

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2006-1098-PST-E TCEQ ID: RN101780922 CASE NO.: 30874
RESPONDENT NAME: R.D.S.A., INC. DBA TEXAS FOOD STORE

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 checked="" 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: 8700 S. Braeswood Boulevard, Houston, Harris 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 June 15, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Dinniah M. Chahin, Litigation Division, MC 175, (512) 239-0617 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 TCEQ Enforcement Coordinator: Mr. Tom Greimel, Waste Enforcement Section, MC 128, (512) 239-5690 TCEQ Regional Contact: Ms. Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623 Respondent: Mr. Majed Affi, President, R.D.S.A. Inc.: 1726 Augusta #103, Houston, Texas 77057; 8700 S. Braeswood, Houston, Texas 77031; 3202 Freshmeadows Drive, Houston, Texas 77063 Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS 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: N/A</p> <p>Date of Investigation Relating to this Case: June 20, 2006</p> <p>Date of NOE Relating to this Case: July 28, 2006</p> <p>Background Facts: The EDPRP was filed January 26, 2007 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 January 29, 2007. The EDFARP was filed February 11, 2009 and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDFARP on February 13, 2009. The Respondent failed to answer either the EDPRP or the EDFARP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>By three separate letters (to three alternate addresses) dated April 23, 2009, the Notice of Intent ("NOI") to shutdown the USTs at the Facility was mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green cards", the Respondent received the NOIs on April 25, 2009.</p> <p>Current Compliance Status: Not yet in compliance. The Respondent's delivery certificate expired in October 2006.</p> <p>PST:</p> <p>1. Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), failed to provide release detection for the piping associated with the USTs, and failed to test the line leak detectors at least once per year for performance and operational reliability [30 TEX. ADMIN. CODE § 334.50(b)(1)(A), (b)(2) and (b)(2)(A)(i)(III), and TEX. WATER CODE § 26.3475(a) and (c)(1)].</p>	<p>Total Assessed: \$5,100</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: \$5,100</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 checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input checked="" type="checkbox"/> High <input 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>Ordering Provisions:</p> <p>The Respondent's UST delivery certificate is revoked immediately. The Respondent may submit an application for a new delivery certificate only after compliance with Ordering Provisions 1 through 6 below and payment of the assessed administrative penalty.</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Immediately: <ol style="list-style-type: none"> a. Cease dispensing fuel from the UST's; b. Cease receiving deliveries of regulated substances into the USTs; c. Padlock the dispensers; d. Empty the USTs of all regulated substances; and e. Temporarily remove the USTs from service. 2. Within 10 days, surrender its UST delivery certificate to the TCEQ. 3. Within 15 days, submit a detailed written report documenting the steps taken to comply with Ordering Provisions Nos 1.a. through 1.e. and 2. 4. If Respondent elects to permanently remove from service any UST systems at the Facility: <ol style="list-style-type: none"> a. Immediately, permanently remove those UST systems; and b. Within 15 days, submit to the Commission a written report documenting compliance. 5. Prior to receiving deliveries of gasoline: <ol style="list-style-type: none"> a. Install and implement a release detection method for the USTs and piping associated with the USTs, and conduct testing of the line leak detectors; and b. Obtain a new delivery certificate. 6. Prior to resuming retail sales of gasoline, begin conducting effective manual or automatic inventory control procedures for all USTs.

2. Failed to conduct effective manual or automatic inventory control procedures for USTs involved in the retail sale of petroleum substances used as a motor fuel [30 TEX. ADMIN. CODE § 334.48(c)].

7. Within 10 days of resuming retail sales of gasoline, submit written notarized certification to demonstrate compliance with Ordering Provisions 5.a., 5.b, and 6.



DATES	Assigned	14-Aug-2006	Screening	21-Aug-2006	EPA Due	
	PCW	10-Feb-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	R.D.S.A., Inc. dba Texas Food Store
Reg. Ent. Ref. No.	RN101780922
Facility/Site Region	12-Houston
Major/Minor Source	Minor Source

CASE INFORMATION			
Enf./Case ID No.	30874	No. of Violations	2
Docket No.	2006-1098-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Thomas Greimel
Multi-Media		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History -8% Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability No

Notes

Good Faith Effort to Comply 0% Reduction **Subtotal 5**

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	X	(mark with a small x)

Notes

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

Total EB Amounts	<input type="text" value="\$102"/>	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	<input type="text" value="\$2,000"/>	

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL

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

Notes

PAYABLE PENALTY

Screening Date 21-Aug-2006

Docket No. 2006-1098-PST-E

PCW

Respondent R.D.S.A., Inc. dba Texas Food Store

Policy Revision 2 (September 2002)

Case ID No. 30874

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101780922

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

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	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments 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 disclosed)	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%
Other	<i>Please Enter Yes or No</i>		
	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) 2%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes: Enhancement for one NOV without same or similar violations and reduction for high performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) -8%

Screening Date 21-Aug-2006

Docket No. 2006-1098-PST-E

PCW

Respondent R.D.S.A., Inc. dba Texas Food Store

Policy Revision 2 (September 2002)

Case ID No. 30874

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101780922

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

Violation Number

1

Primary Rule Cite(s)

30 Tex. Admin Code § 334.50(b)(1)(A), 334.50(b)(2), and 334.50(b)(2)(A)(i)(III)

Secondary Rule Cite(s)

Tex. Water Code § 26.3475(a) & (c)(1)

Violation Description

Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Specifically, the respondent had stopped using Statistical Inventory Reconciliation (SIR) and inventory control as release detection method in April 2000 and did not provide any other release detection method for the USTs at the Facility. Failed to provide release detection for the piping associated with the UST. In addition, the respondent 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

Harm

Release	Major	Moderate	Minor
Actual			
Potential	X		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent

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

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 1

mark only one use a small x	daily	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One quarterly event is recommended based on documentation of the violation during the June 20, 2006 investigation, to the August 21, 2006 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$82

Violation Final Penalty Total \$2,550

This violation Final Assessed Penalty (adjusted for limits) \$2,550

Economic Benefit Worksheet

Respondent R.D.S.A., Inc. dba Texas Food Store
Case ID No. 30874
Reg. Ent. Reference No. RN101780922
Media [Statute] 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
Delayed Costs							
Equipment	\$1,500	20-Jun-2006	01-Apr-2007	0.8	\$4	\$78	\$82
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 Estimated cost to provide a method of release detection for the UST system. The Date Required is the date of the investigation and the Final Date is the estimated 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 n/a

Approx. Cost of Compliance \$1,500

TOTAL \$82

Screening Date 21-Aug-2006

Docket No. 2006-1098-PST-E

PCW

Respondent R.D.S.A., Inc. dba Texas Food Store

Policy Revision 2 (September 2002)

Case ID No. 30874

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101780922

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

Violation Number 2

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.48(c)

Secondary Rule Cite(s)

Violation Description Failed to conduct effective manual or automatic inventory control procedures for USTs involved in the retail sale of petroleum substances used as a motor fuel.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (25%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent.

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

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 1

Table for event frequency: daily, monthly, quarterly (marked with X), semiannual, annual, single event.

Violation Base Penalty \$2,500

One quarterly event is recommended based on documentation of the violation during the June 20, 2006 investigation, to the August 21, 2006 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$20

Violation Final Penalty Total \$2,550

This violation Final Assessed Penalty (adjusted for limits) \$2,550

Economic Benefit Worksheet

Respondent R.D.S.A., Inc. dba Texas Food Store
 Case ID No. 30874
 Reg. Ent. Reference No. RN101780922
 Media [Statute] 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
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)	\$500	20-Jun-2006	01-Apr-2007	0.8	\$20	n/a	\$20

Notes for DELAYED costs: Estimated cost to conduct the required inventory control. The Date Required is the date of investigation and the Final date is estimated date of compliance.

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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: n/a

Approx. Cost of Compliance \$500

TOTAL \$20

Compliance History

Customer/Respondent/Owner-Operator:	CN600963359	R.D.S.A., Inc.	Classification: HIGH	Rating: 0.00
Regulated Entity:	RN101780922	TEXAS FOOD STORE	Classification: HIGH	Site Rating: 0.00
<hr/>				
ID Number(s):	PETROLEUM STORAGE TANK		REGISTRATION	68892
<hr/>				
Location:	8700 S BRAESWOOD BLVD, HOUSTON, TX, 77031		Rating Date: 9/1/2005 Repeat Violator: NO	
<hr/>				
TCEQ Region:	REGION 12 - HOUSTON			
<hr/>				
Date Compliance History Prepared:	August 21, 2006			
<hr/>				
Agency Decision Requiring Compliance History:	Enforcement			
<hr/>				
Compliance Period:	August 21, 2001 to August 21, 2006			

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

Name: Deana Holland Phone: 239-2504

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? | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>N/A</u> |
| 5. When did the change(s) in ownership occur? | <u>N/A</u> |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- | | | | |
|---|------------|----------|--|
| 1 | 06/28/2006 | (482226) | |
| 2 | 07/28/2006 | (484439) | |
| 3 | 09/06/2002 | (8514) | |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | |
|--------------|--|----------|--------------------------|
| Date: | 06/28/2006 | (482226) | |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.242(3)[G] | | |
| 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, includin | | |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.245(2)[G] | | |
| Description: | Tex. Admin. Code Section 115.245 (2)- Failure to verify proper operation of the Stage II equipment at least once every twelve months or upon major system replacement or modification, whichever occurs first. The verification shall include all functional tests that were required for the initial system test, except for TX | | |
| Self Report? | NO | | Classification: Minor |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.246(6) | | |
| Description: | 30 Tex. Admin. Code Section 115.246 (6) - Failure to maintain a record of the results of the daily inspections conducted at the motor vehicle fuel dispensing facility in accordance with the provisions specified in § 115.244 of this title (relating to Inspection Requirements). | | |
- 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
R.D.S.A., INC. DBA TEXAS FOOD
STORE;
RN101780922**

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT AND SHUTDOWN ORDER

DOCKET NO. 2006-1098-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's First Amended Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty, corrective action of the respondent, and revocation of the respondent's fuel delivery certificate. The Commission also considered the Executive Director's Motion requesting entry of an Order requiring the respondent, R.D.S.A., Inc. dba Texas Food Store ("R.D.S.A."), to shutdown or remove from service the Underground Storage Tanks ("USTs") at the R.D.S.A. facility, located at 8700 S. Braeswood Boulevard, Houston, Harris County, Texas.

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

FINDINGS OF FACT

1. R.D.S.A. owns and operates a convenience store with retail sales of gasoline, located at 8700 S. Braeswood Boulevard, Houston, Harris County, Texas (the "Facility").
2. The USTs at the Facility contain regulated substances as defined in the Commission's rules. The USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. On June 20, 2006, a TCEQ contractor from the University of Texas Arlington PST Stage II Office documented that R.D.S.A.:
 - a. Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), failed to provide release detection for the piping associated with the USTs, and failed to test

the line leak detectors at least once per year for performance and operational reliability. Specifically, R.D.S.A. stopped using Statistical Inventory Reconciliation (SIR) and inventory control as a release detection method in April 2000 and did not provide any other release detection method for the USTs at the Facility.

- b. Failed to conduct effective manual or automatic inventory control procedures for USTs involved in the retail sale of petroleum substances used as a motor fuel.
4. By letter dated July 28, 2006, the University of Texas at Arlington provided R.D.S.A. with notice of the violations and the TCEQ's authority to shut down and remove from service USTs not in compliance with release detection, spill and/or overfill prevention, and corrosion protection regulations if the violations were not corrected.
5. R.D.S.A. received notice of the violations on or about August 2, 2006.
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 R.D.S.A., Inc. dba Texas Food Store" (the "EDPRP") in the TCEQ Chief Clerk's office on January 26, 2007.
7. By letter dated January 26, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served R.D.S.A. with notice of the EDPRP. According to the return receipt "green card," R.D.S.A. received notice of the EDPRP on January 29, 2007, as evidenced by the signature on the card.
8. The Executive Director filed the "Executive Director's First Amended 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 R.D.S.A., Inc. dba Texas Food Store" (the "EDFARP") in the TCEQ Chief Clerk's office on February 11, 2009.
9. By letter dated February 11, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served R.D.S.A. with notice of the EDFARP. According to the return receipt "green card," R.D.S.A. received notice of the EDFARP on February 13, 2009, as evidenced by the signature on the card.
10. More than 20 days have elapsed since R.D.S.A. received notice of the EDPRP and EDFARP, provided by the Executive Director. R.D.S.A. failed to file an answer to the either the

EDPRP or the EDFARP, failed to request a hearing, and failed to schedule a settlement conference.

11. By letter dated April 23, 2009, TCEQ provided R.D.S.A. with notice of TCEQ's intent to order the USTs at the Facility shut down and removed from service if R.D.S.A. failed correct violations regarding release detection for tanks and piping within 30 days after R.D.S.A.'s receipt of the notice.
12. As of the date of entry of this Order, R.D.S.A. has not corrected the violations noted during the June 20, 2006, investigation.
13. The USTs at the Facility do not have tank release detection as required by 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), do not have piping release detection as required by 30 TEX. ADMIN. CODE § 334.50(b)(2) and 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a), and may be releasing petroleum products to the environment without the knowledge of the tank owner or operator. Therefore, conditions at the Facility constitute an imminent peril to public health, safety, and welfare.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, R.D.S.A.'s USTs are subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, and the rules of the Commission.
2. As evidenced by Finding of Fact Number 3.a., R.D.S.A., failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), failed to provide release detection for the piping associated with the USTs, and 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)(1)(A), 334.50(b)(2), and 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a) and 26.3475(c)(1).
3. As evidenced by Finding of Fact Number 3.b., R.D.S.A. failed to conduct effective manual or automatic inventory control procedures for USTs involved in the retail sale of petroleum substances used as a motor fuel, in violation of 30 TEX. ADMIN. CODE § 334.48(c).
4. As evidenced by Finding of Fact Nos. 6, 7, 8, and 9 the Executive Director timely served R.D.S.A. with proper notice of the EDPRP and EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
5. As evidenced by Finding of Fact No. 10, R.D.S.A. failed to file a timely answer to either the EDPRP or EDFARP, 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 R.D.S.A. and assess the penalty recommended by the Executive Director.

6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against R.D.S.A. for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of five thousand one hundred dollars (\$5,100.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. As evidenced by Finding of Fact Nos. 3, 4, 5, 11 and 12, R.D.S.A. failed to correct documented violations of Commission requirements within 30 days after R.D.S.A. received notice of the violations and notice of the Executive Director's intent to shut down the Facility.
9. TEX. WATER CODE §§ 26.3475(e) and 26.352(i) authorize the Commission to order a UST owner or operator to shut down a UST system if, within 30 days after receiving notice of the violations, the owner or operator fails to correct violations of Commission regulatory requirements relating to release detection for tanks and/or piping, spill and overflow protection for tanks, corrosion protection for tanks and piping, and/or acceptable financial assurance.
10. 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.
11. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke R.D.S.A.'s UST delivery certificate if the Commission finds that good cause exists.
12. Good cause for revocation of R.D.S.A.'s UST delivery certificate exists as justified by Findings of Fact Nos. 3 through 12 and Conclusions of Law Nos. 2, 3, 4, 5 and 8.
13. As evidenced by Finding of Fact Number 13, current conditions at the Facility constitute an imminent peril to public health, safety and welfare. Therefore, pursuant to the Administrative Procedure Act, TEX. GOV'T CODE § 2001.144(a)(3), this Order is final and effective on the date rendered.

ORDERING PROVISIONS

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. Immediately upon the effective date of this Order, R.D.S.A. shall take the following steps to shut down operations of all USTs at the Facility:
 - a. Cease dispensing fuel from the USTs;
 - b. Cease receiving deliveries of regulated substances into the USTs;
 - c. Padlock the dispensers;
 - d. Empty the USTs of all regulated substances in accordance with 30 TEX. ADMIN. CODE § 334.54(d); and
 - e. Temporarily remove the USTs from service in accordance with 30 TEX. ADMIN. CODE § 334.54.
2. R.D.S.A.'s UST delivery certificate is revoked immediately upon the effective date of this Order. R.D.S.A. may submit an application for a new delivery certificate only after R.D.S.A. has complied with the requirements set forth in Ordering Provision Nos. 1, 3, 4, 6, 7, 8, and 9.
3. Within 10 days after the effective date of this Order, R.D.S.A. shall send its 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. Within 15 days after the effective date of this Order, R.D.S.A. shall submit to the Executive Director a detailed written report documenting the steps it has taken to comply with Ordering Provision Nos. 1.a. through 1.e. and 3. R.D.S.A. shall submit the report to:

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

and

Nicole Bealle, Waste Section Manager
Texas Commission on Environmental Quality
Houston Regional Office
5425 Polk Street, Suite H
Houston, Texas 77023-1452

5. If R.D.S.A. elects to permanently remove from service any USTs at the Facility, R.D.S.A. shall immediately and permanently remove the UST system in accordance with 30 TEX. ADMIN. CODE § 334.55. If R.D.S.A. permanently removes any portion of the UST system from service, R.D.S.A. shall, within 15 days after the effective date of this order, submit to the Commission a written report documenting compliance with 30 TEX. ADMIN. CODE § 334.55. R.D.S.A. shall submit the written report to:

Petroleum Storage Tank Registration Team, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

6. R.D.S.A. is assessed an administrative penalty in the amount of five thousand one hundred dollars (\$5,100.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and R.D.S.A.'s compliance with all the terms and conditions set forth in this Order completely resolve only 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: R.D.S.A., Inc. dba Texas Food Store; Docket No. 2006-1098-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

7. R.D.S.A.'s USTs shall remain out of service, pursuant to TEX. WATER CODE § 26.3475 and as directed by Ordering Provision Nos. 1.a. through 1.e., until such time as R.D.S.A.

demonstrates to the satisfaction of the Executive Director that it has corrected the violations noted in Finding of Fact No. 3.a and Conclusion of Law No. 2 as listed herein.

8. Prior to receiving deliveries of gasoline, R.D.S.A. shall:
 - a. Install and implement a release detection method for the USTs and piping associated with the USTs, and conduct testing of the line leak detectors, in accordance with 30 TEX. ADMIN. CODE § 334.50; and
 - b. Obtain a new delivery certificate from the TCEQ.
9. Prior to resuming retail sales of gasoline, R.D.S.A. shall begin conducting effective manual or automatic inventory control procedures for all USTs, in accordance with 30 TEX. ADMIN. CODE § 334.48.
10. Within 10 days of resuming retail sales of gasoline, R.D.S.A. shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 8.a., 8.b., and 9. The written 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.”

The certification shall be submitted to:

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

and

Nicole Bealle, Waste Section Manager
Texas Commission on Environmental Quality
Houston Regional Office

5425 Polk Avenue, Suite H
Houston, Texas 77023-7826

11. Upon obtaining a new delivery certificate, R.D.S.A. shall post the delivery certificate in a location where the document is clearly visible at all times, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii).
12. All relief not expressly granted in this Order is denied.
13. The provisions of this Order shall apply to and be binding upon R.D.S.A., and R.D.S.A. is ordered to give notice of this Order to personnel who maintain day to day control of the USTs at the Facility.
14. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to R.D.S.A. if the Executive Director determines that R.D.S.A. is noncompliant with or in violation of any of the terms and conditions set forth in this Order.
15. This Order shall terminate five years from its effective date or when R.D.S.A. demonstrates to the satisfaction of the Executive Director that it has corrected all of the violations noted herein.
16. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order is the date this decision was rendered, pursuant to TEX. GOV'T CODE § 2001.144(a)(3).

R.D.S.A., Inc. dba Texas Food Store
TCEQ Docket No. 2006-1098-PST-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF DINNIAH M. CHAHIN

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Dinniah M. Chahin. 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 R.D.S.A., Inc. dba Texas Food Store” (the “EDPRP”) was filed with the Office of the Chief Clerk on January 26, 2007.

The EDPRP was mailed to R.D.S.A. at its last known address on January 26, 2007, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” R.D.S.A. received notice of the EDPRP on January 29, 2007, as evidenced by the signature on the card.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s First Amended 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 R.D.S.A., Inc. dba Texas Food Store” (the “EDFARP”) was filed with the Office of the Chief Clerk on February 11, 2009.

The EDFARP was mailed to R.D.S.A. at its last known address on February 11, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” R.D.S.A. received notice of the EDFARP on February 13, 2009, as evidenced by the signature on the card.

More than 20 days have elapsed since R.D.S.A. received notice of the EDPRP and EDFARP. R.D.S.A. failed to file an answer either the EDPRP or the EDFARP, failed to request a hearing, and failed to schedule a settlement conference.

By letter dated April 23, 2009, sent via first class mail and certified mail, return receipt requested article nos. 91 7108 2133 3935 9107, 91 7108 2133 3935 2031 9114, and 91 7108 2133 3935 2031 9121, I provided R.D.S.A. with notice of the TCEQ’s intent to order the USTs at the Facility shut down and removed from service if the violations pertaining to release detection were not corrected within 30 days of R.D.S.A.’s receipt of the letter. According to the return receipt “green cards,” R.D.S.A. received the notice on April 25, 2009, as evidenced by the signature on two of the cards.

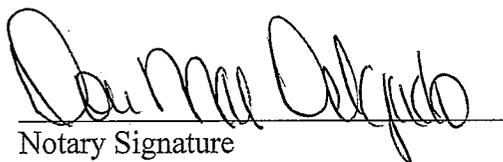
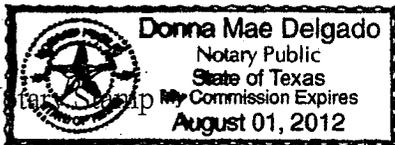
As of the date of this affidavit, I am not aware of any evidence that indicates that R.D.S.A. has corrected the violations noted during the June 20, 2006, investigation.”



Dinniah M. Chahin, Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Dinniah M. Chahin, 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 19th day of May, A.D., 2009.



Notary Signature