

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2007-1739-PST-E TCEQ ID: RN100871300 CASE NO.: 34859**

**RESPONDENT NAME: DHANANI INVESTMENT INC. DBA SAVEWAY FOOD MARKET**

<b>ORDER TYPE:</b>		
<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	
<b>CASE TYPE:</b>		
<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

**SITE WHERE VIOLATION(S) OCCURRED:** 13501 South Post Oak Road, Houston, Harris County

**TYPE OF OPERATION:** Convenience store with retail sales of gasoline

**SMALL BUSINESS:**  Yes  No

**OTHER SIGNIFICANT MATTERS:** There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** No one other than the ED and the Respondent has expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired on June 9, 2008. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Mr. Barham A. Richard, Litigation Division, MC 175, (512) 239-0107  
Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873

**TCEQ Enforcement Coordinator:** Ms. Judy Kluge, Waste Enforcement Section, MC R-4, (817) 588-5825

**TCEQ Regional Contact:** Ms. Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623

**Respondent:** Mr. Nadyarshah Dhanani, President, Dhanani Investment Inc., 1310 Meadow Bay Court, Sugar Land, Texas 77479

**Respondent's Attorney:** Not represented by counsel.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date of Complaints Relating to this Case:</b> None</p> <p><b>Dates of Investigation Relating to this Case:</b> October 12, 2007</p> <p><b>Date of NOE Relating to this Case:</b> October 12, 2007</p> <p><b>Background Facts:</b></p> <p>An EDPRP was filed on March 3, 2008. The Respondent received notice of the EDPRP on March 5, 2008 as evidenced by the signature on the return receipt green card. The Respondent has failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>The Respondent in this case does owe additional penalties according to the Administrative Penalty Database Report in the amount of \$26,081.06 pursuant to TCEQ Docket No. 2004-0369-PST-E</p> <p><b>PST</b></p> <ol style="list-style-type: none"> <li>Failed to upgrade the Stage II equipment to Onboard Refueling Vapor Recovery (ORVR) compatible systems [30 TEX. ADMIN. CODE § 115.242(1)(C) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)];</li> <li>Failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel [30 TEX ADMIN. CODE § 115.246(5) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)];</li> <li>Failed to renew a delivery certificate by timely and proper submission of a completed UST Registration and Self-Certification form to the agency at least 30 days before the expiration date of the delivery certificate [30 TEX. ADMIN. CODE § 334.8(c)(5)(B)(ii)]; and</li> </ol>	<p><b>Total Assessed:</b> \$4,600</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$4,600</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><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Technical Requirements</b></p> <p>The Respondent's delivery certificate is revoked immediately.</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Immediately, cease accepting fuel until such time as a valid certificate is obtained from the TCEQ.</li> <li>Within 10 days, send its UST delivery certificate to TCEQ.</li> <li>Within 30 days:             <ol style="list-style-type: none"> <li>Begin maintaining the Stage II Vapor Recovery System in proper operating condition; this shall include, but not be limited to installing an approved ORVR compatible Stage II Vapor Recover System, and conducting successful Stage II vapor recovery tests after completing the ORVR upgrade; and</li> <li>Begin maintaining all Stage II records including the test results for the Stage II Vapor Recovery System</li> </ol> </li> <li>Within 45 days, submit written, notarized certification demonstrate compliance with these Ordering Provisions.</li> </ol>

4. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)].

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
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# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision September 19, 2007

DATES	Assigned	22-Oct-2007	Screening	24-Oct-2007	EPA Due	
	PCW	13-Jan-2008				

RESPONDENT/FACILITY INFORMATION			
Respondent	Dhanani Investment Inc. dba Saveway Food Market		
Reg. Ent. Ref. No.	RN100871300		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	34859	No. of Violations	4
Docket No.	2007-1739-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Judy Kluge
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 \$4,000

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

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

**Compliance History** 15% Enhancement Subtotals 2, 3, & 7 \$600

Notes: Enhancement for poor performer classification and one prior NOV with same or similar violations.

**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	X	(mark with x)

Notes: The Respondent does not meet the good faith criteria.

**Total EB Amounts** 0% Enhancement\* Subtotal 6 \$0  
 Approx. Cost of Compliance \$91 \*Capped at the Total EB \$ Amount \$1,800

**SUM OF SUBTOTALS 1-7** Final Subtotal \$4,600

**OTHER FACTORS AS JUSTICE MAY REQUIRE** 0% Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount** \$4,600

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty \$4,600

**DEFERRAL** 0% Reduction Adjustment \$0

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

Notes: Deferral not offered for non-expedited settlement.

**PAYABLE PENALTY** \$4,600

Screening Date 24-Oct-2007

Docket No. 2007-1739-PST-E

PCW

Respondent Dhanani Investment Inc. dba Saveway Food Market

Policy Revision 2 (September 2002)

Case ID No. 34859

PCW Revision September 19, 2007

Reg. Ent. Reference No. RN100871300

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

### Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	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 judgments 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)

Poor Performer

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance History Notes

Enhancement for poor performer classification and one prior NOV with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 15%

<b>Screening Date</b> 24-Oct-2007	<b>Docket No.</b> 2007-1739-PST-E	<b>PCW</b>
<b>Respondent</b> Dhanani Investment Inc. dba Saveway Food Market	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 34859	<i>PCW Revision September 19, 2007</i>	
<b>Reg. Ent. Reference No.</b> RN100871300		
<b>Media [Statute]</b> Petroleum Storage Tank		
<b>Enf. Coordinator</b> Judy Kluge		
<b>Violation Number</b>	1	
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 115.242(1)(C) and Tex. Health & Safety Code § 382.085(b),	
<b>Violation Description</b>	Failed to upgrade the Stage II equipment to onboard refueling vapor recovery (ORVR) compatible systems.	
<b>Base Penalty</b>		\$10,000

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

<b>OR</b>	<b>Harm</b>				
		Major	Moderate		Minor
	Actual	Potential	x		Percent
				10%	

**>> 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   Number of violation days

<i>mark only one with an x</i>	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
single event		

**Violation Base Penalty** \$1,000

One quarterly event is recommended based on documentation of the violation during the October 12, 2007 record review to the October 24, 2007 screening date.

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b> <input type="text" value="\$74"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$1,150"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$1,150"/>	

## Economic Benefit Worksheet

**Respondent:** Dhanani Investment Inc. dba Saveway Food Market

**Case ID No.:** 34859

**Reg. Ent. Reference No.:** RN100871300

**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
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No commas or \$

### Delayed Costs

Equipment	\$1,500	12-Oct-2007	24-Jun-2008	0.7	\$4	\$70	\$74
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 upgrade the Stage II equipment to ORVR compatible systems. The date required is the record review date and the final date is the expected 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

\$1,500

TOTAL

\$74

<b>Screening Date</b> 24-Oct-2007	<b>Docket No.</b> 2007-1739-PST-E	<b>PCW</b>
<b>Respondent</b> Dhanani Investment Inc. dba Saveway Food Market	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 34859	<i>PCW Revision September 19, 2007</i>	
<b>Reg. Ent. Reference No.</b> RN100871300		
<b>Media [Statute]</b> Petroleum Storage Tank		
<b>Enf. Coordinator</b> Judy Kluge		
<b>Violation Number</b>	2	
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 115.246(5) and Tex. Health & Safety Code § 382.085(b)	
<b>Violation Description</b>	Failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel. Specifically, the test results for the Stage II vapor recovery system were not available.	
<b>Base Penalty</b>		\$10,000

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

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

**>> Programmatic Matrix**

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

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

**Violation Base Penalty**

One single event is recommended based on documentation of the violation during the October 12, 2007 record review.

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
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<b>Estimated EB Amount</b> <input type="text" value="\$7"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$1,150"/>
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**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** Dhanani Investment Inc. dba Saveway Food Market  
**Case ID No.** 34859  
**Reg. Ent. Reference No.** RN100871300  
**Media** Petroleum Storage Tank  
**Violation No.** 2

<b>Percent Interest</b>	<b>Years of Depreciation</b>
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	\$200	12-Oct-2007	24-Jun-2008	0.7	\$7	n/a	\$7
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to maintain Stage II records as required. The date required is the record review date and the final date is the expected 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 \$200

**TOTAL** \$7

<b>Screening Date</b> 24-Oct-2007	<b>Docket No.</b> 2007-1739-PST-E	<b>PCW</b>
<b>Respondent</b> Dhanani Investment Inc. dba Saveway Food Market	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 34859	<i>PCW Revision September 19, 2007</i>	
<b>Reg. Ent. Reference No.</b> RN100871300		
<b>Media [Statute]</b> Petroleum Storage Tank		
<b>Enf. Coordinator</b> Judy Kluge		
<b>Violation Number</b> <input type="text" value="3"/>		
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 334.8(c)(5)(B)(ii)	
<b>Violation Description</b>	Failed to renew a delivery certificate by timely and proper submission of a completed UST registration and self-certification form to the agency at least 30 days before the expiration date of the delivery certificate. Specifically, the delivery certificate expired on May 31, 2006.	
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>

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

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

**>> Programmatic Matrix**

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

**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"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="checkbox"/>

**Violation Base Penalty**

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b> <input type="text" value="\$11"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$1,150"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$1,150"/>	

### Economic Benefit Worksheet

**Respondent:** Dhanani Investment Inc. dba Saveway Food Market  
**Case ID No:** 34859  
**Reg. Ent. Reference No:** RN100871300  
**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
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)	\$100	1-May-2006	24-Jun-2008	2.2	\$11	n/a	\$11

Notes for DELAYED costs

The delayed cost includes the estimated cost to renew a delivery certificate in a timely manner. The date required is 30 days before the expiration date and the final date is the expected 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

\$100

**TOTAL**

\$11

Screening Date 24-Oct-2007

Docket No. 2007-1739-PST-E

PCW

Respondent Dhanani Investment Inc. dba Saveway Food Market

Policy Revision 2 (September 2002)

Case ID No. 34859

PCW Revision September 19, 2007

Reg. Ent. Reference No. RN100871300

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(A)(i) and Tex. Water Code § 26.3467(a)

Violation Description

Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, the Respondent accepted one fuel delivery without a delivery certificate.

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 Number of violation days 12

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the October 12, 2007 record review.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$1,150

This violation Final Assessed Penalty (adjusted for limits) \$1,150

## Economic Benefit Worksheet

**Respondent** Dhanani Investment Inc. dba Saveway Food Market  
**Case ID No.** 34859  
**Reg. Ent. Reference No.** RN100871300  
**Media** 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
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

Economic benefit included in Violation No. 3.

### 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

\$0

TOTAL

\$0

# Compliance History

Customer/Respondent/Owner-Operator:	CN601241573    Dhanani Investment Inc.	Classification: POOR	Rating: 48.50
Regulated Entity:	RN100871300    SAVEWAY FOOD MARKET	Classification: AVERAGE	Site Rating: 4.00
ID Number(s):	AIR NEW SOURCE PERMITS PETROLEUM STORAGE TANK REGISTRATION	ACCOUNT NUMBER REGISTRATION	HG5316U 49609
Location:	13501 S POST OAK RD, HOUSTON, TX, 77045		
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	November 07, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	October 24, 2002 to October 24, 2007		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Judy Kluge	Phone:	817-588-5825

## Site Compliance History Components

- |  |     |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | No  |
| 3. If Yes, who is the current owner?   | 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. (CCEDS Inv. Track. No.)
- |   |            |          |  |
|---|------------|----------|--|
| 1 | 06/24/2004 | (275479) |  |
| 2 | 08/27/2004 | (286735) |  |
| 3 | 04/15/2007 | (556875) |  |
| 4 | 10/17/2007 | (597650) |  |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |              |   |                 |          |
|--------------|---|-----------------|----------|
| Date:        | 04/15/2007  | (556875)        |          |
| 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 115.244(1)   |                 |          |
| Description: | Failure to conduct daily inspections of the Stage II vapor recovery system.   |                 |          |
| Self Report? | NO  | Classification: | Moderate |
| Citation:    | 30 TAC Chapter 115, SubChapter C 115.244(3)   |                 |          |
| Description: | Failure to conduct monthly inspections.   |                 |          |
| 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 the training.   |                 |          |
| Self Report? | NO  | Classification: | Minor    |
| Citation:    | 30 TAC Chapter 115, SubChapter C 115.246(3)   |                 |          |
| Description: | Failure to maintain a record of any maintenance conducted on any part of the  |                 |          |

Stage II equipment.

Self Report? NO Classification: Minor

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

Description: Failure to maintain a copy of the California Air Resources Board (CARB) Executive Order(s) for the Stage II vapor recovery system and any related components installed at the facility.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(5)  
5C THC Chapter 382, SubChapter D 382.085(b)

Description: Failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(1)(C)  
5C THC Chapter 382, SubChapter D 382.085(b)

Description: Failed to upgrade the Stage II equipment to onboard refueling vapor recovery ("ORVR") compatible systems.

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  
DHANANI INVESTMENT INC.  
DBA SAVEWAY FOOD MARKET;  
RN100871300**

§  
§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER  
DOCKET NO. 2007-1739-PST-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Dhanani Investment Inc. dba Saveway Food Market ("Dhanani Investment").

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

**FINDINGS OF FACT**

1. Dhanani Investment owns and operates a convenience store with retail sales of gasoline located at 13501 South Post Oak Road, Houston, Harris County, Texas (the "Station").
2. Dhanani Investment's two (2) underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Dhanani Investment's USTs contain a regulated substance as defined in the rules of the Commission. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. During a record review conducted on October 12, 2007, a TCEQ Houston Regional Office investigator documented that Dhanani Investment:
  - a. Failed to upgrade the Stage II equipment to onboard refueling vapor recovery (ORVR) compatible systems;
  - b. Failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel. Specifically, the test results for the Stage II vapor recovery system were not available;

- c. Failed to renew a delivery certificate by timely and proper submission of a completed UST registration and self-certification form to the agency at least 30 days before the expiration date of the delivery certificate. Specifically, the delivery certificate expired on May 31, 2006; and
  - d. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, the Respondent accepted one fuel delivery without a delivery certificate.
4. Dhanani Investment received notice of the violations on or about October 17, 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 Dhanani Investment Inc. dba Saveway Food Market" (the "EDPRP") in the TCEQ Chief Clerk's office on March 3, 2008.
  6. By letter dated March 3, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Dhanani Investment with notice of the EDPRP. According to the return receipt "green card," Dhanani Investment received notice of the EDPRP on March 5, 2008, as evidenced by the signature on the card.
  7. More than 20 days have elapsed since Dhanani Investment received notice of the EDPRP, provided by the Executive Director. Dhanani Investment 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, Dhanani Investment is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 3.a., Dhanani Investment failed to upgrade the Stage II equipment to ORVR compatible systems, in violation of 30 TEX. ADMIN. CODE § 115.242(1)(C) and TEX. HEALTH & SAFETY CODE § 382.085(b).
3. As evidenced by Finding of Fact No. 3.b., Dhanani Investment failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 115.246(5) and TEX. HEALTH & SAFETY CODE § 382.085(b).

4. As evidenced by Finding of Fact No. 3.c., Dhanani Investment failed to renew a delivery certificate by timely and proper submission of a completed UST registration and self-certification form to the agency at least 30 days before the expiration date of the delivery certificate, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(B)(ii).
5. As evidenced by Finding of Fact No. 3.d., Dhanani Investment failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE §26.3467(a).
6. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Dhanani Investment with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
7. As evidenced by Finding of Fact No. 7, Dhanani Investment 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 Dhanani Investment and assess the penalty recommended by the Executive Director.
8. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Dhanani Investment 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.
9. An administrative penalty in the amount of four thousand six hundred dollars (\$4,600.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
10. 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.
11. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the commission has authority to revoke Dhanani Investment's UST delivery certificate if the Commission finds that good cause exists.
12. Good cause for revocation of Dhanani Investment's UST delivery certificate exists as justified by Findings of Fact Nos. 5, 6, and 7, and Conclusions of Law Nos. 6 and 7.

### ORDERING PROVISIONS

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

1. Dhanani Investment is assessed an administrative penalty in the amount of four thousand six hundred dollars (\$4,600.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Dhanani Investment's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Dhanani Investment Inc. dba Saveway Food Market; Docket No. 2007-1739-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. Dhanani Investment's UST delivery certificate is revoked immediately upon the effective date of this Order. Dhanani Investment may submit an application for a new delivery certificate only after Dhanani Investment has complied with all requirements of this Order.
3. Within 10 days after the effective date of this Order, Dhanani Investment 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. Dhanani Investment shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Order, Dhanani Investment shall cease accepting fuel until such time as a valid certificate is obtained from the TCEQ, in accordance with 30 TEX. ADMIN. CODE § 334.8;

- b. Within 30 days after the effective date of this Order, Dhanani Investment shall:
- i. Begin maintaining the Stage II vapor recovery system in proper operating condition, this shall include, but not be limited to installing an approved ORVR compatible Stage II vapor recover system, and conducting successful Stage II vapor recovery tests after completing the ORVR upgrade, in accordance with 30 TEX. ADMIN. CODE § 115.242;
  - ii. Begin maintaining all Stage II records including the test results for the Stage II vapor recovery system, in accordance with 30 TEX. ADMIN. CODE § 115.246; and
- c. Within 45 days after the effective date of this Order, Dhanani Investment shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 4.a. through 4.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Dhanani Investment shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 4.a. through 4.b 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:

Nicolle Bealle, Waste Section Manager  
Texas Commission on Environmental Quality  
Houston Regional Office  
5425 Polk Avenue, Suite H  
Houston, Texas 78711-3087

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

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF BARHAM A. RICHARD**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Barham A. Richard. 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 Dhanani Investment Inc. dba Saveway Food Market” (the “EDPRP”) was filed with the Office of the Chief Clerk on March 3, 2008.

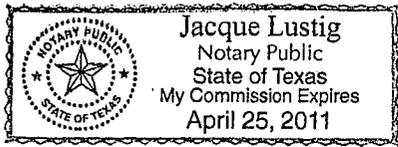
The EDPRP was mailed to Dhanani Investment at its last known address on March 3, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Dhanani Investment received notice of the EDPRP on March 5, 2008, as evidenced by the signature on the card.

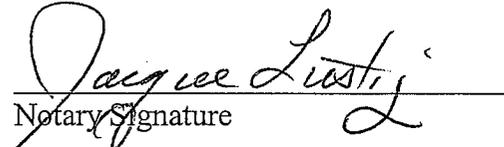
More than 20 days have elapsed since Dhanani Investment received notice of the EDPRP. Dhanani Investment failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”

  
Barham A. Richard, Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Barham A. Richard, 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 16<sup>th</sup> day of April, A.D., 2008.



  
Notary Signature