

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1276-PST-E TCEQ ID: RN101738979 CASE NO.: 36428

RESPONDENT NAME: K-YOBA, INC. dba Jedco 21

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Jedco 21, 9345 New Guilbeau Road, San Antonio, Bexar County</p> <p>TYPE OF OPERATION: Convenience store with retail sales of gasoline</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on January 12, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p>TCEQ Attorney/SEP Coordinator: None</p> <p>TCEQ Enforcement Coordinator: Mr. Rajesh Acharya, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-0577; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171</p> <p>Respondent: Mr. Ismael Albatayneh, President, K-YOBA, INC., 9345 New Guilbeau Road, San Antonio, Texas 78250</p> <p>Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: May 1, 2008</p> <p>Date of NOE Relating to this Case: June 26, 2008 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>1) Failure to provide release detection for the pressurized piping associated with the underground storage tanks (USTs). Specifically, the Respondent did not conduct the annual piping tightness test [30 TEX. ADMIN. CODE § 334.50(b)(2)(A) and TEX. WATER CODE § 26.3475(a)].</p> <p>2) Failure to test the line leak detectors at least once per year for performance and operational reliability [30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a)].</p> <p>3) Failure to conduct effective manual or automatic inventory control procedures for all USTs at the Facility [30 TEX. ADMIN. CODE § 334.48(c)].</p> <p>4) Failure to notify the agency of any change or additional information regarding USTs within 30 days from the date of occurrence of the change or addition. Specifically, the registration was not updated to reflect the correct type of release detection methods for the tanks and the piping [30 TEX. ADMIN. CODE § 334.7(d)(3)].</p>	<p>Total Assessed: \$7,922</p> <p>Total Deferred: \$1,584 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$530 (remaining \$5,808 due in 11 monthly payments of \$528 each)</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002.</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a) Tested the line leak detectors for performance and operational reliability and conducted the required piping tightness test on May 8, 2008;</p> <p>b) Begun conducting proper inventory control procedures for all USTs at the Facility on August 22, 2008; and</p> <p>c) Properly updated the UST registration information reflecting the correct type of release detection methods for the tanks and the piping on August 22, 2008.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

DATES	Assigned	14-Jul-2008		
	PCW	25-Aug-2008	Screening	18-Jul-2008
		EPA Due		

RESPONDENT/FACILITY INFORMATION			
Respondent	K-YOBA, INC. dba Jedco 21		
Reg. Ent. Ref. No.	RN101738979		
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36428	No. of Violations	3
Docket No.	2008-1276-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Rajesh Acharya
Admin. Penalty \$ Limit Minimum		\$0	Maximum
			\$10,000
		EC's Team	Enforcement Team 6

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	<i>Subtotal 1</i>	\$6,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	30.0% Enhancement	<i>Subtotals 2, 3, & 7</i>	\$1,800
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Notes: Enhancement for one prior enforcement order containing a denial of liability and for poor performer classification.

Culpability	No	0.0% Enhancement	<i>Subtotal 4</i>	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	<i>Subtotal 5</i>	\$975
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Economic Benefit	0.0% Enhancement*	<i>Subtotal 6</i>	\$0
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Total EB Amounts: \$1,106
 Approx. Cost of Compliance: \$1,600
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	<i>Final Subtotal</i>	\$6,825
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OTHER FACTORS AS JUSTICE MAY REQUIRE	16.1%	<i>Adjustment</i>	\$1,097
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with Violation No. 1.

<i>Final Penalty Amount</i>	\$7,922
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STATUTORY LIMIT ADJUSTMENT	<i>Final Assessed Penalty</i>	\$7,922
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DEFERRAL	20.0% Reduction	<i>Adjustment</i>	-\$1,584
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY	\$6,338
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Screening Date 18-Jul-2008

Docket No. 2008-1276-PST-E

PCW

Respondent K-YOBA, INC. dba Jedco 21

Policy Revision 2 (September 2002)

Case ID No. 36428

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN101738979

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 20%

>> **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 one prior enforcement order containing a denial of liability and for poor performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 30%

Screening Date 18-Jul-2008 **Docket No.** 2008-1276-PST-E **PCW**
Respondent K-YOBA, INC. dba Jedco 21 *Policy Revision 2 (September 2002)*
Case ID No. 36428 *PCW Revision June 12, 2008*
Reg. Ent. Reference No. RN101738979
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Rajesh Acharya

Violation Number 1
Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(2)(A), (b)(2)(A)(i)(III) and Tex. Water Code § 26.3475(a)
Violation Description Fail to provide release detection for the pressurized piping associated with the USTs. Specifically, the Respondent did not conduct the annual piping tightness test. Also, failed to test the line leak detectors at least once per year for performance and operational reliability.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 365 Number of violation days

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

Violation Base Penalty \$2,500

One annual event is recommended for the 12-month period preceding the May 1, 2008 investigation.

Good Faith Efforts to Comply 25.0% Reduction \$625

	Reduction	
	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	x	
N/A		(mark with x)

Notes The Respondent came into compliance on May 8, 2008.

Violation Subtotal \$1,875

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount \$1,097 Violation Final Penalty Total \$3,047

This violation Final Assessed Penalty (adjusted for limits) \$3,047

Economic Benefit Worksheet

Respondent K-YOBA, INC. dba Jedco 21
Case ID No. 36428
Reg. Ent. Reference No. RN101738979
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Item Description	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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$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]	\$1,000	1-May-2007	8-May-2008	1.94	\$97	\$1,000	\$1,097
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Avoided cost for piping tightness and line leak detector tests. Date Required is one year prior to the investigation date. Final Date is the compliance date.

Approx. Cost of Compliance \$1,000

TOTAL \$1,097

Screening Date 18-Jul-2008	Docket No. 2008-1276-PST-E																			
Respondent K-YOBA, INC. dba Jedco 21	PCW																			
Case ID No. 36428	<i>Policy Revision 2 (September 2002)</i>																			
Reg. Ent. Reference No. RN101738979	<i>PCW Revision June 12, 2008</i>																			
Media [Statute] Petroleum Storage Tank																				
Enf. Coordinator Rajesh Acharya																				
Violation Number 2																				
Rule Cite(s)	30 Tex. Admin. Code § 334.48(c)																			
Violation Description	Failed to conduct effective manual or automatic inventory control procedures for all USTs at the Facility.																			
Base Penalty \$10,000																				
>> Environmental, Property and Human Health Matrix																				
OR	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <th colspan="3">Harm</th> <td></td> </tr> <tr> <td></td> <th>Major</th> <th>Moderate</th> <th>Minor</th> <td></td> </tr> <tr> <td>Actual</td> <td></td> <td></td> <td></td> <td rowspan="2" style="vertical-align: middle;">Percent 25%</td> </tr> <tr> <td>Potential</td> <td style="text-align: center;">x</td> <td></td> <td></td> </tr> </table>		Harm					Major	Moderate	Minor		Actual				Percent 25%	Potential	x		
		Harm																		
		Major	Moderate	Minor																
Actual				Percent 25%																
Potential	x																			
>> Programmatic Matrix																				
	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <th>Falsification</th> <th>Major</th> <th>Moderate</th> <th>Minor</th> <td></td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> <td rowspan="2" style="vertical-align: middle;">Percent 0%</td> </tr> </table>		Falsification	Major	Moderate	Minor							Percent 0%							
	Falsification	Major	Moderate	Minor																
					Percent 0%															
Matrix Notes	Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.																			
Adjustment \$7,500																				
\$2,500																				
Violation Events																				
Number of Violation Events	1																			
	78																			
	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></td></tr> <tr><td>monthly</td><td></td></tr> <tr><td>quarterly</td><td style="text-align: center;">x</td></tr> <tr><td>semiannual</td><td></td></tr> <tr><td>annual</td><td></td></tr> <tr><td>single event</td><td></td></tr> </table>	daily		monthly		quarterly	x	semiannual		annual		single event		Violation Base Penalty \$2,500						
	daily																			
	monthly																			
	quarterly	x																		
	semiannual																			
	annual																			
single event																				
One quarterly event is recommended based on documentation of the violation during the May 1, 2008 investigation to the July 18, 2008 screening date.																				
Good Faith Efforts to Comply																				
	10.0% Reduction	\$250																		
	Before NOV NOV to EDPRP/Settlement Offer																			
Extraordinary																				
Ordinary	x																			
N/A	(mark with x)																			
Notes	The Respondent came into compliance on August 22, 2008.																			
Violation Subtotal		\$2,250																		
Economic Benefit (EB) for this violation		Statutory Limit Test																		
Estimated EB Amount	\$8	Violation Final Penalty Total \$3,482																		
This violation Final Assessed Penalty (adjusted for limits)		\$3,482																		

Economic Benefit Worksheet

Respondent: K-YOBA, INC. dba Jedco 21
Case ID No.: 36428
Reg. Ent. Reference No.: RN101738979
Media: Petroleum Storage Tank
Violation No.: 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$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	1-May-2008	22-Aug-2008	0.31	\$8	n/a	\$8
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 proper inventory control procedures. Date Required is the investigation date. Final Date is the compliance date.

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	\$8
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Screening Date	18-Jul-2008	Docket No.	2008-1276-PST-E	PCW
Respondent	K-YOBA, INC. dba Jedco 21	Policy Revision 2 (September 2002)		
Case ID No.	36428	PCW Revision June 12, 2008		
Reg. Ent. Reference No.	RN101738979			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Rajesh Acharya			
Violation Number	3			
Rule Cite(s)	30 Tex. Admin. Code § 334.7(d)(3)			
Violation Description	Failed to notify the agency of any change or additional information regarding USTs within 30 days from the date of occurrence of the change or addition. Specifically, the registration was not updated to reflect the correct type of release detection methods for the tanks and the piping.			
Base Penalty	\$10,000			

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual				
	Potential			0%	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
		x			10%

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

Adjustment: \$9,000

\$1,000

Violation Events

Number of Violation Events: 1 78 Number of violation days

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 investigation date of May 1, 2008.

Good Faith Efforts to Comply: 10.0% Reduction \$100

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		x
N/A		(mark with x)

Notes: The Respondent came into compliance on August 22, 2008.

Violation Subtotal: \$900

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount: \$2 Violation Final Penalty Total: \$1,393

This violation Final Assessed Penalty (adjusted for limits): \$1,393

Economic Benefit Worksheet

Respondent K-YOBA, INC. dba Jedco 21
Case ID No. 36428
Reg. Ent. Reference No. RN101738979
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)	\$100	1-May-2008	22-Aug-2008	0.31	\$2	n/a	\$2

Notes for DELAYED costs: Estimated cost to prepare and submit a UST registration. Date Required is the investigation date. Final Date is the compliance date.

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	\$2
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Compliance History

Customer/Respondent/Owner-Operator:	CN600935464 K-Yoba, Inc.	Classification: POOR	Rating: 192.50
Regulated Entity:	RN101738979 Jedco 21	Classification: POOR	Site Rating: 192.50
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		60480
Location:	9345 NEW GUILBEAU RD, SAN ANTONIO, TX, 78250	Rating Date: 9/1/2007	Repeat Violator: NO
TCEQ Region:	REGION 13 - SAN ANTONIO		
Date Compliance History Prepared:	August 06, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	August 06, 2003 to August 06, 2008		

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

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

Site Compliance History Components

- | | |
|----------------------------------------------------------------------------------------------|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

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

- N/A Effective Date: 06/26/2006 ADMINORDER 2006-0053-PST-E
- Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)
30 TAC Chapter 334, SubChapter C 334.50(d)(1)(B)(ii)
Description: Failure to reconcile inventory records on a monthly basis and in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1% of flow-through plus 130 gallons.
 - Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)
Description: Failure to provide records to document compliance with corrosion protection.
 - Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)
Description: Failure to amend or change the PST Registration to show current method of release detection for tanks and piping.
 - Classification: Major
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(a)
30 TAC Chapter 334, SubChapter C 334.50(b)(2)
Description: Failure to conduct release detection for piping.
 - Classification: Major
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(a)
30 TAC Chapter 334, SubChapter C 334.50(b)(2)(A)(i)(III)
Description: Failure to have a performance test done on all line leak detectors annually.
 - Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(C)
Description: Failure to label all tank fills according to the Self-Certification Form.
 - Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.45(c)(3)(A)
Description: Failure to anchor all shear valves.

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.)

N/A 1 01/03/2006 (438551)
2 06/27/2008 (680237)

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

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
K-YOBA, INC. DBA JEDCO 21
RN101738979

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2008-1276-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 K-YOBA, INC. dba Jedco 21 ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a convenience store with retail sales of gasoline at 9345 New Guilbeau Road in San Antonio, Bexar County, Texas (the "Facility").
2. The Respondent's two underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about July 1, 2008.
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 Seven Thousand Nine Hundred Twenty-Two Dollars (\$7,922) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Five Hundred Thirty Dollars (\$530) of the

administrative penalty and One Thousand Five Hundred Eighty-Four Dollars (\$1,584) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with 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 Five Thousand Eight Hundred Eight Dollars (\$5,808) of the administrative penalty shall be payable in 11 monthly payments of Five Hundred Twenty-Eight Dollars (\$528) 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. Tested the line leak detectors for performance and operational reliability and conducted the required piping tightness test on May 8, 2008;
 - b. Begun conducting proper inventory control procedures for all USTs at the Facility on August 22, 2008; and
 - c. Properly updated the UST registration information reflecting the correct type of release detection methods for the tanks and the piping on August 22, 2008.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

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

1. Failed to provide release detection for the pressurized piping associated with the USTs, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2)(A) and TEX. WATER CODE § 26.3475(a), as documented during an investigation conducted on May 1, 2008. Specifically, the Respondent did not conduct the annual piping tightness test.
2. Failed to test the line leak detectors at least once per year for performance and operational reliability, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a), as documented during an investigation conducted on May 1, 2008.
3. Failed to conduct effective manual or automatic inventory control procedures for all USTs at the Facility, in violation of 30 TEX. ADMIN. CODE § 334.48(c), as documented during an investigation conducted on May 1, 2008.
4. Failed to notify the agency of any change or additional information regarding USTs within 30 days from the date of occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3), as documented during an investigation conducted on May 1, 2008. Specifically, the registration was not updated to reflect the correct type of release detection methods for the tanks and the piping.

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: K-YOBA, INC. dba Jedco 21, Docket No. 2008-1276-PST-E" to:

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

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

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

K-YOBA, INC. dba Jedco 21
DOCKET NO. 2008-1276-PST-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Soderer
For the Executive Director

12/29/2008
Date

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

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

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

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

→ *Ismael Albatayneh*
Signature

→ 12-15-08
Date

→ ISMAEL ALBATAYNEH
Name: (Printed or typed)
Authorized Representative of
K-YOBA, INC. dba Jedco 21

→ OWNER
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.

