

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER****DOCKET NO.:** 2009-0870-PST-E **TCEQ ID:** RN102454402 **CASE NO.:** 37786**RESPONDENT NAME:** Munir Nasah dba Express Mart

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> <b>1660 AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS ORDER FOLLOWING SOAH HEARING</b>
<input type="checkbox"/> <b>FINDINGS DEFAULT ORDER</b>	<input type="checkbox"/> <b>SHUTDOWN ORDER</b>	<input type="checkbox"/> <b>IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER</b>
<input type="checkbox"/> <b>AMENDED ORDER</b>	<input type="checkbox"/> <b>EMERGENCY ORDER</b>	
<b>CASE TYPE:</b>		
<input type="checkbox"/> <b>AIR</b>	<input type="checkbox"/> <b>MULTI-MEDIA (check all that apply)</b>	<input type="checkbox"/> <b>INDUSTRIAL AND HAZARDOUS WASTE</b>
<input type="checkbox"/> <b>PUBLIC WATER SUPPLY</b>	<input checked="" type="checkbox"/> <b>PETROLEUM STORAGE TANKS</b>	<input type="checkbox"/> <b>OCCUPATIONAL CERTIFICATION</b>
<input type="checkbox"/> <b>WATER QUALITY</b>	<input type="checkbox"/> <b>SEWAGE SLUDGE</b>	<input type="checkbox"/> <b>UNDERGROUND INJECTION CONTROL</b>
<input type="checkbox"/> <b>MUNICIPAL SOLID WASTE</b>	<input type="checkbox"/> <b>RADIOACTIVE WASTE</b>	<input type="checkbox"/> <b>DRY CLEANER REGISTRATION</b>
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Express Mart, 1234 North 18th Street, Waco, McLennan County</p> <p><b>TYPE OF OPERATION:</b> Convenience store with retail sales of gasoline</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on November 23, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Ms. Judy Kluge, Enforcement Division, Enforcement Team 6, MC R-04, (817) 588-5825; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387  <b>Respondent:</b> Mr. Munir Nasah, Operator, Express Mart, 1234 North 18th Street, Waco, Texas 76707  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> May 19, 2009</p> <p><b>Date of NOV/NOE Relating to this Case:</b> June 2, 2009 (NOB)</p> <p><b>Background Facts:</b> This was a record review.</p> <p><b>WASTE</b></p> <p>1) Failure to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated underground storage tank ("UST") according to the UST registration and self-certification form [30 TEX. ADMIN. CODE § 334.8(c)(5)(C)].</p> <p>2) Failure to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel [30 TEX. ADMIN. CODE § 334.48(c)].</p> <p>3) Failure to provide proper release detection for the UST system by failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of one percent of the total substance flow-through for the month plus 130 gallons. Specifically, monthly reconciliation of the inventory control records was not completed for January 2009 through March 2009 [30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>4) Failure to utilize a third-party vendor to adequately complete Statistical Inventory</p>	<p><b>Total Assessed:</b> \$5,550</p> <p><b>Total Deferred:</b> \$1,110  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid (Due) to General Revenue:</b> \$1,110 (remaining \$3,330 due in 3 monthly payments of \$1,110 each)</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 checked="" type="checkbox"/> Average <input 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>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a. Properly marked the USTs according to the UST registration and self-certification form on May 19, 2009;</p> <p>b. Began conducting proper inventory control procedures on June 17, 2009; and</p> <p>c. Obtained a third-party vendor and implemented statistical inventory reconciliation and inventory control as a release detection method for all USTs on June 17, 2009.</p>

<p>Reconciliation ("SIR") as a method of release detection. Specifically, inventory control records were not being submitted to an SIR vendor to perform a statistical analysis of inventory discrepancies [30 TEX. ADMIN. CODE § 334.50(d)(9)(A)(ii) and TEX. WATER CODE § 26.3475(c)(1)].</p>		
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Additional ID No(s): PST No. 18892



**Penalty Calculation Worksheet (PCW)**  
 Policy Revision 2 (September 2002) PCW Revision October 30, 2008

<b>DATES</b>	<b>Assigned</b>	8-Jun-2009	<b>Screening</b>	10-Jun-2009	<b>EPA Due</b>	
	<b>PCW</b>	15-Jun-2009				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Munir Nasah dba Express Mart
<b>Reg. Ent. Ref. No.</b>	RN102454402
<b>Facility/Site Region</b>	9-Waco
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	37786	<b>No. of Violations</b>	3
<b>Docket No.</b>	2009-0870-PST-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Judy Kluge
		<b>EC's Team</b>	Enforcement Team 6
<b>Admin. Penalty \$ Limit</b>	Minimum \$0	Maximum	\$10,000

<b>Penalty Calculation Section</b>		
<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$6,000</b>
<b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>		
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the Indicated percentage.</small>		
<b>Compliance History</b>	5.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>
<b>Notes</b>	Adjustment for one NOV with same or similar violations within the past five years.	<b>\$300</b>
<b>Culpability</b>	No 0.0% Enhancement	<b>Subtotal 4</b>
<b>Notes</b>	The Respondent does not meet the culpability criteria.	<b>\$0</b>
<b>Good Faith Effort to Comply Total Adjustments</b>		<b>Subtotal 5</b>
		<b>\$750</b>
<b>Economic Benefit</b>	0.0% Enhancement* <small>*Capped at the Total EB \$ Amount</small>	<b>Subtotal 6</b>
<b>Total EB Amounts</b>	\$8	
<b>Approx. Cost of Compliance</b>	\$2,100	
		<b>\$0</b>
<b>SUM OF SUBTOTALS 1-7</b>		<b>Final Subtotal</b>
		<b>\$5,550</b>
<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>
<b>Notes</b>		<b>\$0</b>
		<b>Final Penalty Amount</b>
		<b>\$5,550</b>
<b>STATUTORY LIMIT ADJUSTMENT</b>		<b>Final Assessed Penalty</b>
		<b>\$5,550</b>
<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>
<b>Notes</b>	Deferral offered for expedited settlement.	<b>-\$1,110</b>
<b>PAYABLE PENALTY</b>		<b>\$4,440</b>

<b>Screening Date</b> 10-Jun-2009	<b>Docket No.</b> 2009-0870-PST-E	<b>PCW</b>
<b>Respondent</b> Munir Nasah dba Express Mart	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 37786	<i>PCW Revision October 30, 2008</i>	
<b>Reg. Ent. Reference No.</b> RN102454402		
<b>Media [Statute]</b> Petroleum Storage Tank		
<b>Enf. Coordinator</b> 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 <i>(number of NOVs meeting criteria)</i>	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	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 <i>(number of judgements or consent decrees meeting criteria)</i>	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 <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	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 <i>(number of audits for which notices were submitted)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	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**

Adjustment for one NOV with same or similar violations within the past five years.

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

<b>Screening Date</b> 10-Jun-2009	<b>Docket No.</b> 2009-0870-PST-E	<b>PCW</b>		
<b>Respondent</b> Munir Nasah dba Express Mart	<i>Policy Revision 2 (September 2002)</i>			
<b>Case ID No.</b> 37786	<i>PCW Revision October 30, 2008</i>			
<b>Reg. Ent. Reference No.</b> RN102454402				
<b>Media [Statute]</b> Petroleum Storage Tank				
<b>Enf. Coordinator</b> Judy Kluge				
<b>Violation Number</b> <input type="text" value="1"/>				
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 334.8(c)(5)(C)			
<b>Violation Description</b>	Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form.			
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>		
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
OR	Harm			
	Release	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%"/>
<b>&gt;&gt; Programmatic Matrix</b>				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	X	<input type="text"/>	<input type="text"/>
				<b>Percent</b> <input type="text" value="10%"/>
<b>Matrix Notes</b>	100% of the rule requirement was not met.			
			<b>Adjustment</b>	<input type="text" value="\$9,000"/>
				<input type="text" value="\$1,000"/>
<b>Violation Events</b>				
	<b>Number of Violation Events</b>	<input type="text" value="1"/>	<b>Number of violation days</b>	<input type="text" value="1"/>
<i>mark only one with an x</i>	daily	<input type="text"/>		
	weekly	<input type="text"/>		
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	X		
			<b>Violation Base Penalty</b>	<input type="text" value="\$1,000"/>
One single event is recommended based on documentation of the violation during the May 19, 2009 record review.				
<b>Good Faith Efforts to Comply</b>			<b>25.0% Reduction</b>	<input type="text" value="\$250"/>
		Before NOV	NOV to EOPRP/Settlement Offer	
Extraordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Ordinary	X	<input type="text"/>	<input type="text"/>	
N/A	<input type="text"/>	(mark with x)		
<b>Notes</b>	The Respondent came into compliance on May 19, 2009 prior to the NOE dated June 2, 2009.			
			<b>Violation Subtotal</b>	<input type="text" value="\$750"/>
<b>Economic Benefit (EB) for this violation</b>			<b>Statutory Limit Test</b>	
	<b>Estimated EB Amount</b>	<input type="text" value="\$0"/>	<b>Violation Final Penalty Total</b>	<input type="text" value="\$800"/>
			<b>This violation Final Assessed Penalty (adjusted for limits)</b>	<input type="text" value="\$800"/>

### Economic Benefit Worksheet

**Respondent:** Munir Nasah dba Express Mart  
**Case ID No.:** 37786  
**Reg. Ent. Reference No.:** RN102454402  
**Media:** Petroleum Storage Tank  
**Violation No.:** 1

Percent Interest	Years of Depreciation
5.0	15

Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Item Description</b> No commas or \$						

**Delayed Costs**

Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount	
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	19-May-2009	19-May-2009	0.00	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost includes the amount required to permanently affix a metal label to each UST fill tube. The date required is the investigation date and the final date is the compliance date.

**Avoided Costs**

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

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

\$0

<b>Screening Date:</b> 10-Jun-2009	<b>Docket No.:</b> 2009-0870-PST-E	<b>PCW</b>	
<b>Respondent:</b> Munir Nasah dba Express Mart	<i>Policy Revision 2 (September 2002)</i>		
<b>Case ID No.:</b> 37786	<i>PCW Revision October 30, 2008</i>		
<b>Reg. Ent. Reference No.:</b> RN102454402			
<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 § 334.46(c)		
<b>Violation Description:</b>	Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel.		
<b>Base Penalty:</b>		\$10,000	
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>			
OR	<b>Harm</b>		
	Major	Moderate	Minor
Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Percent</b>			25%
<b>&gt;&gt; Programmatic Matrix</b>			
<b>Falsification</b>			
Major      Moderate      Minor			
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>			<b>Percent</b> 0%
<b>Matrix Notes</b>	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.		
<b>Adjustment:</b>			\$7,500
			\$2,500
<b>Violation Events</b>			
Number of Violation Events		1	22
		Number of violation days	
<i>mark only one with an x</i>	daily	<input type="checkbox"/>	
	weekly	<input type="checkbox"/>	
	monthly	<input checked="" type="checkbox"/>	
	quarterly	<input type="checkbox"/>	
	semiannual	<input type="checkbox"/>	
	annual	<input type="checkbox"/>	
	single event	<input type="checkbox"/>	
<b>Violation Base Penalty:</b>			\$2,500
One monthly event is recommended based on documentation of the violation during the May 19, 2009 record review to the June 10, 2009 screening date.			
<b>Good Faith Efforts to Comply</b>		10.0% Reduction	\$250
		Before NOV      NOV to EDPRP/Settlement Offer	
Extraordinary	<input type="checkbox"/>		
Ordinary	<input checked="" type="checkbox"/>		
N/A	(mark with x)		
<b>Notes</b>	The Respondent came into compliance on June 17, 2009 after the NOE dated June 2, 2009.		
<b>Violation Subtotal:</b>			\$2,250
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>	
Estimated EB Amount	\$2	Violation Final Penalty Total	\$2,375
<b>This violation Final Assessed Penalty (adjusted for limits)</b>			\$2,375

### Economic Benefit Worksheet

**Respondent:** Munir Nasah dba Express Mart  
**Case ID No.:** 37786  
**Reg. Ent. Reference No.:** RN102454402  
**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
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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	\$500	19-May-2009	17-Jun-2009	0.08	\$2	n/a	\$2
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 conduct inventory control for all USTs involved in the retail sale of petroleum substances used as motor fuel. The date required is the date of the investigation and final date is the date of compliance.

**Avoided Costs**

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

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

\$500

**TOTAL**

\$2

<b>Screening Date</b> 10-Jun-2009	<b>Docket No.</b> 2009-0870-PST-E	<b>PCW</b>			
<b>Respondent</b> Munir Nasah dba Express Mart	<i>Policy Revision 2 (September 2002)</i>				
<b>Case ID No.</b> 37786	<i>PCW Revision October 30, 2008</i>				
<b>Reg. Ent. Reference No.</b> RN102454402					
<b>Media [Statute]</b> Petroleum Storage Tank					
<b>Enf. Coordinator</b> Judy Kluge					
<b>Violation Number</b> 3					
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 334.50(d)(1)(B)(ii) and (d)(9)(A)(ii) and Tex. Water Code § 26.3475(c)(1)				
<b>Violation Description</b>	Failed to provide proper release detection for the UST system by failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons. Specifically, monthly reconciliation of the inventory control records was not completed for January 2009 through March 2009. Also, failed to utilize a third-party vendor to adequately complete Statistical Inventory Reconciliation ("SIR") as a method of release detection. Specifically, inventory control records were not being submitted to an SIR vendor to perform a statistical analysis of inventory discrepancies.				
<b>Base Penalty</b>		\$10,000			
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>					
OR	Harm				
	Release	Major	Moderate		Minor
	Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Percent</b> <input type="text" value="25%"/>
	Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>&gt;&gt; Programmatic Matrix</b>					
	Falsification	Major	Moderate	Minor	<b>Percent</b> <input type="text" value="0%"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Matrix Notes</b>	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.				
<b>Adjustment</b>		<input type="text" value="\$7,500"/>			
					<input type="text" value="\$2,500"/>
<b>Violation Events</b>					
Number of Violation Events		<input type="text" value="1"/>	<input type="text" value="22"/>		Number of violation days
<i>mark only one with an x</i>	daily	<input type="checkbox"/>			
	weekly	<input type="checkbox"/>			
	monthly	<input checked="" type="checkbox"/>			
	quarterly	<input type="checkbox"/>			
	semiannual	<input type="checkbox"/>			
	annual	<input type="checkbox"/>			
	single event	<input type="checkbox"/>			
					<b>Violation Base Penalty</b> <input type="text" value="\$2,500"/>
One monthly event is recommended based on documentation of the violation during the May 19, 2009 record review to the June 10, 2009 screening date.					
<b>Good Faith Efforts to Comply</b>		<b>10.0% Reduction</b>			<input type="text" value="\$250"/>
		Before NOV	NOV to EDPRP/Settlement Offer		
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>			
Ordinary	<input type="checkbox"/>	<input checked="" type="checkbox"/>			
N/A	<input type="checkbox"/>	(mark with x)			
<b>Notes</b>	The Respondent came into compliance on June 17, 2009 after the NOE dated June 2, 2009.				
<b>Violation Subtotal</b>					<input type="text" value="\$2,250"/>
<b>Economic Benefit (EB) for this violation</b>			<b>Statutory Limit Test</b>		
<b>Estimated EB Amount</b>		<input type="text" value="\$6"/>	<b>Violation Final Penalty Total</b>		<input type="text" value="\$2,375"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b>					<input type="text" value="\$2,375"/>

### Economic Benefit Worksheet

**Respondent:** Munir Nasah dba Express Mart  
**Case ID No.:** 37786  
**Reg. Ent. Reference No.:** RN102454402  
**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				0.00	\$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	19-May-2009	17-Jun-2009	0.08	\$6	n/a	\$6

**Notes for DELAYED costs**  
 The estimated cost for monthly reconciliation of inventory control records and for monitoring all USTs for releases using SIR as a release detection method. The date required is the record review date and the final date is the date of compliance.

**Avoided Costs**

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

Disposal				0.00	\$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	<b>TOTAL</b>	\$6
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# Compliance History Report

Customer/Respondent/Owner-Operator: CN603459801 Munir Nasah Classification: AVERAGE Rating: 12.82  
Regulated Entity: RN102454402 Express Mart Classification: AVERAGE Site Rating: 3.01  
BY DEFAULT  
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 18892  
Location: 1234 N 18TH ST, WACO, TX, 76707  
TCEQ Region: REGION 09 - WACO  
Date Compliance History Prepared: June 10, 2009  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: June 10, 2004 to June 10, 2009  
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/operator of the site during the compliance period? Yes
3. If Yes, who is the current owner/operator? SILWAD INC., owner and Munir Nasah, Operator
4. If Yes, who was/were the prior owner(s)/operator(s)? Mohammad M Altal
5. When did the change(s) in owner or operator occur? 11/01/2008
6. Rating Date: 9/1/2008 Repeat Violator: NO

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, 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 | 03/26/2009 | (739252) |
| 2 | 05/11/2009 | (744411) |
| 3 | 06/01/2009 | (746121) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |              |  |          |                          |
|--------------|--|----------|--------------------------|
| Date:        | 04/03/2009   | (739252) |                          |
| Self Report? | NO   |          | Classification: Moderate |
| Citation:    | 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(C)                                |          |                          |
| Description: | Failure to number all tanks according to Registration/Self-Certification form. |          |                          |
| Self Report? | NO   |          | Classification: Moderate |
| Citation:    | 30 TAC Chapter 334, SubChapter C 334.48(c)                                     |          |                          |
| Description: | Failure to adequately conduct inventory control and monthly reconciliation.    |          |                          |
- 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  
MUNIR NASAH DBA EXPRESS  
MART  
RN102454402

§  
§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**AGREED ORDER**  
**DOCKET NO. 2009-0870-PST-E**

**I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Munir Nasah dba Express Mart ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent operates a convenience store with retail sales of gasoline at 1234 North 18th Street in Waco, McLennan County, Texas (the "Facility").
2. The Respondent's three underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about June 7, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Five Thousand Five Hundred Fifty Dollars (\$5,550) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand One Hundred Ten Dollars (\$1,110) of the administrative

penalty and One Thousand One Hundred Ten Dollars (\$1,110) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Three Thousand Three Hundred Thirty Dollars (\$3,330) of the administrative penalty shall be payable in three monthly payments of One Thousand One Hundred Ten Dollars (\$1,110) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
  - a. Properly marked the USTs according to the UST registration and self-certification form on May 19, 2009;
  - b. Began conducting proper inventory control procedures on June 17, 2009; and
  - c. Obtained a third-party vendor and implemented statistical inventory reconciliation and inventory control as a release detection method for all USTs on June 17, 2009.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

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

1. Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(C), as documented during a record review conducted on May 19, 2009.
2. Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel, in violation of 30 TEX. ADMIN. CODE § 334.48(c), as documented during a record review conducted on May 19, 2009.
3. Failed to provide proper release detection for the UST system by failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of one percent of the total substance flow-through for the month plus 130 gallons, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1), as documented during a record review conducted on May 19, 2009. Specifically, monthly reconciliation of the inventory control records was not completed for January 2009 through March 2009.
4. Failed to utilize a third-party vendor to adequately complete Statistical Inventory Reconciliation ("SIR") as a method of release detection, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(9)(A)(ii) and TEX. WATER CODE § 26.3475(c)(1), as documented during a record review conducted on May 19, 2009. Specifically, inventory control records were not being submitted to an SIR vendor to perform a statistical analysis of inventory discrepancies.

## III. DENIALS

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

## IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Munir Nasah dba Express Mart, Docket No. 2009-0870-PST-E" to:

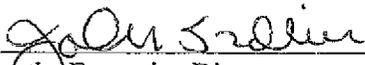
Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

\_\_\_\_\_  
Date 10/20/2009

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

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

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

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

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date 9-11-09

MUNIR NASAH  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Munir Nasah dba Express Mart

\_\_\_\_\_  
Title

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

