

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2009-0072-PST-E TCEQ ID: RN101353555 CASE NO.: 37031
RESPONDENT NAME: MOHAMMAD RAFIUL HABIB

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 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: 10560 New Church Road, Dallas, Dallas 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 expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired October 5, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Mr. Michael Pace, Waste Enforcement Section, MC R-4, (817) 588-5933

TCEQ Regional Contact: Mr. Sam Barrett, Dallas/Fort Worth Regional Office, MC R-4, (817) 588-5903

Respondent: Mr. Mohammad Rafiul Habib, 2009 Meadowbrook Dr., Mesquite, Texas 75149 and 11009 Shady Trail Road, Dallas, Texas 75229

Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint</p> <p><input type="checkbox"/> Routine</p> <p><input checked="" type="checkbox"/> Enforcement Follow-up</p> <p><input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: December 12, 2008</p> <p>Date of NOE Relating to this Case: December 15, 2008</p> <p>Background Facts: The EDPRP was filed June 29, 2009, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on July 1, 2009. The Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: The Respondent no longer operates the Facility. The owner of the Facility as of May 14, 2009, is Hasan Brothers, LLC. The Respondent owes \$5,249.19 in past-due fees.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)]. Failed to ensure that a corrosion protection system is designed, installed, operated, and maintained in a manner that corrosion protection is continuously provided to all underground metal components of the UST system [TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(a)(2)]. Failed to monitor USTs for releases at a frequency of at least once every 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>Total Assessed: \$6,420</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order</p> <p><input type="checkbox"/> Financial Inability to Pay</p> <p><input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$6,420</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>The Executive Director recognizes that the Respondent no longer operates the Facility.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	5-Jan-2009	Screening	15-Jan-2009	EPA Due	
	PCW	8-Jan-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	Mohammad Rafiul Habib
Reg. Ent. Ref. No.	RN101353555
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	37031	No. of Violations	3
Docket No.	2009-0072-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Mike Pace
		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 \$6,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 7.0% Enhancement Subtotals 2, 3, & 7 \$420

Notes: Enhancement for one NOV with same or similar violations and one NOV with dissimilar violations.

Culpability No 0.0% Enhancement Subtotal 4 \$0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments Subtotal 5 \$0

Economic Benefit 0.0% Enhancement* Subtotal 6 \$0

Total EB Amounts	\$100
Approx. Cost of Compliance	\$2,600

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal \$6,420

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0% Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$6,420

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$6,420

DEFERRAL 0.0% 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 \$6,420

Screening Date 15-Jan-2009

Docket No. 2009-0072-PST-E

PCW

Respondent Mohammad Rafiul Habib

Policy Revision 2 (September 2002)

Case ID No. 37031

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101353555

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Mike Pace

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	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

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

Adjustment Percentage (Subtotal 2) 7%

>> 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 and one NOV with dissimilar violations.

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

Screening Date 15-Jan-2009	Docket No. 2009-0072-PST-E	PCW
Respondent Mohammad Rafiul Habib		<i>Policy Revision 2 (September 2002)</i>
Case ID No. 37031		<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No. RN101353555		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Mike Pace		
Violation Number <input type="text" value="1"/>		
Rule Cite(s)	30 Tex. Admin. Code § 334.7(d)(3)	
Violation Description	Failed to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current operational status of the UST system.	
	Base Penalty	<input type="text" value="\$10,000"/>
>> Environmental, Property and Human Health Matrix		
OR	Harm	
	Major Moderate Minor	
	Actual <input type="text"/> <input type="text"/> <input type="text"/>	Percent <input type="text" value="0%"/>
Potential <input type="text"/> <input type="text"/> <input type="text"/>		
>> Programmatic Matrix		
	Falsification Major Moderate Minor	
	<input type="text"/> <input type="text" value="x"/> <input type="text"/> <input type="text"/>	Percent <input type="text" value="10%"/>
Matrix Notes	100% of the rule requirement was not met.	
	Adjustment	<input type="text" value="\$9,000"/>
		<input type="text" value="\$1,000"/>
Violation Events		
Number of Violation Events <input type="text" value="1"/>	<input type="text" value="34"/>	Number of violation days
<i>mark only one with an x</i>	daily <input type="text"/>	Violation Base Penalty <input type="text" value="\$1,000"/>
	weekly <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"/>	
One single event is recommended based on the documentation of the violation during the December 12, 2008 investigation.		
Good Faith Efforts to Comply	0.0% Reduction	<input type="text" value="\$0"/>
	Before NOV NOV to EDRP/Settlement Offer	
Extraordinary <input type="text"/>	<input type="text"/>	
Ordinary <input type="text"/>	<input type="text"/>	
N/A <input type="text" value="x"/>	(mark with x) <input type="text"/>	
Notes	The Respondent does not meet the good faith criteria for this violation.	
	Violation Subtotal	<input type="text" value="\$1,000"/>
Economic Benefit (EB) for this violation	Statutory Limit Test	
Estimated EB Amount <input type="text" value="\$3"/>	Violation Final Penalty Total	<input type="text" value="\$1,070"/>
	This violation Final Assessed Penalty (adjusted for limits)	<input type="text" value="\$1,070"/>

Economic Benefit Worksheet

Respondent Mohammad Rafiul Habib
Case ID No. 37031
Reg. Ent. Reference No. RN101353555
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				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	12-Dec-2008	12-Aug-2009	0.67	\$3	n/a	\$3

Notes for DELAYED costs

Estimated cost to submit an amended UST registration form to the TCEQ. The date required is the investigation 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				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$3

Screening Date 15-Jan-2009		Docket No. 2009-0072-PST-E		PCW
Respondent Mohammad Rafiul Habib				<i>Policy Revision 2 (September 2002)</i>
Case ID No. 37031				<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No. RN101353555				
Media [Statute] Petroleum Storage Tank				
Enf. Coordinator Mike Pace				
Violation Number		<input type="text" value="2"/>		
Rule Cite(s)		<input type="text" value="30 Tex. Admin. Code § 334.49(a)(2) and Tex. Water Code § 26.3475(d)"/>		
Violation Description		<input type="text" value="Failed to ensure that a corrosion protection system is designed, installed, operated, and maintained in a manner that corrosion protection is continuously provided to all underground metal components of the UST system. Specifically, the rectifier did not have a power supply."/>		
Base Penalty				<input type="text" value="\$10,000"/>
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="25%"/>
Potential	<input type="text" value="x"/>	<input type="text"/>		
>> 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	<input type="text" value="Human health or the environment could be exposed to pollutants which would exceed levels that are protective of human health and environmental receptors as a result of the violation."/>			
Adjustment				<input type="text" value="\$7,500"/>
				<input type="text" value="\$2,500"/>
Violation Events				
Number of Violation Events		<input type="text" value="1"/>	Number of violation days	
		<input type="text" value="34"/>		
<i>mark only one with an x</i>	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$2,500"/>	
	weekly	<input type="text"/>		
	monthly	<input type="text" value="x"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input type="text"/>		
<input type="text" value="One quarterly event is recommended based on the documentation of the violation during the December 12, 2008 investigation to the January 15, 2009 screening date."/>				
Good Faith Efforts to Comply		<input type="text" value="0.0%"/>	Reduction	<input type="text" value="\$0"/>
		<small>Before NOV</small>	<small>NOV to EDRP/Settlement Offer</small>	
Extraordinary		<input type="text"/>	<input type="text"/>	
Ordinary		<input type="text"/>	<input type="text"/>	
N/A		<input type="text" value="x"/>	<small>(mark with x)</small>	
Notes		<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>		
Violation Subtotal				<input type="text" value="\$2,500"/>
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount		<input type="text" value="\$47"/>	Violation Final Penalty Total <input type="text" value="\$2,675"/>	
This violation Final Assessed Penalty (adjusted for limits)				<input type="text" value="\$2,675"/>

Economic Benefit Worksheet

Respondent Mohammad Rafiul Habib
Case ID No. 37031
Reg. Ent. Reference No. RN101353555
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	\$1,000	12-Dec-2008	12-Aug-2009	0.67	\$2	\$44	\$47
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to provide a power supply to the rectifier and properly maintain the corrosion protection system. The Date Required is the investigation date and the Final Date is the date of expected compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

TOTAL

\$47

Screening Date 15-Jan-2009	Docket No. 2009-0072-PST-E	PCW																
Respondent Mohammad Rafiul Habib		<i>Policy Revision 2 (September 2002)</i>																
Case ID No. 37031		<i>PCW Revision October 30, 2008</i>																
Reg. Ent. Reference No. RN101353555																		
Media [Statute] Petroleum Storage Tank																		
Enf. Coordinator Mike Pace																		
Violation Number <input type="text" value="3"/>																		
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 every month (not to exceed 35 days between each monitoring)."/>																	
	Base Penalty	<input type="text" value="\$10,000"/>																
>> Environmental, Property and Human Health Matrix																		
OR	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <td colspan="3" style="text-align: center;">Harm</td> </tr> <tr> <td>Release</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> </tr> <tr> <td>Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> <tr> <td>Potential</td> <td style="text-align: center;">x</td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>		Harm			Release	Major	Moderate	Minor	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Potential	x	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="25%"/>
	Harm																	
Release	Major	Moderate	Minor															
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>															
Potential	x	<input type="text"/>	<input type="text"/>															
>> Programmatic Matrix																		
	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> </tr> <tr> <td>Falsification</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>		Major	Moderate	Minor	Falsification	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>								
	Major	Moderate	Minor															
Falsification	<input type="text"/>	<input type="text"/>	<input type="text"/>															
Matrix Notes	<input type="text" value="Human health or the environment could be exposed to pollutants which would exceed levels that are protective of human health and environmental receptors as a result of the violation."/>																	
	Adjustment	<input type="text" value="\$7,500"/>																
		<input type="text" value="\$2,500"/>																
Violation Events																		
	Number of Violation Events <input type="text" value="1"/>	<input type="text" value="34"/> Number of violation days																
<i>mark only one with an x</i>	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr><td>daily</td><td><input type="text"/></td></tr> <tr><td>weekly</td><td><input type="text"/></td></tr> <tr><td>monthly</td><td><input type="text"/></td></tr> <tr><td>quarterly</td><td style="text-align: center;">x</td></tr> <tr><td>semiannual</td><td><input type="text"/></td></tr> <tr><td>annual</td><td><input type="text"/></td></tr> <tr><td>single event</td><td><input type="text"/></td></tr> </table>	daily	<input type="text"/>	weekly	<input type="text"/>	monthly	<input type="text"/>	quarterly	x	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input type="text"/>	Violation Base Penalty <input type="text" value="\$2,500"/>		
daily	<input type="text"/>																	
weekly	<input type="text"/>																	
monthly	<input type="text"/>																	
quarterly	x																	
semiannual	<input type="text"/>																	
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single event	<input type="text"/>																	
	<input type="text" value="One quarterly event is recommended based on the documentation of the violation during the December 12, 2008 investigation to the January 15, 2009 screening date."/>																	
Good Faith Efforts to Comply	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <td style="text-align: center;">0.0% Reduction</td> </tr> <tr> <td></td> <td style="text-align: center;">Before NOV NOV to EDRP/ Settlement Offer</td> </tr> <tr> <td>Extraordinary</td> <td><input type="text"/></td> </tr> <tr> <td>Ordinary</td> <td><input type="text"/></td> </tr> <tr> <td>N/A</td> <td style="text-align: center;">x (mark with x)</td> </tr> </table>		0.0% Reduction		Before NOV NOV to EDRP/ Settlement Offer	Extraordinary	<input type="text"/>	Ordinary	<input type="text"/>	N/A	x (mark with x)	<input type="text" value="\$0"/>						
	0.0% Reduction																	
	Before NOV NOV to EDRP/ Settlement Offer																	
Extraordinary	<input type="text"/>																	
Ordinary	<input type="text"/>																	
N/A	x (mark with x)																	
Notes	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>																	
	Violation Subtotal	<input type="text" value="\$2,500"/>																
Economic Benefit (EB) for this violation																		
	Estimated EB Amount	<input type="text" value="\$50"/>																
Statutory Limit Test																		
	Violation Final Penalty Total	<input type="text" value="\$2,675"/>																
	This violation Final Assessed Penalty (adjusted for limits)	<input type="text" value="\$2,675"/>																

Economic Benefit Worksheet

Respondent Mohammad Rafiul Habib
Case ID No. 37031
Reg. Ent. Reference No. RN101353555
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
Delayed Costs							
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	12-Dec-2008	12-Aug-2009	0.67	\$50	n/a	\$50

Notes for DELAYED costs

Estimated cost to monitor USTs for releases. The Date Required is the investigation date and the Final Date is the date of expected compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$50

Compliance History Report

Customer/Respondent/Owner-Operator:	CN601581887	Habib, Mohammad Rafiul	Classification: AVERAGE	Rating: 6.10
Regulated Entity:	RN101353555	LBJ Food Mart	Classification: AVERAGE	Site Rating: 11.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	3611
Location:	10560 CHURCH RD, DALLAS, TX, 75238			
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	June 22, 2009			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	June 22, 2004 to June 22, 2009			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Mike Pace	Phone:	817-588-5933	

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/operator of the site during the compliance period? Yes
3. If Yes, who is the current owner/operator?
JUMA REAL ESTATE LIMITED PARTNERSHIP.
4. If Yes, who was/were the prior owner(s)/operator(s) ?
PT Gas Service Company, L.C.
5. When did the change(s) in owner or operator occur?
11/05/2004
- 6.

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	07/26/2007	(566835)	
2	12/15/2008	(721322)	
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	07/30/2007	(566835)	CN601581887
Self Report?	NO		Classification: Minor
Citation:	30 TAC Chapter 115, SubChapter C 115.246(7)(A)		
Description:	Failure to maintain records on-site and make immediately available for review.		
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 115, SubChapter C 115.245(1)		
Description:	Failure to successfully conduct initial testing upon reopening.		
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 115, SubChapter C 115.242(1)(C)		
Description:	Failure to install an ORVR compatible system.		
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 115, SubChapter C 115.242(3)(J)		
Description:	Failure to maintain equipment in proper operating condition. The facility has one broken dry break.		
Date:	06/17/2008	(682862)	CN601581887

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)
Description: Failed to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3), as documented during an investigation conducted on December 12, 2008. Specifically, the registration was not updated to reflect the current operational status of the UST system.

Self Report? NO Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(d)
30 TAC Chapter 334, SubChapter C 334.49(a)(2)
Description: Failed to ensure that a corrosion protection system is designed, installed, operated, and maintained in a manner that corrosion protection is continuously provided to all underground metal components of the UST system, in violation of 30 TEX. ADMIN. CODE § 334.49(a)(2) and TEX. WATER CODE § 26.3475(d), as documented during an investigation conducted on December 12, 2008. Specifically, the rectifier did not have a power supply.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.54(b)
Description: Failure to ensure the underground storage tank access points were secured to prevent access by unauthorized persons.

Self Report? NO Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)
30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)
Description: Failed to monitor USTs for releases at a frequency of at least once every 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 December 12, 2008.

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
MOHAMMAD RAFIUL HABIB;
RN101353555**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2009-0072-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality, (“Commission” or “TCEQ”) considered the Executive Director’s Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty. The respondent made the subject of this Order is Mohammad Rafiul Habib (“Mr. Habib”).

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

FINDINGS OF FACT

1. At the time of the violations, Mr. Habib operated a convenience store with retail sales of gasoline located at 10560 New Church Road in Dallas, Dallas County, Texas (the “Facility”).
2. Mr. Habib’s three underground storage tanks (“USTs”) were not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Habib’s USTs contained a regulated petroleum substance as defined in the rules of the Commission.
3. During an inspection conducted on December 12, 2008, a TCEQ DFW Regional Office investigator documented that Mr. Habib:
 - a. Failed to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current operational status of the UST system.
 - b. Failed to ensure that a corrosion protection system is designed, installed, operated, and maintained in a manner that corrosion protection is continuously provided to all underground metal components of the UST system. Specifically, the rectifier did not have a power supply.

- c. Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).
4. Mr. Habib received notice of the violations on or about December 20, 2008.
5. The Executive Director recognizes that Mr. Habib is no longer the operator of the Facility.
6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Mohammad Rafiul Habib" (the "EDPRP") in the TCEQ Chief Clerk's office on June 29, 2009.
7. By letter dated June 29, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Habib with notice of the EDPRP. According to the return receipt "green card", Mr. Habib received notice of the EDPRP on July 1, 2009, as evidenced by the signature on the card.
8. More than 20 days have elapsed since Mr. Habib received notice of the EDPRP, provided by the Executive Director. Mr. Habib failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Habib is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Habib failed to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3).
3. As evidenced by Finding of Fact No. 3.b., Mr. Habib failed to ensure that a corrosion protection system is designed, installed, operated, and maintained in a manner that corrosion protection is continuously provided to all underground metal components of the UST system, in violation of TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(a)(2).
4. As evidenced by Finding of Fact No. 3.c., Mr. Habib failed to monitor USTs for releases at a frequency of at least once every 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).

5. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director timely served Mr. Habib 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. 8, Mr. Habib failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Habib and assess the penalty recommended by the Executive Director.
7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Habib for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
8. An administrative penalty in the amount of six thousand four hundred twenty dollars (\$6,420.00) 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.

ORDERING PROVISIONS

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

1. Mr. Habib is assessed an administrative penalty in the amount of six thousand four hundred twenty dollars (\$6,420.00) for violations of state statutes and TCEQ rules. The payment of this administrative penalty and Mr. Habib'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: Mohammad Rafiul Habib; Docket No. 2009-0072-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. All relief not expressly granted in this Order is denied.
3. The provisions of this Order shall apply to and be binding upon Mr. Habib.
4. If Mr. Habib fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Habib's failure to comply is not a violation of this Order. Mr. Habib shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Habib shall notify the Executive Director within seven days after Mr. Habib becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Habib shall be made in writing to the Executive Director. Extensions are not effective until Mr. Habib receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Habib if the Executive Director determines that Mr. Habib has not complied with one or more of the terms or conditions in this Order.
7. 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.
8. 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.

Mohammad Rafiul Habib
Docket No. 2009-0072-PST-E
Page 5

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF KARI L. GILBRETH

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Kari L. Gilbreth. 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 Mohammad Rafiul Habib” (the “EDPRP”) was filed with the Office of the Chief Clerk on June 29, 2009.

I sent the EDPRP to Mr. Habib at his last known address on June 29, 2009 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card”, Mr. Habib received notice of the EDPRP on July 1, 2009, as evidenced by the signature on the card.

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



Kari L. Gilbreth
Attorney
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 17th day of August, A.D., 2009.



Notary Signature

Notary Stamp

