

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2008-0194-PST-E **TCEQ ID:** RN101492312 **CASE NO.:** 35325
RESPONDENT NAME: Ashmal, Inc. dba East 1st Grocery

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input 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: East 1st Grocery, 1811 East Cesar Chavez Street, Austin, Travis 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 June 16, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Elvia Maske, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-0789; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Mubarak Ali Dhuka, President, Ashmal, Inc., 1811 East Cesar Chavez Street, Austin, Texas 78702 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: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: October 31, 2007</p> <p>Date of NOE Relating to this Case: December 8, 2007 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>1) Failure to monitor underground storage tanks ("USTs") for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>2) Failure to maintain UST records and make them immediately available for inspection upon request by agency personnel. Specifically, the results of all tests and inspections of the impressed current cathodic protection system were not available for review [30 TEX. ADMIN. CODE §§ 334.10(b) and 334.49(e)(2)(B)].</p>	<p>Total Assessed: \$4,375</p> <p>Total Deferred: \$875 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$136 (remaining \$3,364 due in 29 monthly payments of \$116 each)</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" 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>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a) Implemented a release detection method for all USTs on January 30, 2008; and</p> <p>b) Submitted UST records including all test and inspections of the impressed current cathodic protection system on January 30, 2008.</p>

Additional ID No(s): PST Facility ID No. 11315



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision January 29, 2008

TCEQ

DATES	Assigned	10-Dec-2007	PCW	20-Mar-2008	Screening	22-Jan-2008	EPA Due	
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RESPONDENT/FACILITY INFORMATION			
Respondent	Ashmal, Inc. dba East 1st Grocery		
Reg. Ent. Ref. No.	RN101492312		
Facility/Site Region	11-Austin	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	35325	No. of Violations	2
Docket No.	2008-0194-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Elvia Maske
Multi-Media		EC's Team	Enforcement Team 6
Admin. Penalty \$	Limit Minimum	\$0	Maximum
			\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	<i>Subtotal 1</i>	\$3,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	35% Enhancement	<i>Subtotals 2, 3, & 7</i>	\$1,225
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Notes	Enhancement due to one NOV with same or similar violations, one 1660 order, and poor performer classification.
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Culpability	No	0% Enhancement	<i>Subtotal 4</i>	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply	10% Reduction	<i>Subtotal 5</i>	\$350
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<small>Before NOV NOV to EDPRP/Settlement Offer</small>	
Extraordinary	
Ordinary	X
N/A	<small>(mark with x)</small>
Notes	The Respondent achieved compliance on January 30, 2008.

	0% Enhancement*	<i>Subtotal 6</i>	\$0
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<small>Total EB Amounts</small>	\$20	<small>*Capped at the Total EB \$ Amount</small>	
<small>Approx. Cost of Compliance</small>	\$1,600		

SUM OF SUBTOTALS 1-7	<i>Final Subtotal</i>	\$4,375
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0%	<i>Adjustment</i>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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<i>Final Penalty Amount</i>	\$4,375
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STATUTORY LIMIT ADJUSTMENT	<i>Final Assessed Penalty</i>	\$4,375
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DEFERRAL	20%	Reduction	<i>Adjustment</i>	-\$875
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral offered for expedited settlement.
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PAYABLE PENALTY	\$3,500
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Screening Date 22-Jan-2008

Docket No. 2008-0194-PST-E

PCW

Respondent Ashmal, Inc. dba East 1st Grocery

Policy Revision 2 (September 2002)

Case ID No. 35325

PCW Revision January 29, 2008

Reg. Ent. Reference No. RN101492312

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

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)	1	5%
	Other written NOVs	0	0%
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 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%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 25%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Poor Performer

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance History Notes

Enhancement due to one NOV with same or similar violations, one 1660 order, and poor performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 35%

Screening Date 22-Jan-2008	Docket No. 2008-0194-PST-E	PCW
Respondent Ashmal, Inc. dba East 1st Grocery	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 35325	<i>PCW Revision January 29, 2008</i>	
Reg. Ent. Reference No. RN101492312		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Elvia Maske		
Violation Number <input type="text" value="1"/>		
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 334.50(b)(1)(A) and Tex. Water Code § 26.3475(c)(1)"/>	
Violation Description	<input type="text" value="Failed to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring)."/>	
Base Penalty		<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text" value="x"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

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

Estimated EB Amount **Violation Final Penalty Total**

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent: Ashmal, Inc. dba East 1st Grocery
Case ID No.: 35325
Reg. Ent. Reference No.: RN101492312
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
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)	\$1,500	31-Oct-2007	30-Jan-2008	0.2	\$19	n/a	\$19

Notes for DELAYED costs

Estimated cost to provide release detection for the USTs. The date required is the date of the investigation and the final date is the date of compliance.

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$19

Screening Date 22-Jan-2008	Docket No. 2008-0194-PST-E	PCW
Respondent Ashmal, Inc. dba East 1st Grocery	<small>Policy Revision 2 (September 2002)</small>	
Case ID No. 35325	<small>PCW Revision January 29, 2008</small>	
Reg. Ent. Reference No. RN101492312		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Elvia Maske		
Violation Number 2		
Rule Cite(s)	30 Tex. Admin. Code §§ 334.10(b) and 334.49(e)(2)(B)	
Violation Description	Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel. Specifically, the results of all tests and inspections of the impressed current cathodic protection system were not available for review.	
Base Penalty		\$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate		Minor
	Actual	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
	Potential	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
				Percent <input type="text" value="0%"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Percent <input type="text" value="10%"/>

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

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="checkbox"/>
monthly	<input type="checkbox"/>
quarterly	<input type="checkbox"/>
semiannual	<input type="checkbox"/>
annual	<input type="checkbox"/>
single event	<input checked="" type="checkbox"/>

Violation Base Penalty

One single event is recommended based on documentation of the violation during the October 31, 2007 investigation.

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount **Violation Final Penalty Total**

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Ashmal, Inc. dba East 1st Grocery
Case ID No. 35325
Reg. Ent. Reference No. RN101492312
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
No commas or \$							

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$100	31-Oct-2007	30-Jan-2008	0.2	\$1	n/a	\$1
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 all UST records. The date required is the date of the investigation and final date is the date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$100

TOTAL

\$1

Compliance History

Customer/Respondent/Owner-Operator:	CN600780811 Ashmal, Inc.	Classification: POOR	Rating: 74.50
Regulated Entity:	RN101492312 EAST 1ST GROCERY	Classification: POOR	Site Rating: 74.50
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	11315
Location:	1811 E CESAR CHAVEZ ST, AUSTIN, TX, 78702	Rating Date: 9/1/2007	Repeat Violator: NO
TCEQ Region:	REGION 11 - AUSTIN		
Date Compliance History Prepared:	January 29, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	January 29, 2003 to January 29, 2008		

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

Name: Elvia Maske Phone: (512) 239-0789

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? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

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

Effective Date: 10/25/2004	ADMINORDER 2003-0666-PST-E
Classification: Moderate	
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c) 30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)	
Description: Failure to monitor for releases at least once per month.	
Classification: Moderate	
Citation: 30 TAC Chapter 334, SubChapter C 334.49(e)(2)(B)(i)	
Description: Failure to maintain records of the results of tests and inspections of the impressed current cathodic protection system.	
Classification: Moderate	
Citation: 30 TAC Chapter 334, SubChapter C 334.48(c)	
Description: Failure to conduct inventory control for all usts involved in the retail sale of petroleum substances used as motor fuel.	

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

N/A

- C. Chronic excessive emissions events.

N/A

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

1	06/19/2007	(561802)
2	12/07/2007	(601223)

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

Date: 06/14/2007	(561802)	
Self Report?	NO	Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c) 30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)		
Description: Failure to monitor for releases at least once per month.		
Self Report?	NO	Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.49(e)(2)(B)(i)		
Description: Failure to maintain records of the results of tests and inspections of the impressed current cathodic protection system.		
Self Report?	NO	Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.48(c)		

Description: Failure to conduct inventory control for all usts involved in the retail sale of petroleum substances used as motor fuel.

Self Report? NO

Classification: Major

Citation: 2A TWC Chapter 7, SubChapter A 7.101

Rqmt Prov: ORDER Ordering Provisions 2.a through 2.b.

Description: Failure to comply with Ordering Provisions of Agreed Order.

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
ASHMAL, INC. DBA EAST 1ST
GROCERY
RN101492312**

§ **BEFORE THE**
§
§ **TEXAS COMMISSION ON**
§
§
§ **ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2008-0194-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Ashmal, Inc. dba East 1st Grocery ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a convenience store with retail sales of gasoline at 1811 East Cesar Chavez Street in Austin, Travis County, Texas (the "Facility").
2. The Respondent's two underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about December 13, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Four Thousand Three Hundred Seventy-Five Dollars (\$4,375) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Hundred Thirty-Six Dollars (\$136) of the

administrative penalty and Eight Hundred Seventy-Five Dollars (\$875) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Three Thousand Three Hundred Sixty-Four Dollars (\$3,364) of the administrative penalty shall be payable in 29 monthly payments of One Hundred Sixteen Dollars (\$116) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. Implemented a release detection method for all USTs on January 30, 2008; and
 - b. Submitted UST records including all test and inspections of the impressed current cathodic protection system on January 30, 2008.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring), in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on October 31, 2007.
2. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE §§ 334.10(b) and 334.49(e)(2)(B), as documented during an investigation conducted on October 31, 2007. Specifically, the results of all tests and inspections of the impressed current cathodic protection system were not available for review.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Ashmal, Inc. dba East 1st Grocery, Docket No. 2008-0194-PST-E" to:

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

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and

substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission:


For the Executive Director

6/2/2008
Date

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

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

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

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


Signature

4-8-08
Date

Mubarak Dhulke
Name (Printed or typed)
Authorized Representative of
Ashmal, Inc. dba East 1st Grocery

President
Title

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

