

DOCKET NO.: 2007-0698-PST-E TCEQ ID: RN103190393 CASE NO.: 33419
 RESPONDENT NAME: HUSNAIN AFTAB ENTERPRISES, INC. DBA JR MINI 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: 5320 North Main Street, Vidor, Orange 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 April 28, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Mr. Gary K. Shiu, Litigation Division, MC R-12, (713) 767-3500 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Mr. Rajesh Acharya, Waste Enforcement Section, MC 128, (512) 239-0577 TCEQ Regional Contact: Mr. Ronald Hebert, Beaumont Regional Office, MC R-10, (409) 898-3838 Respondent: Mr. Mohammad Aftab Sultan, Director and Registered Agent, Husnain Aftab Enterprises, Inc., dba JR Mini Mart, P.O. Box 216, Vidor, Texas 77670-0216 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: May 31, 2006</p> <p>Date of NOEs/NOVs Relating to this Case: May 31, 2006 (NOV) April 23, 2007 (NOE)</p> <p>Background Facts:</p> <p>On September 18, 2007, the Executive Director filed and mailed the EDPRP against the Respondent. More than 20 days have elapsed since the Respondent received notice of the EDPRP provided by the Executive Director. 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 at the Facility and make them immediately available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 115.246(4), (5), (6) and (7)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2. Failed to verify proper operation of the State II equipment at least once every 12 months, and the Stage II vapor space manifold and dynamic pressure performance at least once every 36 months [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>3. Failed to maintain the Stage II Vapor Recovery System in proper operating condition and free of defects that would impair the effectiveness of the system [30 TEX. ADMIN. CODE § 115.242(3)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$4,725</p> <p>Total Deferred: \$0</p> <p>SEP Conditional Offset: \$0</p> <p>Total Due to General Revenue: \$4,725</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 proposed Order.</p> <p>Site Compliance History Classification:</p> <p><input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification:</p> <p><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 undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Immediately, begin maintaining all Stage II records at the Facility. 2. Within 10 days, the Respondent must send in his UST delivery certificate to the TCEQ. 3. Within 30 days: <ol style="list-style-type: none"> a. Conduct the annual and triennial testing of the Stage II Vapor Recovery System; and b. Begin maintaining all Stage II equipment in proper operating condition, including but not limited to, the installation of swivel adaptors. 4. Within 45 days, submit written, notarized certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with the above Ordering Provisions.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision April 26, 2007

TCEQ

DATES	Assigned	30-Apr-2007			
	PCW	24-Jul-2007	Screening	30-Apr-2007	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	Husnain Aftab Enterprises, Inc. dba JR Mini Mart
Reg. Ent. Ref. No.	RN103190393
Facility/Site Region	10-Beaumont
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	33419	No. of Violations	3
Docket No.	2007-0698-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Rajesh Acharya
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) **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 **Subtotals 2, 3, & 7**

Notes

Culpability **Subtotal 4**

Notes

Good Faith Effort to Comply **Subtotal 5**

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	X	(mark with x)

Notes

Subtotal 6

Total EB Amounts	\$1,244	0% Enhancement*
Approx. Cost of Compliance	\$2,000	*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 **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 30-Apr-2007

Docket No. 2007-0698-PST-E

PCW

Respondent Husnain Aftab Enterprises, Inc. dba JR Mini Mart

Policy Revision 2 (September 2002)

Case ID No. 33419

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN103190393

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

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	0	0%
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) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 30-Apr-2007

Docket No. 2007-0698-PST-E

PCW

Respondent Husnain Aftab Enterprises, Inc. dba JR Mini Mart

Policy Revision 2 (September 2002)

Case ID No. 33419

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN103190393

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 115.246(4), (5), (6) and (7)(A) and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to maintain Stage II records on-site at the Station ordinarily manned during business hours, and make them immediately available for inspection upon request by agency personnel. Specifically, employee training records, daily inspection records, Stage II test results, and a copy of the CARB Executive Order were not available for review.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

59 Number of violation days

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the March 2, 2007 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$19

Violation Final Penalty Total \$1,050

This violation Final Assessed Penalty (adjusted for limits) \$1,050

Economic Benefit Worksheet

Respondent Husnain Aftab Enterprises, Inc. dba JR Mini Mart
Case ID No. 33419
Reg. Ent. Reference No. RN103190393
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	\$500	2-Mar-2007	2-Dec-2007	0.8	\$19	n/a	\$19
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 establish and maintain a record keeping system. Date Required is the investigation date. Final date is the estimated compliance date.

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	\$19
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Screening Date 30-Apr-2007

Docket No. 2007-0698-PST-E

PCW

Respondent Husnain Aftab Enterprises, Inc. dba JR Mini Mart

Policy Revision 2 (September 2002)

Case ID No. 33419

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN103190393

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

Violation Number 2

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, and the Stage II vapor space manifold and dynamic pressure performance at least once every 36 months. Specifically, the Stage II annual and triennial compliance testing had not been conducted.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				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 1095 Number of violation days

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$2,500

One single event is recommended for the three year period preceding the March 2, 2007 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,196

Violation Final Penalty Total \$2,625

This violation Final Assessed Penalty (adjusted for limits) \$2,625

Economic Benefit Worksheet

Respondent Husnain Aftab Enterprises, Inc. dba JR Mini Mart
Case ID No. 33419
Reg. Ent. Reference No. RN103190393
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

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)	\$1,000	2-Mar-2004	2-Mar-2007	3.9	\$196	\$1,000	\$1,196

Notes for AVOIDED costs

Estimated cost for annual and triennial testing to verify proper operation of the Stage II equipment. Date Required is three years prior to the investigation date. Final Date is the investigation date.

Approx. Cost of Compliance

\$1,000

TOTAL

\$1,196

Screening Date 30-Apr-2007

Docket No. 2007-0698-PST-E

PCW

Respondent Husnain Aftab Enterprises, Inc. dba JR Mini Mart

Policy Revision 2 (September 2002)

Case ID No. 33419

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN103190393

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 115.242(3)(A) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system. Specifically, Stage II swivel adapters were not installed on the regular unleaded and super unleaded fill ports and Stage I dry break.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				10%
Potential		x		

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

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 Number of violation days 59

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

Violation Base Penalty \$1,000

One quarterly event is recommended from the March 2, 2007 investigation date to the April 30, 2007 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$29

Violation Final Penalty Total \$1,050

This violation Final Assessed Penalty (adjusted for limits) \$1,050

Economic Benefit Worksheet

Respondent Husnain Aftab Enterprises, Inc. dba JR Mini Mart
Case ID No. 33419
Reg. Ent. Reference No. RN103190393
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	\$500	2-Mar-2007	2-Jan-2008	0.8	\$1	\$28	\$29
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 swivel adaptors. Date Required is the date of investigation. 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

\$29

Compliance History

Customer/Respondent/Owner-Operator:	CN601719289 Husnain Aftab Enterprises, Inc.	Classification: AVERAGE	Rating: 6.00
Regulated Entity:	RN103190393 JR MINI MART	Classification: AVERAGE	Site Rating: 6.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION:	74484
Location:	5320 N MAIN ST, VIDOR, TX, 77662	Rating Date: September 01 06	Repeat Violator: NO
TCEQ Region:	REGION 10 - BEAUMONT		
Date Compliance History Prepared:	May 04, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	May 04, 2002 to May 04, 2007		

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

Name: Rajesh Acharya Phone: (512) 239-0577

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.
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. (CEEDS Inv. Track. No.)
- | | | | |
|---|------------|----------|--|
| 1 | 05/31/2006 | (453650) | |
| 2 | 04/23/2007 | (543194) | |
- E. Written notices of violations (NOV). (CEEDS Inv. Track. No.)
- | | | | |
|--------------|---|-----------------|----------|
| Date: | 05/31/2006 | (453650) | |
| Self Report? | NO | Classification: | Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.246(7)(A) | | |
| Description: | Failure to maintain records on site and make immediately available for review upon request by authorized representatives of the executive director, EPA, or any local air pollution control program with jurisdiction at sites ordinarily manned during business hours. | | |
| Self Report? | NO | Classification: | Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.246(6) | | |
| Description: | Failure to maintain records of daily inspections. | | |
| Self Report? | NO | Classification: | Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.246(4) | | |
| Description: | 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 facility. | | |
| Self Report? | NO | Classification: | Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.246(5) | | |
| Description: | Failure to maintain all copies of Stage II vapor recovery annual and triennial tests available for review. | | |
- 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
HUSNAIN AFTAB ENTERPRISES,
INC. DBA JR MINI MART,
RN103190393

§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

**DEFAULT ORDER
DOCKET NO. 2007-0698-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 ch. 7, 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 Husnain Aftab Enterprises, Inc. dba JR Mini Mart (“Husnain Aftab Enterprises”).

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

FINDINGS OF FACT

1. Husnain Aftab Enterprises owns and/or operates a convenience store with retail sales of gasoline at 5320 North Main Street in Vidor, Orange County, Texas (the “Facility”).
2. Husnain Aftab Enterprises’ underground storage tank (“UST”) is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Husnain Aftab Enterprises’ UST contains a regulated petroleum substance as defined in the rules of the Commission. The Facility consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. During an inspection conducted on March 2, 2007, a TCEQ Beaumont Regional Office investigator documented that Husnain Aftab Enterprises:
 - a. Failed to maintain Stage II records on-site at the Facility and make them immediately available for inspection upon request by agency personnel. Specifically, employee training records, daily inspection records, Stage II test results, and a copy of the

California Air Resources Board ("CARB") Executive Order were not available for review.

- b. Failed to verify proper operation of the Stage II equipment at least once every 12 months, and the Stage II vapor space manifolding and dynamic pressure performance at least once every 36 months. Specifically, the Stage II annual and triennial compliance testing had not been conducted.
 - c. Failed to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system. Specifically, Stage II swivel adapters were not installed on the regular unleaded and super unleaded fill ports and Stage I dry break.
4. Husnain Aftab Enterprises received notice of the violations on or about April 28, 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 Husnain Aftab Enterprises, Inc. dba JR Mini Mart" (the "EDPRP") in the TCEQ Chief Clerk's office on September 18, 2007.
 6. By letter dated September 18, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Husnain Aftab Enterprises with notice of the EDPRP. According to the return receipt "green card," Husnain Aftab Enterprises received notice of the EDPRP on September 25, 2007, as evidenced by the signature on the card.
 7. More than 20 days have elapsed since Husnain Aftab Enterprises received notice of the EDPRP, provided by the Executive Director. Husnain Aftab Enterprises 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, Husnain Aftab Enterprises is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Husnain Aftab Enterprises violated 30 TEX. ADMIN. CODE § 115.246(4), (5), (6) and (7)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to maintain Stage II records on-site at the Facility and make them immediately available for inspection upon request by agency personnel.

3. As evidenced by Finding of Fact No. 3.b., Husnain Aftab Enterprises violated 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to verify proper operation of the Stage II equipment at least once every 12 months, and the Stage II vapor space manifolding and dynamic pressure performance at least once every 36 months.
4. As evidenced by Finding of Fact No. 3.c., Husnain Aftab Enterprises violated 30 TEX. ADMIN. CODE § 115.242(3)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system.
5. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director has timely served Husnain Aftab Enterprises 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, Husnain Aftab Enterprises 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 Husnain Aftab Enterprises 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 Husnain Aftab Enterprises 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 Four Thousand Seven Hundred Twenty-Five dollars (\$4,725.00) 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 Husnain Aftab Enterprises' UST delivery certificate if the Commission finds that good cause exists.
11. Good cause for revocation of Husnain Aftab Enterprises' 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. Husnain Aftab Enterprises is assessed an administrative penalty in the amount of Four Thousand Seven Hundred Twenty-Five dollars (\$4,725.00) for violations of TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 382, and rules of the TCEQ. The payment of this administrative penalty and Husnain Aftab Enterprises' 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: Husnain Aftab Enterprises, Inc. dba JR Mini Mart; Docket No. 2007-0698-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. Husnain Aftab Enterprises' UST delivery certificate is revoked immediately upon the effective date of this Order. Husnain Aftab Enterprises may submit an application for a new delivery certificate only after Husnain Aftab Enterprises has complied with all of the requirements of this Order.
3. Within 10 days after the effective date of this Order, Husnain Aftab Enterprises 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. Husnain Aftab Enterprises shall undertake the following technical requirements:

- a. Immediately upon the effective date of the Commission Order, begin maintaining all Stage II records at the Facility, in accordance with 30 TEX. ADMIN. CODE § 115.246.
- b. Within 30 days after the effective date of the Commission Order:
 - i. Conduct the annual and triennial testing of the Stage II vapor recovery system, in accordance with 30 TEX. ADMIN. CODE § 115.245; and
 - ii. Begin maintaining all Stage II equipment in proper operating condition, including, but not limited to, the installation of swivel adaptors, in accordance with 30 TEX. ADMIN. CODE § 115.242.
- c. Within 45 days after the effective date of the Commission Order, 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. 4.a. through 4.b.ii. 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:

Waste Section Manager
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1892

5. All relief not expressly granted in this Order is denied.
6. The provisions of this Order shall apply to and be binding upon Husnain Aftab Enterprises. Husnain Aftab Enterprises is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
7. 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 Husnain Aftab Enterprises shall be made in writing to the Executive Director. Extensions are not effective until Husnain Aftab Enterprises receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
8. 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 Husnain Aftab Enterprises if the Executive Director determines that Husnain Aftab Enterprises has not complied with one or more of the terms or conditions in this Order.
9. 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.
10. 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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF GARY K. SHIU

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Gary K. Shiu. 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, I 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 Husnain Aftab Enterprises, Inc. dba JR Mini Mart” (the “EDPRP”) with the Office of the Chief Clerk on September 18, 2007.

I sent the EDPRP to Mr. Mohammad Aftab Sultan, Director & Registered Agent, Husnain Aftab Enterprises, Inc., at the last known address on September 18, 2007 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Husnain Aftab Enterprises received notice of the EDPRP on September 25, 2007, as evidenced by the signature on the card.

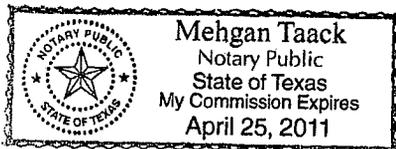
More than 20 days have elapsed since Husnain Aftab Enterprises received notice of the EDPRP. Husnain Aftab Enterprises failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”



Gary K. Shiu
Attorney
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 11th day of March, A.D., 2008.





Notary Stamp