

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-1001-PST-E TCEQ ID NO.: RN102030186 CASE NO.: 30327

RESPONDENT NAME: SHALYNAH, INC. DBA SAMMYS 3

| | | |
|--|---|--|
| 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 checked="" 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: 1601 West Fairmont Parkway, La Porte, 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 January 21, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Mr. Rajesh Acharya, Water Enforcement Section, MC 219, (512) 239-0577 TCEQ Regional Contact: Ms. Nicole Beale, Houston Regional Office, MC R-12, (713) 767-3623 Respondent: Mr. Ashiff Bhanji, President and Registered Agent, Shalynah, Inc. dba Sammys 3, 9700 Spenser Highway, Pasadena, Texas 77571-4072 Respondent's Attorney: Not represented by counsel on this enforcement matter.</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: None</p> <p>Dates of Investigation Relating to this Case: January 9, 2006 and May 15, 2006</p> <p>Date of NOEs/NOVs Relating to this Case: June 21, 2006 (NOE) January 30, 2006 and June 26, 2006 (NOVs)</p> <p>Background Facts:</p> <p>The EDPRP was filed on May 18, 2007. The Respondent received the EDPRP on May 21, 2007, as evidenced by the signature on the green card. No Answer has been filed. The Notice of Intent to Shutdown USTs was filed on September 25, 2007. As of the date of entry of this Order, the Respondent has not corrected the violations noted during the May 15, 2006 investigation.</p> <p>PST</p> <p>1) Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances as a motor fuel [30 TEX. ADMIN. CODE § 334.48(c)].</p> <p>2) Failed to test the line leak detectors at least once per year for performance and operational reliability [30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE 26.3475(a)].</p> <p>3) Failed to provide release detection for the piping associated with the USTs [30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(ii) and TEX. WATER CODE 26.3475(a)].</p> <p>4) Failed to provide release detection for the USTs and failed to conduct inventory volume measurements in conjunction with automatic tank gauging [30 TEX. ADMIN. CODE § 334.50(d)(4)(A)(i) and TEX. WATER CODE 26.3475(c)(1)].</p> | <p>Total Assessed: \$11,790</p> <p>Total Deferred: \$0</p> <p>SEP Conditional Offset: \$0</p> <p>Total Due to General Revenue: \$11,790</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 submit an application for a new delivery certificate only after the Respondent has complied with all of the requirements of this Order.</p> <p>The Respondent shall:</p> <p>1) Immediately, take the following steps to shut down operations of the non-compliant UST systems at the Facility:</p> <ul style="list-style-type: none"> a) Cease dispensing fuel from the USTs; b) Cease receiving deliveries of regulated substances into the USTs; c) Padlock the dispensers; d) Empty the USTs of all regulated substances; and e) Temporarily remove the UST system from service. <p>2) Within 10 days, send its UST delivery certificate to the TCEQ.</p> <p>3) Within 15 days, submit a detailed written report documenting the steps it has taken to comply with these Ordering Provisions.</p> <p>Technical Requirements</p> <p>The Respondent shall:</p> <p>4) If the Respondent elects to permanently remove from service any UST systems at the Facility, the Respondent shall permanently remove those UST systems.</p> <p>5) The Respondent's UST systems shall remain out of service as directed by Ordering Provision No. 1 until such time the Respondent demonstrates to the satisfaction of the executive director that it has corrected the violations.</p> |

| | | |
|--|--|--|
| <p>5) Failed to put the ATG into test mode to perform an automatic test for substance loss capable of detecting a release of 0.2 gallons per hour from any portion of the tank containing regulated substances [30 TEX. ADMIN. CODE § 334.50(d)(4)(A)(ii)(II) and TEX. WATER CODE 26.3475(c)(1)].</p> | | <p>6) Prior to resuming service of the USTs, the Respondent shall immediately begin conducting effective manual or automatic inventory control procedures for all USTs.</p> |
| <p>6) Failed to equip each UST with a valve or other device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level no higher than the 95% capacity level of the tank [30 TEX. ADMIN. CODE § 334.51(b) and TEX. WATER CODE 26.3475(c)(2)].</p> <p>7) Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].</p> | | <p>7)-Within 30 days:</p> <p>a) Implement a release detection method for all USTs at the Facility; perform testing of the line leak detectors at least once per year for performance and operational reliability, and conduct annual piping test;</p> <p>b) Equip the UST system with overflow prevention equipment; and</p> <p>c) Submit documentation that demonstrates acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.</p> <p>8) Within 45 days of resuming service of the USTs, submit written, notarized certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with these Ordering Provisions.</p> <p>9) Upon obtaining a new delivery certificate, the Respondent shall post the delivery certificate in a location where the document is clearly visible at all times.</p> |



Policy Revision 2 (September 2002)

PCW Revision May 19, 2005

| | | | | |
|------------------------|-------------|-----------|-------------|---------|
| DATES: Assigned | 10-Jul-2006 | | | |
| PCW | 04-Nov-2006 | Screening | 18-Jul-2006 | EPA Due |

| | | | |
|--|------------------------------|--------------------|--------------|
| RESPONDENT/FACILITY INFORMATION | | | |
| Respondent | Shalyriah, Inc. dba Sammys 3 | | |
| Reg. Ent. Ref. No. | RN102030186 | | |
| Facility/Site Region | 12-Houston | Major/Minor Source | Minor Source |

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

Penalty Calculation Section

| | | |
|---|------------|---------|
| TOTAL BASE PENALTY (Sum of violation base penalties) | Subtotal 1 | \$9,000 |
|---|------------|---------|

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

| | | | |
|---------------------------|-----------------|--------------------|---------|
| Compliance History | 31% Enhancement | Subtotal 2, 3, & 7 | \$2,790 |
|---------------------------|-----------------|--------------------|---------|

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

| | | | | |
|--------------------|----|----------------|------------|-----|
| Culpability | No | 0% Enhancement | Subtotal 4 | \$0 |
|--------------------|----|----------------|------------|-----|

Notes: The respondent does not meet the culpability criteria

| | | | |
|------------------------------------|--------------|------------|-----|
| Good Faith Effort to Comply | 0% Reduction | Subtotal 5 | \$0 |
|------------------------------------|--------------|------------|-----|

| | Before NOV | NOV to EDPRP/Settlement Offer |
|---------------|-------------------------------------|-------------------------------|
| Extraordinary | | |
| Ordinary | | |
| N/A | <input checked="" type="checkbox"/> | (mark with a small x) |

Notes: The respondent does not meet the good faith criteria

| | | | |
|-------------------------|----------------|------------|-----|
| Economic Benefit | 0% Enhancement | Subtotal 6 | \$0 |
|-------------------------|----------------|------------|-----|

| | | |
|----------------------------|---------|-----------------------------------|
| Total EB Amounts | \$2,139 | *Capped at the Total EB \$ Amount |
| Approx. Cost of Compliance | \$4,200 | |

| | | |
|-----------------------------|----------------|----------|
| SUM OF SUBTOTALS 1-7 | Final Subtotal | \$11,790 |
|-----------------------------|----------------|----------|

| | | |
|---|------------|-----|
| 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 \$11,790

| | | |
|-----------------------------------|------------------------|----------|
| STATUTORY LIMIT ADJUSTMENT | Final Assessed Penalty | \$11,790 |
|-----------------------------------|------------------------|----------|

| | | | |
|-----------------|-----------|------------|-----|
| DEFERRAL | Reduction | Adjustment | \$0 |
|-----------------|-----------|------------|-----|

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

Notes: This is not an expedited case

| | |
|------------------------|----------|
| PAYABLE PENALTY | \$11,790 |
|------------------------|----------|

| | | | |
|-------------------------|-----------------------------|--|------------------------------------|
| Screening Date: | 11-2006 | Division/Cases: D/Sammys Revised PCW.wb3 | PGW |
| Respondent: | Shalynah, Inc. dba Sammys 3 | Docket No: 2006-1001-P | Policy Revision 2 (September 2002) |
| Case ID No: | 30327 | | PCW Revision May 19, 2005 |
| Reg. Ent. Reference No: | RN102030186 | | |
| Media/Statute: | Petroleum Storage Tank | | |
| Enf. Coordinator: | Deana Holland | | |

Compliance History Worksheet

Compliance History Site Enhancement (Subtotal 2)

| Component | Number of... | Enter Number Here | Adjust. |
|-------------------------------|--|-------------------|---------|
| NOVs | Written NOV's with same or similar violations as those in the current enforcement action (number of NOV's meeting criteria) | 1 | 5% |
| | Other written NOV's | 3 | 6% |
| Orders | Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria) | 1 | 20% |
| | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 0 | 0% |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria) | 0 | 0% |
| | Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government | 0 | 0% |
| Convictions | Any criminal convictions of this state or the federal government (number of counts) | 0 | 0% |
| Emissions | Chronic excessive emissions events (number of events) | 0 | 0% |
| Audits | Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were) | 0 | 0% |
| | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed) | 0 | 0% |
| Other | Environmental management systems in place for one year or more | No | 0% |
| | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program | No | 0% |
| | Participation in a voluntary pollution reduction program | No | 0% |
| | Early compliance with, or offer of a product that meets future state or federal government environmental requirements | No | 0% |

Adjustment Percentage (Subtotal 2) 31%

Repeat Violator (Subtotal 3)

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 due to one NOV with same or similar violations, three NOV's without same or similar violations, and one 1660 Order

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

Screening Date 1-2006 Division\Cases\ED\Sammys\Revised PCW.wb3
 Respondent Shatynah, Inc. dba Sammys 3 PCW
 Case ID No. 30327 Policy Revision 2 (September 2002)
 Reg. Ent. Reference No. RN102030186 PCW Revision May 19, 2005
 Media [Statute] Petroleum Storage Tank
 Ent. Coordinator Deana Holland
 Violation Number

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.48(c)
 Secondary Rule Cite(s)
 Violation Description Failure to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances as a motor fuel.

Base Penalty

Environmental, Property and Human Health Matrix

| Release | Harm | | | Percent |
|-----------|-------------------------------------|--------------------------|--------------------------|----------------------------------|
| | Major | Moderate | Minor | |
| Actual | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="text" value="25%"/> |
| Potential | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |

Programmatic Matrix

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

Matrix Notes Human health or the environment will or could be exposed to 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="checkbox"/> |
| monthly | <input type="checkbox"/> |
| quarterly | <input checked="" type="checkbox"/> |
| semiannual | <input type="checkbox"/> |
| annual | <input type="checkbox"/> |
| single event | <input type="checkbox"/> |

Violation Base Penalty

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

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Division Cases \ D \ Sammys \ Revised ROW \ w3
Economic Benefit Worksheet

Respondent: Shalynah, Inc. dba Sammys 3
 Case ID No: 30327
 Reg. Ent. Reference No: RN102030186
 Media (Statute): Petroleum Storage Tank
 Violation No: 1

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0 | 15 |

| Item Description | Item Cost | Date Required | Final Date | Yrs. | Interest Saved | One-time 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) | \$500 | 15-May-2006 | 01-Feb-2007 | 0.7 | \$18 | n/a | \$18 |

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

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

Notes for AVOIDED costs: n/a

Approx. Cost of Compliance **TOTAL**

Division/Cases/ED/Sammys/Revised PCW/wb3
 Screening Date: 1/2006 Docket No: 2006-1001-P: **PCW**
 Respondent: Shalynah, Inc. dba Sammys 3 Policy Revision 2 (September 2002)
 Case ID No: 30327 PCW Revision May 19, 2005
 Reg. Ent. Reference No: RN102030186
 Media/Statute: Petroleum Storage Tank
 Enf. Coordinator: Deana Holland
 Violation Number: 2

Primary Rule Cite(s): 30 Tex. Admin. Code § 334.50(b)(2)(A)(i)(II); 334.50(b)(2)(A)(ii),
 334.50(d)(4)(A)(i); and 334.50(d)(4)(A)(ii)(II)
 Secondary Rule Cite(s): Tex. Water Code § 26.3475(a) and (c)(1)
 Violation Description: Failed to test the line leak detectors at least once per year for performance and operational reliability. Specifically, the line leak detectors had not been performance tested annually. Failed to provide release detection for the piping associated with the USTs. Specifically, the respondent did not conduct monthly monitoring or annual piping tightness test. Failed to provide release detection for the USTs by failing to conduct inventory volume measurements in conjunction with automatic tank gauging, and failed to put the ATG into test mode to perform an automatic test for substance loss capable of detecting a release of 0.2 gallon per hour from any portion of the tank containing regulated substances.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

| OR | Harm | | | Percent | |
|-----------|---------|-------|----------|---------|-------|
| | Release | Major | Moderate | | Minor |
| | Actual | | | | |
| Potential | X | | | | |

>> Programmatic Matrix

| Falsification | Major | Moderate | Minor | Percent |
|---------------|-------|----------|-------|---------|
| | | | | |

Matrix Notes: Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 1

mark only one use a small x

| | |
|--------------|---|
| daily | |
| monthly | |
| quarterly | X |
| semiannual | |
| annual | |
| single event | |

Violation Base Penalty \$2,500

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

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount \$60

Violation Final Penalty Total \$3,275

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

Division Cases: ID: Shalmys, Revised: PGW/wb3
Economic Benefit Worksheet

Respondent: Shalynah, Inc. dba Sammys 3
 Case ID No: 30327
 Reg. Ent. Reference No: RN102030186
 Media/Statute: Petroleum Storage Tank
 Violation No: 2

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0 | 15 |

| Item Description | Item Cost | Date Required | Final Date | Vrs | Interest Saved | One-time 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) | \$1,600 | 15-May-2006 | 01-Mar-2007 | 0.8 | \$60 | n/a | \$60 |

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

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

Notes for AVOIDED costs: n/a

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

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

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

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

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

Base Penalty: \$10,000

Environmental Property and Human Health Matrix

Harm Matrix:
 Release: Major Moderate Minor
 Actual: [] [] []
 Potential: [] [X] []
 Percent: 10%

Programmatic Matrix:
 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

Base Penalty Subtotal: \$1,000

Violation Events

Number of Violation Events: 1

mark only one use a small x
 Frequency Matrix:
 daily []
 monthly []
 quarterly [X]
 semiannual []
 annual []
 single event []

Violation Base Penalty: \$1,000

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

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount: \$14

Violation Final Penalty Total: \$1,310

This violation Final Assessed Penalty (adjusted for limits): \$1,310

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

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

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0 | 15 |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | One-time costs | EE Amount |
|--------------------------|-----------|---------------|-------------|-----|----------------|----------------|-----------|
| Delayed Costs | | | | | | | |
| Equipment | \$250 | 15-May-2006 | 01-Mar-2007 | 0.8 | \$1 | \$13 | \$14 |
| Buildings | | | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |
| Engineering/construction | | | | 0.0 | \$0 | \$0 | \$0 |
| Land | | | | 0.0 | \$0 | n/a | \$0 |
| Record Keeping System | | | | 0.0 | \$0 | n/a | \$0 |
| Training/Sampling | | | | 0.0 | \$0 | n/a | \$0 |
| Remediation/Disposal | | | | 0.0 | \$0 | n/a | \$0 |
| Permit Costs | | | | 0.0 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | n/a | \$0 |

Notes for DELAYED costs: Estimated cost to install a valve or other appropriate device for overfill prevention. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

| Item Description | ANNUALIZED avoided costs before entering item (except for one-time avoided costs) | Yrs | Interest Saved | One-time costs | EE Amount |
|-------------------------------|---|-----|----------------|----------------|-----------|
| Avoided Costs | | | | | |
| Disposal | | 0.0 | \$0 | \$0 | \$0 |
| Personnel | | 0.0 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling | | 0.0 | \$0 | \$0 | \$0 |
| Supplies/equipment | | 0.0 | \$0 | \$0 | \$0 |
| Financial Assurance [2] | | 0.0 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3] | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | | 0.0 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs: n/a

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

Screening Date: 11/04/06
 Respondent: Shalynah, Inc. dba Sammys 3
 Case ID No: 30327
 Reg. Ent Reference No: RN102030186
 Media [Statute]: Petroleum Storage Tank
 Enf. Coordinator: Deana Holland
 Violation Number: 4

Division\Cases\LD\Sammys\Revised PCW.wb3
 2006 Docket No: 2006-1001-P

PCW

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

Primary Rule Cite(s): 30 Tex. Admin. Code, § 37.815(a) and (b)
 Secondary Rule Cite(s):
 Violation Description: Failure to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

| Release | Harm | | | Percent |
|-----------|-------|----------|-------|---------|
| | Major | Moderate | Minor | |
| Actual | | | | |
| Potential | | | | |

>> Programmatic Matrix

| Falsification | Major | Moderate | Minor | Percent |
|---------------|-------|----------|-------|---------|
| | X | | | 10% |

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

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

Violation Events

Number of Violation Events: 3

mark only one use a small x

| | |
|--------------|---|
| daily | |
| monthly | |
| quarterly | |
| semiannual | |
| annual | |
| single event | X |

Violation Base Penalty \$3,000

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

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount \$2,048

Violation Final Penalty Total \$3,930

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

Division\Cases\11\Shalynah\Revised\PCW\wb3
Economic Benefit Worksheet

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

| 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 | | | | n/a | | | |

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

Approx. Cost of Compliance **TOTAL**

Compliance History

| | | | |
|---|---|-------------------------|---|
| Customer/Respondent/Owner-Operator: | CN602720492 Shalynah, Inc. | Classification: AVERAGE | Rating: 3.41 |
| Regulated Entity: | RN102030186 SAMMYS 3 | Classification: AVERAGE | Site Rating: 9.17 |
| ID Number(s): | PETROLEUM STORAGE TANK REGISTRATION | | 69277 |
| Location: | 1601 W FAIRMONT PKWY, LA PORTE, TX, 77571 | | Rating Date: September-09/01/2005 Repeat Violator: NO |
| TCEQ Region: | REGION 12 - HOUSTON | | |
| Date Compliance History Prepared: | July 23, 2006 | | |
| Agency Decision Requiring Compliance History: | Enforcement | | |
| Compliance Period: | July 23, 2001 to July 23, 2006 | | |
| TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History | | | |
| Name: | Deana Holland | Phone: | (512) 239-2504 |

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? Yes
3. If Yes, who is the current owner? Shalynah, Inc.
4. If Yes, who was/were the prior owner(s)? Sampri Investments, LLC
5. When did the change(s) in ownership occur? December 31, 2005

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
 - N/A Effective Date: 06/27/2005 ADMINORDER 2004-1108-PST-E
 - Classification: Moderate
 - Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)
30 TAC Chapter 37, SubChapter I 37.815(b)
 - Description: Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.
- B. Any criminal convictions of the state of Texas and the federal government.
 - N/A
- C. Chronic excessive emissions events.
 - N/A
- D. The approval dates of investigations. (CEEDS Inv. Track. No.)
 - N/A
 - 1 09/27/2002 (275197)
 - 2 11/15/2002 (16359)
 - 3 02/26/2003 (25976)
 - 4 04/30/2003 (35351)
 - 5 07/08/2004 (279049)
 - 6 01/30/2006 (451818)
 - 7 06/20/2006 (461498)
 - 8 06/21/2006 (466287)
- E. Written notices of violations (NOV). (CEEDS Inv. Track. No.)
 - Date: 09/27/2002 (275197)
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)
30 TAC Chapter 37, SubChapter I 37.815(b)
 - Description: Failure to provide acceptable financial assurance.
 - Date: 11/15/2002 (16359)
 - Self Report? NO Classification: Minor
 - Citation: 30 TAC Chapter 115, SubChapter C 115.246(3)

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

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(5)

Description: Failure to maintain a record of the results of testing conducted at the facility according to 115.245 (Testing Requirements).

Self Report? NO Classification: Minor

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

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

Self Report? NO Classification: Minor

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

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

Self Report? NO Classification: Minor

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

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

Self Report? NO Classification: Minor

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

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

Self Report? NO Classification: Minor

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

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

Date: 01/30/2006 (451818)

Self Report? NO Classification: Moderate

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

Description: Failure to develop and maintain all UST records.

Self Report? NO Classification: Moderate

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

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

Date: 06/20/2006 (461498)

Self Report? NO Classification: Moderate

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

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

Self Report? NO Classification: Moderate

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

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

Self Report? NO Classification: Moderate

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

Description: No current Stage II test results.

Self Report? NO Classification: Moderate

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

Description: No operating instructions posted on each dispenser.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN § BEFORE THE
ENFORCEMENT ACTION §
CONCERNING § TEXAS COMMISSION ON
SHALYNAH, INC. DBA SAMMYS 3; §
RN102030186 § ENVIRONMENTAL QUALITY
§

DEFAULT AND SHUTDOWN ORDER

DOCKET NO. 2006-1001-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 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty, corrective action of the respondent, and revocation of the respondent's fuel delivery certificate. The Commission also considered the Executive Director's Motion requesting entry of an Order requiring the respondent, Shalynah, Inc. dba Sammys 3 ("Shalynah, Inc."), to shutdown or remove from service the Underground Storage Tanks ("USTs") at the Sammy's 3 facility, located at 1601 West Fairmont Parkway in La Porte, Harris County, Texas.

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

FINDINGS OF FACT

1. Shalynah, Inc. owns and operates a convenience store with retail sales of gasoline, located at 1601 West Fairmont Parkway in La Porte, Harris County, Texas (the "Facility").
2. The USTs at the Facility contain regulated substances as defined in the Commission's rules. The USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. On May 15, 2006, an investigator from the TCEQ Houston Regional Office documented that Shalynah, Inc.:

- a. Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances as a motor fuel.
 - b. Failed to test the line leak detectors at least once per year for performance and operational reliability. Specifically, the line leak detectors had not been performance tested annually.
 - c. Failed to provide release detection for the piping associated with the USTs. Specifically, Shalynah, Inc. did not conduct monthly monitoring or annual piping tightness test.
 - d. Failed to provide release detection for the USTs and for failing to conduct inventory volume measurements in conjunction with automatic tank gauging.
 - e. Failed to put the ATG into test mode to perform an automatic test for substance loss capable of detecting a release of 0.2 gallons per hour from any portion of the tank containing regulated substances.
 - f. Failed to equip each UST with a valve or other device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level no higher than the 95% capacity level of the tank. Specifically, Shalynah, Inc. did not install overfill prevention equipment.
 - g. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.
4. By letter dated June 21, 2006, the TCEQ Houston Regional Office provided Shalynah, Inc. with notice of the violations and the TCEQ's authority to shut down and remove from service UST systems not in compliance with UST system release detection requirements and line leak testing requirements if the violations were not corrected.
 5. Shalynah, Inc. received notice of the violations on or about June 26, 2006.
 6. 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 Shalynah, Inc. dba Sammys 3" (the "EDPRP") in the TCEQ Chief Clerk's office on May 18, 2007.

7. By letter dated May 18, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Shalynah, Inc. with notice of the EDPRP. According to the return receipt "green card," Shalynah, Inc. received notice of the EDPRP on May 21, 2007, as evidenced by the signature on the card.
8. More than 20 days have elapsed since Shalynah, Inc. received notice of the EDPRP, provided by the Executive Director. Shalynah, Inc. failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.
9. By letter dated September 25, 2007, TCEQ provided Shalynah, Inc. with notice of TCEQ's intent to order the UST systems at the Facility shut down and removed from service if Shalynah, Inc. failed to correct the release detection violation within 30 days after Shalynah, Inc.'s receipt of the notice.
10. As of the date of entry of this Order, Shalynah, Inc. has not corrected the violations noted during the May 15, 2006, investigation.
11. The UST systems at the Facility do not have release detection requirements as required by 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(ii), (b)(2)(A)(i)(III), (d)(4)(A)(i), and (d)(4)(A)(ii)(II) and TEX. WATER CODE § 26.3475(a) and (c)(1) and may be releasing petroleum products to the environment without the knowledge of the tank owner or operator. Therefore, conditions at the Facility constitute an imminent peril to public health, safety, and welfare.

CONCLUSIONS OF LAW

1. Shalynah, Inc.'s USTs are subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, and the rules of the Commission.
2. As evidenced by Finding of Fact Number 3.a., Shalynah, Inc. violated 30 TEX. ADMIN. CODE § 334.8(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances as a motor fuel.
3. As evidenced by Finding of Fact Number 3.b., Shalynah, Inc. violated 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX WATER CODE § 26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability. Specifically, the line leak detectors had not been performance tested annually.
4. As evidenced by Finding of Fact Number 3.c., Shalynah, Inc. violated 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(ii) and TEX WATER CODE § 26.3475(a), by failing to provide release

detection for the piping associated with the USTs. Specifically, Shalynah, Inc. did not conduct monthly monitoring or annual piping tightness test.

5. As evidenced by Finding of Fact Number 3.d., Shalynah, Inc. violated 30 TEX. ADMIN. CODE § 334.50(d)(4)(A)(i) and TEX WATER CODE § 26.3475(c)(1), by failing to provide release detection for the USTs and for failing to conduct inventory volume measurements in conjunction with automatic tank gauging.
6. As evidenced by Finding of Fact Number 3.e., Shalynah, Inc. violated TEX. ADMIN. CODE § 334.50(d)(4)(A)(ii)(II) and TEX WATER CODE § 26.3475(c)(1), by failing to put the ATG into test mode to perform an automatic test for substance loss capable of detecting a release of 0.2 gallons per hour from any portion of the tank containing regulated substances.
7. As evidenced by Finding of Fact Number 3.f., Shalynah, Inc. violated 30 TEX. ADMIN. CODE § 334.51(b) and TEX WATER CODE § 26.3475(c)(2), by failing to equip each UST with a valve or other device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level no higher than the 95% capacity level of the tank. Specifically, Shalynah, Inc. did not install overfill prevention equipment.
8. As evidenced by Finding of Fact Number 3.f., Shalynah, Inc. violated 30 TEX. ADMIN. CODE § 37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.
9. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director has timely served Shalynah, Inc. with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
10. As evidenced by Finding of Fact No. 8, Shalynah, Inc. 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 Shalynah, Inc. and assess the penalty recommended by the Executive Director.
11. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Shalynah, Inc. for violations of the Texas Water 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.

12. An administrative penalty in the amount of eleven thousand seven hundred ninety dollars (\$11,790.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
13. As evidenced by Finding of Fact No. 10, Shalynah, Inc. failed to correct documented violations of Commission requirements within 30 days after Shalynah, Inc. received notice of the violations and notice of the Executive Director's intent to shut down the Facility.
14. TEX. WATER CODE § 26.3475(e) authorizes the Commission to order a UST owner or operator to shut down a UST system if, within 30 days after receiving notice of the violations, the owner or operator fails to correct violations of Commission regulatory requirements relating to release detection for tanks and/or piping, spill and overfill protection for tanks, and/or corrosion protection for tanks and piping.
15. 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.
16. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Shalynah, Inc.'s UST delivery certificate if the Commission finds that good cause exists.
17. Good cause for revocation of Shalynah, Inc.'s UST delivery certificate exists as justified by Findings of Fact Nos. 6, 7, and 8, and Conclusions of Law Nos. 9 and 10.
18. As evidenced by Finding of Fact Number 11, current conditions at the Facility constitute an imminent peril to public health, safety and welfare.

ORDERING PROVISIONS

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. Immediately upon the effective date of this Order, Shalynah, Inc. shall take the following steps to shut down operations of the non-compliant UST systems at the Facility:
 - a. Cease dispensing fuel from the USTs;
 - b. Cease receiving deliveries of regulated substances into the USTs;
 - c. Padlock the dispensers;

- d. Empty the USTs of all regulated substances in accordance with 30 TEX. ADMIN. CODE § 334.54(d); and
 - e. Temporarily remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.54.
2. Shalynah, Inc.'s UST delivery certificate is revoked immediately upon the effective date of this Order. Shalynah, Inc. may submit an application for a new delivery certificate only after Shalynah, Inc. has complied with all of the requirements of this Order.
 3. Within 10 days after the effective date of this Order, Shalynah, Inc. shall send its 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. Within 15 days after the effective date of this Order, Shalynah, Inc. shall submit to the Executive Director a detailed written report documenting the steps it has taken to comply with Ordering Provision Nos. 1.a. through 1.e. and 3, Shalynah, Inc. shall submit the report to:

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

And

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

5. If Shalynah, Inc. elects to permanently remove from service any UST systems at the Facility, Shalynah, Inc. shall permanently remove those UST systems in accordance with 30 TEX. ADMIN. CODE § 334.55, and shall submit to the Commission a written report documenting compliance with 30 TEX. ADMIN. CODE § 334.55. Shalynah, Inc. shall submit the written report to:

Petroleum Storage Tank Registration Team, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

6. Shalynah, Inc. is assessed an administrative penalty in the amount of eleven thousand seven hundred ninety dollars (\$11,790.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Shalynah, Inc.'s compliance with all the terms and conditions set forth in this Order completely resolve only 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: Shalynah, inc. dba Sammys 3; Docket No. 2006-1001-PST-E" to:

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

7. Shalynah, Inc.'s UST systems shall remain out of service as directed by Ordering Provision Nos. 1.a. through 1.e. until such time as Shalynah, Inc. demonstrates to the satisfaction of the Executive Director that it has corrected the violations noted in Finding of Fact Nos. 3.a through 3.g and Conclusion of Law Nos. 2 through 8 as listed herein. Prior to resuming service of the USTs, Shalynah, Inc. shall undertake the following technical requirements:
 - a. Immediately after the effective date of the Commission Order, Shalynah, Inc. shall begin conducting effective manual or automatic inventory control procedures for all USTs, in accordance with 30 TEX. ADMIN. CODE § 334.48.

- b. Within 30 days after the effective date of the Commission Order, Shalynah, Inc. shall:
- i. Implement a release detection method for all USTs at the Facility, perform testing of the line leak detectors at least once per year for performance and operational reliability, and conduct annual piping test, in accordance with 30 TEX. ADMIN. CODE § 334.50;
 - ii. Equip the UST system with overfill prevention equipment, in accordance with 30 TEX. ADMIN. CODE § 334.51; and
 - iii. Submit documentation that demonstrates acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in accordance with 30 TEX. ADMIN. CODE § 37.815 to:

Mr. Rob Norris, Senior Financial Analyst
Financial Assurance Unit, MC 184
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- c. Within 45 days of resuming service of the USTs, Shalynah, Inc. shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 7.a. through 7.b.iii. The written 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

and

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

8. Upon obtaining a new delivery certificate, Shalynah, Inc. shall post the delivery certificate in a location where the document is clearly visible at all times, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii).
9. All relief not expressly granted in this Order is denied.
10. The provisions of this Order shall apply to and be binding upon Shalynah, Inc., and Shalynah, Inc. is ordered to give notice of this Order to personnel who maintain day to day control of the UST systems at the Facility.
11. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Shalynah, Inc. if the Executive Director determines that Shalynah, Inc. is noncompliant with or in violation of any of the terms and conditions set forth in this Order.
12. This Order shall terminate five years from its effective date or when Shalynah, Inc. demonstrates to the satisfaction of the Executive Director that it has corrected all of the violations noted herein.
13. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order is the date this decision was rendered, pursuant to TEX. GOV'T CODE § 2001.144(a)(3).

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF JACQUELYN BOUTWELL

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Jacquelyn Boutwell. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

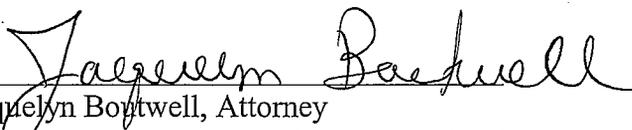
On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Shalynah, inc. dba Sammys 3” (the “EDPRP”) was filed with the Office of the Chief Clerk on May 18, 2007.

The EDPRP was mailed to Shalynah, Inc. at its last known address on May 18, 2007, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Shalynah, Inc. received notice of the EDPRP on May 21, 2007, as evidenced by the signature on the card.

More than 20 days have elapsed since Shalynah, Inc. received notice of the EDPRP. Shalynah, Inc. failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

By letter dated September 25, 2007, I provided Shalynah, Inc. with notice of the TCEQ’s intent to order the UST systems at the Facility shut down and removed from service if the violations pertaining to release detection requirements and line leak testing requirements were not corrected within 30 days of Shalynah, Inc.’s receipt of the letter.

As of the date of this affidavit, I am not aware of any evidence that indicates that Shalynah, Inc. has corrected the violations noted during the May 15, 2006, investigation.”



Jacquelyn Boutwell, Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jacquelyn Boutwell,
known to me to be the person whose name is subscribed to the foregoing instrument and
acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 30 day of November, 2007.

Margaret Jackson
Notary Signature

