EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1861-PST-E **TCEQ ID:** RN103961363 **CASE NO.:** 36879

RESPONDENT NAME: Richdairy Ventures Inc dba High Five Food Store 21

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	X PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: High Five Food Store 21, 3150 South Dairy Ashford Street, Houston, Harris County

TYPE OF OPERATION: Convenience store with retail sales of gasoline

SMALL BUSINESS: __X__ **Yes** ____ **No**

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

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

COMMENTS RECEIVED: The *Texas Register* comment period expired on April 27, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: 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
Respondent: Mr. Hakim Charolia, Director, Richdairy Ventures Inc, 20307 Brightonwood Lane, Spring, Texas 77379
Mr. Salim Charolia, Officer, Richdairy Ventures Inc, 20307 Brightonwood Lane, Spring, Texas 77379
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint X Routine __ Enforcement Follow-up __ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** November 3, 2008 **Date of NOV/NOE Relating to this Case:** November 25, 2008 (NOE) **Background Facts:** This was a routine investigation. **WASTE** 1) Failure to report a suspected release to the TCEQ within 24 hours of discovery. Specifically, the Statistical Inventory Reconciliation ("SIR") report for August 2008 indicated a suspected release that was not reported [30 TEX. ADMIN. CODE § 334.72(3)]. 2) Failure to investigate a suspected release within 30 days of discovery. Specifically, the SIR report for August 2008 indicated a suspected release that was not investigated [30 TEX. ADMIN. CODE § 334.74].	**Total Assessed:** $10,100 **Total Deferred:** $2,020 X Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid (Due) to General Revenue:** $240 (remaining $7,840 due in 35 monthly payments of $224 each) **Site Compliance History Classification** __ **High** X **Average** __ **Poor** **Person Compliance History Classification** __ **High** X **Average** __ **Poor** **Major Source:** X Yes __ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that the University of Texas at Arlington, a TCEQ contractor, received documentation verifying that on November 24, 2008, the required suspected release investigation was conducted, corrective measures were taken to conduct daily inventory control measurements and to ensure the maintenance of a passing monthly SIR report from each underground storage tank.

Additional ID No(s).: PST No. 46108

Penalty Calculation Worksheet (PCW)

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

TCEQ

DATES					
Assigned	1-Dec-2008				
PCW	7-Dec-2008	Screening	3-Dec-2008	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Richdairy Ventures Inc dba High Five Food Store 21		
Reg. Ent. Ref. No.	RN103961363		
Facility/Site Region	12-Houston	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	36879	No. of Violations	2
Docket No.	2008-1861-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Judy Kluge
		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* $12,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 5.0% Enhancement *Subtotals 2, 3, & 7* $625

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

Culpability No 0.0% Enhancement *Subtotal 4* $0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments *Subtotal 5* $3,125

Economic Benefit 0.0% Enhancement* *Subtotal 6* $0

Total EB Amounts $131
Approx. Cost of Compliance $3,100
**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 *Final Subtotal* $10,000

OTHER FACTORS AS JUSTICE MAY REQUIRE 1.0% *Adjustment* $100

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.

Final Penalty Amount $10,100

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* $10,100

DEFERRAL 20.0% Reduction *Adjustment* -$2,020

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY $8,080

Screening Date 3-Dec-2008 **Docket No.** 2008-1861-PST-E **PCW**

Respondent Richdairy Ventures Inc dba High Five Food Store 21

Policy Revision 2 (September 2002)

Case ID No. 36879

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103961363

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Compliance History Worksheet

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

Component	Number of...	*Enter Number Here*	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which notices were submitted)*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%

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

Adjustment Percentage (Subtotal 2) 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 prior NOV with same or similar violations.

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

Screening Date 3-Dec-2008 **Docket No.** 2008-1861-PST-E **PCW**

Respondent Richdairy Ventures Inc dba High Five Food Store 21 *Policy Revision 2 (September 2002)*

Case ID No. 36879 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN103961363

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.72(3)

Violation Description Failed to report a suspected release to the TCEQ within 24 hours of discovery. Specifically, the statistical inventory reconciliation ("SIR") report for August 2008 indicated a suspected release that was not reported.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 25%

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

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events 1 | 30 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $2,500

One single event is recommended based on documentation of the violation during the November 3, 2008 investigation.

Good Faith Efforts to Comply

25.0% Reduction $625

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

Notes: The Respondent came into compliance on November 24, 2008.

Violation Subtotal $1,875

Economic Benefit (EB) for this violation

Estimated EB Amount $100

Statutory Limit Test

Violation Final Penalty Total $2,020

This violation Final Assessed Penalty (adjusted for limits) $2,020

Economic Benefit Worksheet

Respondent Richdairy Ventures Inc dba High Five Food Store 21
Case ID No. 36879
Reg. Ent. Reference No. RN103961363
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							
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)						
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]	$100	1-Sep-2008	2-Sep-2008	0.00	$0	$100	$100
Other (as needed)				0.00	$0	$0	$0
Notes for AVOIDED costs	Estimated cost to report a suspected release. The date required is the date of the suspected release and the final date is the date the report was due.						

Approx. Cost of Compliance: $100

TOTAL: $100

Screening Date 3-Dec-2008 **Docket No.** 2008-1861-PST-E **PCW**

Respondent Richdairy Ventures Inc dba High Five Food Store 21 *Policy Revision 2 (September 2002)*

Case ID No. 36879 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN103961363

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.74

Violation Description Failed to investigate a suspected release within 30 days of discovery. Specifically, the SIR report for August 2008 indicated a suspected release that was not investigated.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

Release	Harm: Major	Moderate	Minor
Actual			
Potential	x		

OR

Percent 50%

>>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 $5,000

$5,000

Violation Events

Number of Violation Events 2 55 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $10,000

Two monthly events are recommended from the release investigation due date of October 1, 2008 to the November 24, 2008 compliance date.

Good Faith Efforts to Comply

25.0% Reduction $2,500

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

Notes: The Respondent came into compliance on November 24, 2008.

Violation Subtotal $7,500

Economic Benefit (EB) for this violation

Estimated EB Amount $31

Statutory Limit Test

Violation Final Penalty Total $8,080

This violation Final Assessed Penalty (adjusted for limits) $8,080

Economic Benefit Worksheet

Respondent Richdairy Ventures Inc dba High Five Food Store 21
Case ID No. 36879
Reg. Ent. Reference No. RN103961363
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	$3,000	1-Oct-2008	24-Nov-2008	0.15	$1	$30	$31
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)				0.00	$0	n/a	$0

Notes for DELAYED costs: Estimated cost to investigate a suspected release. The date required is the release investigation due date. 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: $3,000

TOTAL: $31

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603423922	Richdairy Ventures Inc	Classification: AVERAGE	Rating: 0.75
Regulated Entity:	RN103961363	High Five Food Store 21	Classification: AVERAGE	Site Rating: 0.75
ID Number(s):	PETROLEUM STORAGE TANK	REGISTRATION		46108
Location:	3150 S DAIRY ASHFORD ST, HOUSTON, TX, 77082			

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: December 02, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: December 02, 2003 to December 02, 2008

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

Name: Judy Kluge Phone: 817-588-5825

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period?	Yes
2. Has there been a (known) change in ownership of the site during the compliance period?	Yes
3. If Yes, who is the current owner?	Richdairy Ventures Inc
4. if Yes, who was/were the prior owner(s)?	S R S I Enterprises, Inc. Trico VIII Petroleum, Inc.
5. When did the change(s) in ownership occur?	04/25/2008
6. Rating Date: 9/1/2008 Repeat Violator:	NO

Components (Multimedia) for the Site :

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

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 06/28/2006 (484223)
2 09/27/2006 (513987)
3 11/25/2008 (707440)

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

Date: 06/28/2006 (484223)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)
Description: 30 Tex. Admin. Code Section 115.242 (3)(G) - Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s), and free of defects that would impair the effectiveness of the system, including vapor return lines

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	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
RICHDAIRY VENTURES INC DBA	§	
HIGH FIVE FOOD STORE 21	§	
RN103961363	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2008-1861-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 Richdairy Ventures Inc dba High Five Food Store 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 3150 South Dairy Ashford Street in Houston, Harris 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 November 30, 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 Ten Thousand One Hundred Dollars ($10,100) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Hundred Forty Dollars ($240) of the administrative penalty and

Two Thousand Twenty Dollars ($2,020) 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 Seven Thousand Eight Hundred Forty Dollars ($7,840) of the administrative penalty shall be payable in 35 monthly payments of Two Hundred Twenty-Four Dollars ($224) 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 University of Texas at Arlington, a TCEQ contractor, received documentation verifying that on November 24, 2008, the required suspected release investigation was conducted, corrective measures were taken to conduct daily inventory control measurements and to ensure the maintenance of a passing monthly Statistical Inventory Reconciliation ("SIR") report from each UST.

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 report a suspected release to the TCEQ within 24 hours of discovery, in violation of 30 TEX. ADMIN. CODE § 334.72(3), as documented during an investigation conducted on November

3, 2008. Specifically, the SIR report for August 2008 indicated a suspected release that was not reported.

2. Failed to investigate a suspected release within 30 days of discovery, in violation of 30 TEX. ADMIN. CODE § 334.74, as documented during an investigation conducted on November 3, 2008. Specifically, the SIR report for August 2008 indicated a suspected release that was not investigated.

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: Richdairy Ventures Inc dba High Five Food Store 21, Docket No. 2008-1861-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

_____ 4/2/2009
For the Executive Director 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.

CHAROCIA SALIM 2/15/09
Signature Date

SALIM CHAROCIA OFFICER
Name (Printed or typed) Title
Authorized Representative of
Richdairy Ventures Inc dba High Five Food Store 21

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.