

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-2035-PST-E TCEQ ID: RN101557205 CASE NO.: 35127
RESPONDENT NAME: ALI SHAHJHAN DBA BROWNIES

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 501 Bedford Road in Bedford, Tarrant 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 expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on November 3, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 TCEQ Enforcement Coordinator: Ms. Elvia Maske, Waste Enforcement Section, MC 128, (512) 239-0789 TCEQ Regional Contact: Mr. Sam Barrett, DFW Regional Office, MC R-4, (817) 588-5903 Respondent: Mr. Ali Shahjhan, Owner, Brownies, 501 Bedford Road, Bedford, Texas 76022 Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: October 8, 2007</p> <p>Date of NOE Relating to this Case: November 13, 2007</p> <p>Background Facts: The EDPRP was filed May 9, 2008, 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 May 12, 2008. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: The Respondent's delivery certificate expires in September 2009.</p> <p>PST:</p> <p>1. Failed renew a previously issued UST delivery certificate by timely and proper submission of a completed UST Registration and Self-Certification form to the agency at least 30 days before the expiration date of the delivery certificate [30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)].</p> <p>2. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)].</p> <p>3. Failed to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$5,821</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$5,821</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>Corrective Action(s) Taken: The Executive Director recognizes that the Respondent submitted a UST Registration and Self-Certification form to the agency and obtained a current TCEQ delivery certificate.</p> <p>Ordering Provisions:</p> <ol style="list-style-type: none"> 1. The Respondent's UST delivery certificate is revoked immediately upon the effective date of this Order. The Respondent may submit an application for a new delivery certificate only after the Respondent has complied with all of the requirements of this Order. 2. The Respondent shall undertake the following technical requirements: <ol style="list-style-type: none"> a. Within 10 days, send his UST delivery certificate to the TCEQ; b. Within 30 days, conduct the required annual testing for the Stage II equipment; and c. Within 45 days, submit written certification to demonstrate compliance with Ordering Provision No. 2.b.

Penalty Calculation Worksheet (PCW)
 Policy Revision 2 (September 2002) PCW Revision November 6, 2007

TCEQ DATES	Assigned	21-Nov-2007	Screening	18-Dec-2007	EPA Due	
	PCW	9-May-2008				

RESPONDENT/FACILITY INFORMATION			
Respondent	Ali Shahjhan dba Brownies		
Reg. Ent. Ref. No.	RN101557205		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	35127	No. of Violations	3
Docket No.	2007-2035-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Elvia Maske
Multi-Media		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$4,500
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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	5% Enhancement	Subtotals 2, 3, & 7	\$225
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Notes: Enhancement for one NOV with same or similar violations.

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

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

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

Total EB Amounts	\$1,101	0% Enhancement*	Subtotal 6	\$0
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Approx. Cost of Compliance: \$1,100 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$4,725
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OTHER FACTORS AS JUSTICE MAY REQUIRE	23%	Adjustment	\$1,096
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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. 3.

Final Penalty Amount **\$5,821**

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$5,821
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DEFERRAL	0% Reduction	Adjustment	\$0
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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	\$5,821
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Screening Date 18-Dec-2007

Docket No. 2007-2035-PST-E

PCW

Respondent Ali Shahjhan dba Brownies

Policy Revision 2 (September 2002)

Case ID No. 35127

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN101557205

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

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%
<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) 5%

>> **Repeat Violator (Subtotal 3)**

No

Adjustment Percentage (Subtotal 3) 0%

>> **Compliance History Person Classification (Subtotal 7)**

Average Performer.

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for one NOV with same or similar violations.

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

Screening Date 18-Dec-2007	Docket No. 2007-2035-PST-E	PCW
Respondent Ali Shahjhan dba Brownies	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 35127	<i>PCW Revision November 6, 2007</i>	
Reg. Ent. Reference No. RN101557205		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Elvia Maske		
Violation Number	1	
Rule Cite(s)	30 Tex. Admin. Code § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)	
Violation Description	Failed to renew a previously issued UST delivery certificate by timely and proper submission of a completed UST registration and self-certification form to the agency at least 30 days before the expiration date of the delivery certificate. Specifically, the delivery certificate expired on September 30, 2006.	
Base Penalty		\$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification				
		Major	Moderate		Minor
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
				Percent <input type="text" value="10%"/>	
Matrix Notes	100% of the rule requirement was not met.				
Adjustment				\$9,000	

\$1,000

Violation Events

Number of Violation Events <input type="text" value="1"/>	<input type="text" value="375"/>	Number of violation days
mark only one with an x daily <input type="checkbox"/> monthly <input type="checkbox"/> quarterly <input type="checkbox"/> semiannual <input type="checkbox"/> annual <input type="checkbox"/> single event <input checked="" type="checkbox"/>	Violation Base Penalty <input type="text" value="\$1,000"/>	
One single event is recommended.		

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$6"/>	Violation Final Penalty Total <input type="text" value="\$1,294"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,294"/>	

Economic Benefit Worksheet

Respondent Ali Shahjhan dba Brownies

Case ID No. 35127

Reg. Ent. Reference No. RN101557205

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
<small>No commas or \$</small>							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$100	31-Aug-2006	10-Oct-2007	1.1	\$6	n/a	\$6

Notes for DELAYED costs

Estimated cost to renew a delivery certificate in a timely manner. The date required is 30 days before the expiration date and the final date is the date of compliance.

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$6

Screening Date 18-Dec-2007	Docket No. 2007-2035-PST-E	PCW
Respondent Ali Shahjhan dba Brownies	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 35127	<i>PCW Revision November 6, 2007</i>	
Reg. Ent. Reference No. RN101557205		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Elvia Maske		
Violation Number <input type="text" value="2"/>		
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 334.8(c)(5)(A)(i) and Tex. Water Code § 26.3467(a)"/>	
Violation Description	<input type="text" value="Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, the Respondent accepted 16 fuel deliveries without a delivery certificate."/>	
Base Penalty		<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>	
					Percent <input type="text" value="10%"/>
Matrix Notes	<input type="text" value="100% of the rule requirement was not met."/>				

Adjustment

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty

One single event is recommended based on documentation of the violation during the October 8, 2007 investigation.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$0"/>	Violation Final Penalty Total <input type="text" value="\$1,294"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,294"/>	

Economic Benefit Worksheet

Respondent All Shahjhan dba Brownies

Case ID No. 35127

Reg. Ent. Reference No. RN101557205

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

Notes for DELAYED costs

Economic benefit included in Violation No. 1.

Avoided Costs							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$0

TOTAL \$0

Screening Date 18-Dec-2007	Docket No. 2007-2035-PST-E	PCW
Respondent Ali Shahjhan dba Brownies		<i>Policy Revision 2 (September 2002)</i>
Case ID No. 35127		<i>PCW Revision November 6, 2007</i>
Reg. Ent. Reference No. RN101557205		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Elvia Maske		
Violation Number <input type="text" value="3"/>		
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 115.245(2) and Tex. Health & Safety Code § 382.085(b)"/>	
Violation Description	<input type="text" value="Failed to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification. Specifically, the Stage II annual compliance testing had not been conducted."/>	
	Base Penalty	<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Percent <input type="text" value="25%"/>

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
<input type="text"/>					
					Percent <input type="text" value="0%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty

One annual event is recommended for the 12-month period preceding the October 8, 2007 investigation.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$1,096"/>	Violation Final Penalty Total <input type="text" value="\$3,234"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$3,234"/>	

Economic Benefit Worksheet

Respondent: Ali Shahjhan dba Brownies

Case ID No.: 35127

Reg. Ent. Reference No.: RN101557205

Media: Petroleum Storage Tank

Violation No.: 3

Percent Interest	Years of Depreciation
5.0	15

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

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

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$1,000	8-Oct-2006	8-Oct-2007	1.9	\$96	\$1,000	\$1,096
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost for annual testing to verify proper operation of the Stage II equipment. The date required is one year prior to the investigation date and the final date is the investigation date.

Approx. Cost of Compliance

\$1,000

TOTAL

\$1,096

Citation: 30 TAC Chapter 115, SubChapter C 115.246(7)(A)
Description: Failure to maintain records on-site at facilities ordinarily manned during business hours, and made immediately available for review upon request by authorized representatives of the Texas Commission on Environmental Quality (TCEQ), EPA, or any local air pollution control program.

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
ALI SHAHJHAN DBA BROWNIES;
RN101557205

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2007-2035-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the TCEQ, which requests appropriate relief, including the revocation of the Respondent's underground storage tank fuel delivery certificate, the imposition of an administrative penalty, and corrective action of the Respondent. The Respondent made the subject of this Order is Ali Shahjhan dba Brownies ("Mr. Shahjhan").

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

FINDINGS OF FACT

1. Mr. Shahjhan owns and operates a convenience store with retail sales of gasoline located at 501 Bedford Road in Bedford, Tarrant County, Texas (the "Station").
2. Mr. Shahjhan's two underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Shahjhan's USTs contain a regulated substance as defined in the rules of the Commission. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. During an investigation conducted October 8, 2007, a TCEQ Dallas-Fort Worth Regional Office investigator documented that Mr. Shahjhan:
 - a. Failed to renew a previously issued UST delivery certificate by timely and proper submission of a completed UST registration and self-certification form to the agency at least 30 days before the expiration date of the delivery certificate;

- b. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; and
 - c. Failed to verify proper operations of the Stage II equipment at least once every 12 months or upon major system replacement or modification.
4. Mr. Shahjhan received notice of the violations on or about November 18, 2007.
 5. The Executive Director recognizes that Mr. Shahjhan submitted a UST registration and self-certification form to the agency and obtained a current TCEQ delivery certificate.
 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 and Requiring Certain Actions of Ali Shahjhan dba Brownies" (the "EDPRP") in the TCEQ Chief Clerk's office on May 9, 2008.
 7. By letter dated May 9, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Shahjhan with notice of the EDPRP. According to the return receipt "green card," Mr. Shahjhan received notice of the EDPRP on May 12, 2008, as evidenced by the signature on the card.
 8. More than 20 days have elapsed since Mr. Shahjhan received notice of the EDPRP, provided by the Executive Director. Mr. Shahjhan failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Shahjhan is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Shahjhan failed renew a previously issued UST delivery certificate by timely and proper submission of a completed UST registration and self-certification form to the agency at least 30 days before the expiration date of the delivery certificate, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii).
3. As evidenced by Finding of Fact No. 3.b., Mr. Shahjhan failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a

regulated substance into the USTs, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a).

4. As evidenced by Finding of Fact No. 3.c., Mr. Shahjhan failed to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, in violation of 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b).
5. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director timely served Mr. Shahjhan 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. Shahjhan failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Shahjhan 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. Shahjhan for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
8. An administrative penalty in the amount of five thousand eight hundred twenty-one dollars (\$5,821.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
9. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.
10. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Mr. Shahjhan's UST delivery certificate if the Commission finds that good cause exists.
11. Good cause for revocation of Mr. Shahjhan's UST delivery certificate exists as justified by Findings of Fact Nos. 3, 6, 7, and 8, and Conclusions of Law Nos. 2 through 6.

ORDERING PROVISIONS

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

1. Mr. Shahjhan is assessed an administrative penalty in the amount of five thousand eight hundred twenty-one dollars (\$5,821.00) for violations of TEX. WATER CODE ch.26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the TCEQ. The payment of this administrative penalty and Mr. Shahjhan'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: Ali Shahjhan dba Brownie; Docket No. 2007-2035-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. Mr. Shahjhan's UST delivery certificate is revoked immediately upon the effective date of this Order. Mr. Shahjhan may submit an application for a new delivery certificate only after Mr. Shahjhan has complied with all of the requirements of this Order.
3. Within 10 days after the effective date of this Order, Mr. Shahjhan shall send his UST delivery certificate to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Mr. Shahjhan shall undertake the following technical requirements:
- a. Within 30 days after the effective date of this Order, Mr. Shahjhan shall conduct the required annual testing for the Stage II equipment, in accordance with 30 TEX. ADMIN. CODE § 115.245(2); and
 - b. Within 45 days after the effective date of this Order, Mr. Shahjhan shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision No. 4.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

Mr. Shahjhan shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision No. 4.a. to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Susan Clewis, Waste Section Manager
Texas Commission on Environmental Quality
Corpus Christi Regional Office
6300 Ocean Drive, NCR Building, Suite 1200
Corpus Christi, Texas 78412

5. All relief not expressly granted in this Order is denied.

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

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF JACQUELYN BOUTWELL

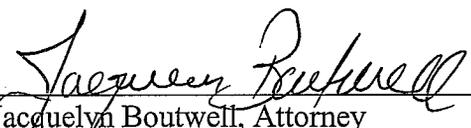
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Jacquelyn Boutwell. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Ali Shahjhan dba Brownies Convenience” (the “EDPRP”) was filed with the Office of the Chief Clerk on May 9, 2008.

The EDPRP was mailed to Mr. Shahjhan at his last known address on May 9, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Shahjhan received notice of the EDPRP on May 12, 2008, as evidenced by the signature on the card.

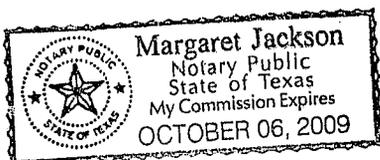
More than 20 days have elapsed since Mr. Shahjhan received notice of the EDPRP. Mr. Shahjhan failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”



Jacquelyn Boutwell, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jacquelyn Boutwell, 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 15 day of September A.D., 2008.





Notary Signature