phillips

Owner
Title

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