

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2007-0571-PST-E **TCEQ ID: RN102372810** **CASE NO.: 33187**
RESPONDENT NAME: SHOUKAT HUSSAIN DBA SPEEDEE MART

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" 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
<p>SITE WHERE VIOLATION(S) OCCURRED: 1801 Ella Boulevard, Houston, Harris County</p> <p>TYPE OF OPERATION: Convenience store with retail sales of gasoline.</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on December 17, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Mr. Patrick Jackson, Litigation Division, MC 175, (512) 239-6501 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Ms. Judy Kluge, Waste Enforcement Section, MC R-4, (817) 588-5825 TCEQ Regional Contact: Ms. Nicole Bealle, Houston Regional Office, MC R-4, (713) 767-3623 Respondent: Mr. Shoukat Hussain dba Speedee Mart, 1801 Ella Boulevard, Houston, Texas 77008 Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

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 Complaints Relating to this Case: N/A</p> <p>Dates of Investigation Relating to this Case: March 27, 2007</p> <p>Date of NOE Relating to this Case: April 9, 2007</p> <p>Background Facts:</p> <p>The EDPRP was filed on August 10, 2007. It was sent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card", the Respondent received notice of the EDPRP on or about August 13, 2007, as evidenced by the signature on the card. The Respondent failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>PST</p> <p>1. Failed to maintain Stage II records on-site and make them immediately available for inspection by Commission personnel [30 TEX. ADMIN. CODE § 115.246(1), (3), and (6) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2. Failed to conduct monthly inspections of the Stage II vapor recovery system [30 TEX. ADMIN. CODE § 115.244(3), and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>3. Failed to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement, whichever occurs first [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$5,040</p> <p>Total Deferred: \$0</p> <p>SEP Conditional Offset: \$0</p> <p>Total Due to General Revenue: \$5,040</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty, but will be required to do so under the terms of this order.</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>Ordering Provisions:</p> <p>The Respondent's UST delivery certificate is revoked immediately upon the effective date of this Order. The Respondent may apply for a new delivery certificate only after the Respondent complies with the terms of this Order.</p> <p>The Respondent shall:</p> <p>1) Within 10 days, send its UST delivery certificate to TCEQ.</p> <p>2) Immediately, begin maintaining all Stage II records on-site.</p> <p>3) Within 30 days:</p> <p style="padding-left: 40px;">a) Begin conducting monthly inspections of the Stage II Vapor Recovery System.</p> <p style="padding-left: 40px;">b) Conduct annual testing of the Stage II equipment.</p> <p>4) Within 45 days, submit written certification to demonstrate compliance with the Ordering Provisions above.</p>



Penalty Calculation Worksheet (PCW)

TCEQ

DATES	Assigned	9-Apr-2007	Screening	11-Apr-2007	EPA Due	
	PCW	3-Jul-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	Shoukat Hussain dba Speedee Mart
Reg. Ent. Ref. No.	RN102372810
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	33187	No. of Violations	3
Docket No.	2007-0571-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Judy Kluge
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*

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 12% Enhancement *Subtotals 2, 3, & 7*

Notes Enhancement for two prior NOV's with same or similar violations and one prior NOV with dissimilar violations.

Culpability No 0% Enhancement *Subtotal 4*

Notes The respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction *Subtotal 5*

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

Notes The respondent does not meet the good faith criteria.

Total EB Amounts **0% Enhancement*** *Subtotal 6*
Approx. Cost of Compliance *Capped at the Total EB \$ Amount

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 This is not an expedited case.

PAYABLE PENALTY

Screening Date 11-Apr-2007

Docket No. 2007-0571-PST-E

PCW

Respondent Shoukat Hussain dba Speedee Mart

Policy Revision 2 (September 2002)

Case ID No. 33187

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN102372810

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	2	10%
	Other written NOVs	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) 12%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for two prior NOVs with same or similar violations and one prior NOV with dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 12%

Screening Date 11-Apr-2007

Docket No. 2007-0571-PST-E

PCW

Respondent Shoukat Hussain dba Speedee Mart

Policy Revision 2 (September 2002)

Case ID No. 33187

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN102372810

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 115.246(1), (3), and (6) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to maintain Stage II records on-site and make immediately available for inspection by Commission personnel. Specifically, records were not available for review at the time of the investigation, included a copy of the applicable California Air Resources Board (CARB) Executive Order(s) for the Stage II system, a maintenance log for any Stage II related repairs, and daily inspection log.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual					0%
Potential					

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			10%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 15 Number of violation days

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the March 27, 2007 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$15

Violation Final Penalty Total \$1,120

This violation Final Assessed Penalty (adjusted for limits) \$1,120

Economic Benefit Worksheet

Respondent Shoukat Hussain dba Speedee Mart
 Case ID No. 33187
 Reg. Ent. Reference No. RN102372810
 Media 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
<i>No commas or \$</i>							
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	\$500	27-Mar-2007	8-Nov-2007	0.6	\$15	n/a	\$15
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 maintain Stage II records as required. The date required is the investigation date and the final date is the estimated 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]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs:

Approx. Cost of Compliance \$500 TOTAL \$15

Screening Date 11-Apr-2007

Docket No. 2007-0571-PST-E

PCW

Respondent Shoukat Hussain dba Speedee Mart

Policy Revision 2 (September 2002)

Case ID No. 33187

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN102372810

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 115.244(3) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to conduct monthly inspections of the Stage II vapor recovery system.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual					10%
Potential		x			

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent

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 \$9,000

\$1,000

Violation Events

Number of Violation Events 1 15 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
single event		

Violation Base Penalty \$1,000

One quarterly event is recommended based on documentation of the violation during the March 27, 2007 investigation to the April 11, 2007 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$135

Violation Final Penalty Total \$1,120

This violation Final Assessed Penalty (adjusted for limits) \$1,120

Economic Benefit Worksheet

Respondent Shoukat Hussain dba Speedee Mart
Case ID No. 33187
Reg. Ent. Reference No. RN102372810
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

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)	\$1,000	27-Mar-2007	7-Dec-2007	0.7	\$35	n/a	\$35

Notes for DELAYED costs

Estimated expense for an employee to conduct monthly inspections of the Stage II system. The date required is based on the investigation date and the final date is the estimated 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]				0.0	\$0	\$0	\$0
Other (as needed)	\$100	27-Feb-2007	27-Mar-2007	0.0	\$0	\$100	\$100

Notes for AVOIDED costs

Estimated avoided expense for an employee to conduct monthly inspections of the Stage II system. The date required is one month prior to the investigation date and the final date is the investigation date.

Approx. Cost of Compliance

\$1,100

TOTAL

\$135

Screening Date 11-Apr-2007

Docket No. 2007-0571-PST-E

PCW

Respondent Shoukat Hussain dba Speedee Mart

Policy Revision 2 (September 2002)

Case ID No. 33187

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN102372810

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 3

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

Violation Description Failed to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first. Specifically, the Stage II annual system compliance testing had not been conducted.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

		Harm			
		Major	Moderate	Minor	
Release	Actual				Percent 25%
	Potential	x			

>> 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 1 365 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	x
	single event	

Violation Base Penalty \$2,500

One annual event is recommended for the 12 month period preceding the March 27, 2007 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,096

Violation Final Penalty Total \$2,800

This violation Final Assessed Penalty (adjusted for limits) \$2,800

Economic Benefit Worksheet

Respondent Shoukat Hussain dba Speedee Mart
Case ID No. 33187
Reg. Ent. Reference No. RN102372810
Media 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
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No commas or \$

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]	\$1,000	27-Mar-2006	27-Mar-2007	1.9	\$96	\$1,000	\$1,096
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

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

Approx. Cost of Compliance

\$1,000

TOTAL

\$1,096

Compliance History

Customer/Respondent/Owner-Operator:	CN601578479 SHOUKAT HUSSAIN	Classification: AVERAGE	Rating: 1.00
Regulated Entity:	RN102372810 SPEEDEE MART	Classification: AVERAGE	Site Rating: 1.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	33608
	PETROLEUM STORAGE TANK STAGE II REGISTRATION	REGISTRATION	33608
Location:	1801 ELLA BLVD, HOUSTON, TX, 77008	Rating Date: September 01 06 Repeat Violator: NO	
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	April 09, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	April 09, 2002 to April 09, 2007		

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

Name: Judy Kluge Phone: (817) 588-5825

Site Compliance History Components

- | | |
|--|------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>N/A</u> |
| 5. When did the change(s) in ownership occur? | <u>N/A</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
- 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 | 08/21/2003 | (147856) |
| 2 | 10/30/2003 | (250590) |
| 3 | 02/23/2004 | (282225) |
| 4 | 01/27/2005 | (292482) |
| 5 | 12/09/2006 | (532544) |
| 6 | 04/04/2007 | (555183) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | |
|--------------|---|----------|--------------------------|
| Date: | 08/21/2003 | (147856) | |
| 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 Stage II training. | | |
| 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. | | |
| Date: | 02/23/2004 | (282225) | |
| 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. | | |
| Date: | 12/09/2006 | (532544) | |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.246(6) | | |
| Description: | 30 Tex. Admin. Code Section 115.246 (6) - Failure to maintain a record of the results of the daily inspections conducted at the motor vehicle fuel dispensing facility in accordance with the provisions specified in § 115.244 of this title (relating | | |

to Inspection Requirements).

Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 115, SubChapter C 115.244(3)
 Description: Tex. Admin. Code Section 115.244 (3) - Failure to conduct monthly inspections of the components listed in §115.242(3)(J) of this title.

Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 115, SubChapter C 115.246(4)
 Description: 30 Tex. Admin. Code Section 115.246 (4) - Failure to maintain proof of attendance and completion of the training specified in §115.248 of this title (relating to Training Requirements), with the documentation of all Stage II training for each employee to be maintained as long as that employee continues to work at the f

Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 115, SubChapter C 115.246(3)
 Description: 30 Tex. Admin. Code Section 115.246(3)- Failure to maintain a record of any maintenance conducted on any part of the Stage II equipment, including a general part description, the date and time the equipment was taken out of service, the date of repair or replacement, the replacement part manufacturer's information, a g

Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 115, SubChapter C 115.246(1)
 Description: 30 Tex. Admin Code Section 115.246 (1)- Failure to maintain a copy of the California Air Resources Board (CARB) Executive Order(s) for the Stage II vapor recovery system and any related components installed at the facility

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)(G)
 Description: Tex. Admin. Code Section 115.245 (2)- Failure to verify proper operation of the Stage II equipment at least once every twelve months or upon major system replacement or modification, whichever occurs first. The verification shall include all functional tests that were required for the initial system test, except for TX

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(G)
 Description: 30 Tex. Admin. Code Section 115.242 (3)(I) - Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s), and free of defects that would impair the effectiveness of the system, including a vacuum producing device t

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
SHOUKAT HUSSAIN DBA
SPEEDEE MART,
RN102372810

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2007-0571-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the TCEQ, which requests appropriate relief, including the revocation of the respondent's underground storage tank delivery certificate, the imposition of an administrative penalty, and corrective action of the respondent. The respondent made the subject of this Order is Shoukat Hussain dba Speedee Mart ("Mr. Hussain").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Mr. Hussain owns and operates a convenience store with retail sales of gasoline located at 1801 Ella Boulevard, Houston, Harris County, Texas (the "Station").
2. Mr. Hussain's underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Hussain's USTs contain a regulated petroleum substance as defined in the rules of the Commission. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. During an inspection conducted on March 27, 2007, a TCEQ University of Texas-Arlington contract investigator documented that Mr. Hussain:
 - a. Failed to maintain Stage II records on-site and make them immediately available for inspection by Commission personnel. Specifically, records were not available for review at the time of the investigation, including a copy of the applicable California

review at the time of the investigation, including a copy of the applicable California Air Resources Board Executive Order(s) for the Stage II system, a maintenance log for any Stage II related repairs, and a daily inspection log.

- b. Failed to conduct monthly inspections of the Stage II vapor recovery system.
 - c. Failed to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement, whichever occurs first. Specifically, the Stage II annual system compliance testing had not been conducted.
4. Mr. Hussain received notice of the violations on or about April 9, 2007.
 5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Shoukat Hussain dba Speedee Mart" (the "EDPRP") in the TCEQ Chief Clerk's office on August 10, 2007.
 6. By letter dated August 10, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Hussain with notice of the EDPRP. According to the return receipt "green card", Mr. Hussain received notice of the EDPRP on or about August 13, 2007, as evidenced by the signature on the card.
 7. More than 20 days have elapsed since Mr. Hussain received notice of the EDPRP, provided by the Executive Director. Mr. Hussain failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Hussain is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Hussain Failed to maintain Stage II records on-site and make them immediately available for inspection by Commission personnel, in violation of 30 TEX. ADMIN. CODE § 115.246(1),(3), and(6), and TEX. HEALTH & SAFETY CODE § 382.085(b).

3. As evidenced by Finding of Fact No. 3.b., Mr. Hussain failed to conduct monthly inspections of the Stage II vapor recovery system, in violation of 30 TEX. ADMIN. CODE § 115.244(3), and TEX. HEALTH & SAFETY CODE § 382.085(b).
4. As evidenced by Finding of Fact No. 3.c., Mr. Hussain failed to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement, whichever occurs first, in violation of 30 TEX. ADMIN. CODE § 115.245(2), and TEX. HEALTH & SAFETY CODE § 382.085(b).
5. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director has timely served Mr. Hussain with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
6. As evidenced by Finding of Fact No. 7, Mr. Hussain has failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Hussain and assess the penalty recommended by the Executive Director:
7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Hussain for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
8. An administrative penalty in the amount of five thousand forty dollars (\$5,040.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
9. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.
10. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Mr. Hussain's UST delivery certificate if the Commission finds that good cause exists.
11. Good cause for revocation of Mr. Hussain's UST delivery certificate exists as justified by Findings of Fact Nos. 3, 5, 6, and 7 and Conclusions of Law Nos. 2, 3, 4, 5, and 6.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Mr. Hussain is assessed an administrative penalty in the amount of five thousand forty dollars (\$5,040.00) for violations of TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 382, and rules of the TCEQ. The payment of this administrative penalty and Mr. Hussain's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Shoukat Hussain dba Speedee Mart; Docket No. 2007-0571-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. Mr. Hussain's UST delivery certificate is revoked immediately upon the effective date of this Order. Mr. Hussain may submit an application for a new delivery certificate only after Mr. Hussain has complied with all of the requirements of this Order.
3. Within 10 days after the effective date of this Order, Mr. Hussain shall send his UST delivery certificate to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P. O. Box 13087
Austin, Texas 78711-3087

4. Mr. Hussain shall undertake the following technical requirements:

- a. Immediately upon the effective date of this Order, Mr. Hussain shall begin maintaining all Stage II records on-site, in accordance with 30 TEX. ADMIN. CODE § 115.246.
- b. Within 30 days after the effective date of this Order, Mr. Hussain shall:
 - i. Begin conducting monthly inspections of the Stage II vapor recovery system, in accordance with 30 TEX. ADMIN. CODE § 115.244; and
 - ii. Conduct annual testing of the Stage II equipment, in accordance with 30 TEX. ADMIN. CODE § 115.246.
- c. Within 45 days after the effective date of this Order, Mr. Hussain shall submit written certification as described below, and include detailed supporting documentation including, photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions 4.a. through 4.b.

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:

Nicole Bealle, Waste Section Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, TX 77023-1486

5. All relief not expressly granted in this Order is denied.
6. The provisions of this Order shall apply to and be binding upon Mr. Hussain. Mr. Hussain is ordered to give notice of this Order to personnel who maintain day-to-day control over the Station operations referenced in this Order.
7. If Mr. Hussain fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Hussain's failure to comply is not a violation of this Order. Mr. Hussain shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Hussain shall notify the Executive Director within seven days after Mr. Hussain becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
8. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Hussain shall be made in writing to the Executive Director. Extensions are not effective until Mr. Hussain receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
9. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Hussain if the Executive Director determines that Mr. Hussain has not complied with one or more of the terms or conditions in this Order.
10. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
11. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

