



**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaints Relating to this Case:</b> None</p> <p><b>Dates of Investigation Relating to this Case:</b>                      July 11, 2006</p> <p><b>Date of NOE Relating to this Case:</b>                      August 29, 2006</p> <p><b>Background Facts:</b> An agreement was reached on July 12, 2007, and a signed Agreed Order was received on July 16, 2007</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p><b>PST</b></p> <p>Failed to verify proper operation of the Stage II equipment at least once every 12 months, and failing to verify vapor space manifold and dynamic pressure performance at least once every 36 months as documented on July 11, 2006 [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p>	<p><b>Total Assessed:</b> \$2,500</p> <p><b>Total Deferred:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> The Respondent has paid the administrative penalty amount of \$2,500 in full.</p> <p><b>Site Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Action Taken:</b></p> <p>The Executive Director recognizes that the Respondent successfully conducted the annual and triennial testing of the Stage II equipment on August 7, 2006.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 19, 2005

DATES	Assigned	05-Sep-2006	Screening	07-Sep-2006	EPA Due	
	PCW	02-Jul-2007				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	Pathan Investments, Inc. dba Time Out
Reg. Ent. Ref. No.	RN102890407
Facility/Site Region	10-Beaumont <input type="checkbox"/>
Major/Minor Source	Minor Source <input type="checkbox"/>

<b>CASE INFORMATION</b>			
Enf./Case ID No.	31097	No. of Violations	1
Docket No.	2006-1568-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank <input type="checkbox"/>	Enf. Coordinator	Philip DeFrancesco
Multi-Media		EC's Team	Enforcement Team 7 <input type="checkbox"/>
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** Subtotal 1

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History**  25% Enhancement Subtotals 2, 3, & 7

Notes

**Culpability**  No  0% Enhancement Subtotal 4

Notes

**Good Faith Effort to Comply**  25% Reduction Subtotal 5

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary	X	
N/A		(mark with a small x)

Notes

**Economic Benefit**  0% Enhancement\* Subtotal 6

Total EB Amounts	<input type="text" value="\$1,050"/>	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	<input type="text" value="\$1,000"/>	

**SUM OF SUBTOTALS 1-7** Final Subtotal

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  Adjustment

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

Notes

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty

**DEFERRAL**  0% Reduction Adjustment

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

Notes

**PAYABLE PENALTY**

**Screening Date** 07-Sep-2006 **Docket No.** 2006-1568-PST-E **PCW**  
**Respondent** Pathan Investments, Inc. dba Time Out *Policy Revision 2 (September 2002)*  
**Case ID No.** 31097 *PCW Revision May 19, 2005*  
**Reg. Ent. Reference No.** RN102890407  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Philip DeFrancesco

**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 <i>(number of NOVs meeting criteria)</i>	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	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 <i>(number of judgements or consent decrees meeting criteria)</i>	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which notices were)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	no	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	no	0%
	Participation in a voluntary pollution reduction program	no	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	no	0%

**Adjustment Percentage (Subtotal 2)** 25%

>> **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 prior NOV with same or similar violations and one 1660 order.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 25%

<b>Screening Date</b>	07-Sep-2006	<b>Docket No.</b>	2006-1568-PST-E	<b>PCW</b>
<b>Respondent</b>	Pathan Investments, Inc. dba Time Out		Policy Revision 2 (September 2002)	
<b>Case ID No.</b>	31097	PCW Revision May 19, 2005		
<b>Reg. Ent. Reference No.</b>	RN102890407			
<b>Media [Statute]</b>	Petroleum Storage Tank			
<b>Enf. Coordinator</b>	Philip DeFrancesco			
<b>Violation Number</b>	1			
<b>Primary Rule Cite(s)</b>	30 Tex. Admin. Code § 115.245(2)			
<b>Secondary Rule Cite(s)</b>	Tex. Health & Safety Code § 382.085(b)			
<b>Violation Description</b>	Failure to verify proper operation of the Stage II equipment at least once every 12 months, and failure to verify vapor space manifolding and dynamic pressure performance at least once every 36 months. Specifically, the respondent did not conduct the annual and triennial tests.			
<b>Base Penalty</b>	\$10,000			

>> **Environmental, Property and Human Health Matrix**

		Harm			
Release		Major	Moderate	Minor	
OR	Actual				Percent <input type="text" value="25%"/>
	Potential	X			

>> **Programmatic Matrix**

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

Base Penalty Subtotal

**Violation Events**

Number of Violation Events

mark only one use a small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	X
	single event	<input type="text"/>

Violation Base Penalty

One annual event is recommended for the 12 month period preceding the July 11, 2006 investigation.

**Economic Benefit (EB) for this violation**

Estimated EB Amount

**Statutory Limit Test**

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

### Economic Benefit Worksheet

Respondent Pathan Investments, Inc. dba Time Out  
 Case ID No. 31097  
 Reg. Ent. Reference No. RN102890407  
 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	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)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$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)	\$1,000	11-Jul-2005	11-Jul-2006	1.0	\$50	\$1,000	\$1,050

Notes for AVOIDED costs

Estimated cost for annual testing to verify proper operation of the Stage II equipment. The date required is 12 months prior to the investigation date and the final date is the date of the investigation.

Approx. Cost of Compliance

**TOTAL**

# Compliance History

Customer/Respondent/Owner-Operator:	CN602935868	PATHAN INVESTMENTS INC	Classification: Average	Rating: 24.75
Regulated Entity:	RN102890407	TIME OUT	Classification: Average	Site Rating: 24.75
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	16557
Location:	1800 WOODWORTH BLVD, PORT ARTHUR, TX, 77640		Rating Date: 9/1/2006	Repeat Violator: NO
TCEQ Region:	REGION 10 - BEAUMONT			
Date Compliance History Prepared:	September 06, 2006			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	September 06, 2001 to September 06, 2006			

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

Name: Philip DeFrancesco Phone: 817-588-5833

### 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? Pathan Investments, Inc.
4. If Yes, who was/were the prior owner(s)? 

Port Arthur Retails, Inc.
Port Arthur Retailing Inc
5. When did the change(s) in ownership occur? 

11/02/2005
------------

### Components (Multimedia) for the Site :

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

Effective Date: 08/30/2004 Classification: Moderate Citation: 30 TAC Chapter 115, SubChapter C 115.246(7)(A) 5C THC Chapter 382, SubChapter A 382.085(b) Description: Failure to make immediately available records of any maintenance conducted at the facility relating to Stage II and proof of attendance and completion of training for each employee. Classification: Moderate Citation: 30 TAC Chapter 115, SubChapter C 115.246(1) 5C THC Chapter 382, SubChapter A 382.085(b) Description: Failure to maintain a copy of the applicable California Air Resource Board Executive Order.	Effective Date: 02/20/2004 Classification: Moderate Citation: 30 TAC Chapter 115, SubChapter C 115.246(7)(A) 5C THC Chapter 382, SubChapter A 382.085(b)
---	---

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	02/24/2006	(439016)
2	08/29/2006	(486072)
3	12/20/2002	(15405)

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

- Date: 02/24/2006 (439016)
- Self Report? NO Classification: Moderate
- Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)[G]
- Description: Failure to verify proper operation of the Stage II equipment at least once every 12 months, and failure to verify Vapor Space Manifolding and Dynamic Pressure Performance at least once every 36 months.
- Self Report? NO Classification: Moderate
- Citation: 30 TAC Chapter 115, SubChapter C 115.246(7)(A)
- Description: Failure to maintain records on site and make immediately available for review upon request by authorized representatives of the executive director, EPA, or any local air pollution control program with jurisdiction at sites ordinarily manned during business hours.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.246(1)

Description: Failure to maintain a copy of the applicable CARB Executive Order at the facility.

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  
PATHAN INVESTMENTS, INC.  
DBA TIME OUT,  
RN102890407

§  
§  
§  
§  
§  
§

BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2006-1568-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 Pathan Investments, Inc. dba Time Out ("Pathan Investments") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 382. The Executive Director of the TCEQ, represented by the Litigation Division, and Pathan Investments, represented by Jennifer Fleck of the law firm of Ted A. Cox, P.C., appear before the Commission and together stipulate that:

1. Pathan Investments owns and operates a convenience store with retail sales of gasoline located at 1800 Woodworth Boulevard, Port Arthur, Jefferson County, Texas (the "Station"). The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
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. HEALTH & SAFETY CODE ch. 382 and TCEQ rules.
3. The Commission and Pathan Investments agree that the Commission has jurisdiction to enter this Agreed Order, and that Pathan Investments is subject to the Commission's jurisdiction.
4. Pathan Investments received notice of the violations alleged in Section II ("Allegations") on or about September 3, 2006.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Pathan Investments of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of two thousand five hundred dollars (\$2,500.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Pathan Investments has paid two thousand five hundred dollars (\$2,500.00) of the administrative 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 Pathan Investments 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 Pathan Investments successfully conducted the annual and triennial testing of the Stage II equipment on August 7, 2006.
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 Pathan Investments 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

Pathan Investments is alleged to have violated 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to verify proper operation of the Stage II equipment at least once every 12 months, and failing to verify vapor space manifolding and dynamic pressure performance at least once every 36 months as documented on July 11, 2006. Specifically, Pathan Investments did not conduct the annual and triennial tests.

### III. DENIALS

Pathan Investments generally denies each allegation in Section II ("Allegations").

### IV. ORDER

1. It is, therefore, ordered by the TCEQ that Pathan Investments pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Pathan Investments' 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: Pathan Investments, Inc. dba Time Out, Docket No. 2006-1568-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 Pathan Investments. Pathan Investments is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Station operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against Pathan Investments 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.
4. 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.
5. 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 Pathan Investments, or three days after the date on which the Commission mails notice of the Order to Pathan Investments, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Pathan Investments, Inc. dba Time Out  
DOCKET NO. 2006-1568-PST-E  
Page 4

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

Johnston Perdue  
For the Executive Director

10/10/07  
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 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

[Signature]

Date

7-17-07

SHARIF A DHANANI

Name (Printed or typed)

PRESIDENT

Title

Authorized representative of  
Pathan Investments, Inc. dba Time Out