

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2008-1939-PST-E TCEQ ID: RN104431473 CASE NO.: 36944**

**RESPONDENT NAME: VIMEX ENTERPRISES, INC. dba Audrey Shell**

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Audrey Shell, 9637 Telephone Road, Houston, Harris County</p> <p><b>TYPE OF OPERATION:</b> Convenience store with retail sales of gasoline</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on May 18, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. Rajesh Acharya, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-0577;                  Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387  <b>Respondent:</b> Mr. Danny Nguyen, President, VIMEX ENTERPRISES, INC., 9637 Telephone Road, Houston, Texas 77075  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> November 20, 2008</p> <p><b>Date of NOV/NOE Relating to this Case:</b> December 2, 2008 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>WASTE</b></p> <p>1) Failure to verify proper operation of the Stage II equipment at least once every 12 months. Specifically, annual testing of the Stage II equipment was not conducted [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p> <p>2) Failure to provide release detection for the pressurized piping associated with the underground storage tank ("UST") system. Specifically, the Respondent did not conduct the annual piping tightness test [30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a)].</p> <p>3) Failure to test the line leak detectors at least once per year for performance and operational reliability [30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a)].</p>	<p><b>Total Assessed:</b> \$9,692</p> <p><b>Total Deferred:</b> \$1,938  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid (Due) to General Revenue:</b> \$325 (remaining \$7,429 due in 23 monthly payments of \$323 each)</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Station:</p> <p>a. Successfully conducted the annual testing of the Stage II vapor recovery system on November 20, 2008; and</p> <p>b. Successfully conducted the required piping tightness and line leak detector tests on November 20, 2008.</p>

Additional ID No(s): PST 78865



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

<b>DATES</b>	Assigned	8-Dec-2008	PCW	15-Dec-2008	Screening	15-Dec-2008	EPA Due	
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<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	VIMEX ENTERPRISES, INC. dba Audrey Shell
Reg. Ent. Ref. No.	RN104431473
Facility/Site Region	12-Houston
Major/Minor Source	Major

<b>CASE INFORMATION</b>			
Enf./Case ID No.	36944	No. of Violations	2
Docket No.	2008-1939-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Rajesh Acharya
		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**

**ADJUSTMENTS (+/-) TO SUBTOTAL 1**

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

**Compliance History**  **Subtotals 2, 3, & 7**

Notes

**Culpability**   **Subtotal 4**

Notes

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5**

**Economic Benefit**  **Subtotal 6**

Total EB Amounts  *\*Capped at the Total EB \$ Amount*  
 Approx. Cost of Compliance

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

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL**  Reduction **Adjustment**

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

Notes

**PAYABLE PENALTY**

Screening Date 15-Dec-2008

Docket No. 2008-1939-PST-E

PCW

Respondent VIMEX ENTERPRISES, INC. dba Audrey Shell

Policy Revision 2 (September 2002)

Case ID No. 36944

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104431473

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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) 0%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

No adjustment due to compliance history.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 0%

**Screening Date** 15-Dec-2008 **Docket No.** 2008-1939-PST-E **PCW**  
**Respondent** VIMEX ENTERPRISES, INC. dba Audrey Shell *Policy Revision 2 (September 2002)*  
**Case ID No.** 36944 *PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN104431473  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Rajesh Acharya

**Violation Number**   
**Rule Cite(s)** 30 Tex. Admin. Code § 115.245(2) and Tex. Health & Safety Code § 382.085(b)  
**Violation Description** Failed to verify proper operation of the Stage II equipment at least once every 12 months. Specifically, annual testing of the Stage II equipment was not conducted.

**Base Penalty**

**>> Environmental, Property and Human Health Matrix**

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="50%"/>
Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

**>> Programmatic Matrix**

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

**Violation Events**

**Number of Violation Events**  **Number of violation days**

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

**Violation Base Penalty**

One annual event is recommended for the 12-month period preceding the November 20, 2008 investigation.

**Good Faith Efforts to Comply**

	25.0% Reduction	
	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input checked="" type="checkbox"/>	<input type="text"/>
N/A	<input type="text"/>	(mark with x)

**Notes** The Respondent came into compliance on November 20, 2008.

**Violation Subtotal**

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount**

**Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

### Economic Benefit Worksheet

**Respondent** VIMEX ENTERPRISES, INC. dba Audrey Shell  
**Case ID No.** 36944  
**Reg. Ent. Reference No.** RN104431473  
**Media** Petroleum Storage Tank  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

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

**Delayed Costs**

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]	\$1,000	20-Nov-2007	20-Nov-2008	1.92	\$96	\$1,000	\$1,096
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost for annual testing to verify proper operation of the Stage II equipment. Date Required is one year prior to the investigation date. Final Date is the compliance date.

Approx. Cost of Compliance

\$1,000

TOTAL

\$1,096

<b>Screening Date</b> 15-Dec-2008	<b>Docket No.</b> 2008-1939-PST-E	<b>PCW</b>		
<b>Respondent</b> VIMEX ENTERPRISES, INC. dba Audrey Shell	<small>Policy Revision 2 (September 2002)</small>			
<b>Case ID No.</b> 36944	<small>PCW Revision October 30, 2008</small>			
<b>Reg. Ent. Reference No.</b> RN104431473				
<b>Media [Statute]</b> Petroleum Storage Tank				
<b>Enf. Coordinator</b> Rajesh Acharya				
<b>Violation Number</b> <input type="text" value="2"/>				
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 334.50(b)(2), and (b)(2)(A)(i)(III) and Tex. Water Code § 26.3475(a)			
<b>Violation Description</b>	Failed to provide release detection for the pressurized piping associated with the UST system. Specifically, the Respondent did not conduct the annual piping tightness test. Also, failed to test the line leak detectors at least once per year for performance and operational reliability.			
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>		
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
Harm				
Release	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Potential	x	<input type="text"/>	<input type="text"/>	
<b>OR</b>		<b>Percent</b>	<input type="text" value="50%"/>	
<b>&gt;&gt; Programmatic Matrix</b>				
Falsification				
Major			Moderate	Minor
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
<b>Matrix Notes</b>		<b>Percent</b>	<input type="text" value="0%"/>	
<b>Matrix Notes</b>		Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.		
<b>Adjustment</b>		<input type="text" value="\$5,000"/>		
		<input type="text" value="\$5,000"/>		
<b>Violation Events</b>				
<b>Number of Violation Events</b>		<input type="text" value="1"/>	<b>Number of violation days</b>	
		<input type="text" value="365"/>		
<small>mark only one with an x</small>	daily	<input type="text"/>	<b>Violation Base Penalty</b>	
	weekly	<input type="text"/>		
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	x		
single event	<input type="text"/>	<input type="text" value="\$5,000"/>		
One annual event is recommended recommended for the 12-month period preceding the November 20, 2008 investigation.				
<b>Good Faith Efforts to Comply</b>		<b>25.0% Reduction</b>	<input type="text" value="\$1,250"/>	
		<small>Before NOV    NOV to EDRP/Settlement Offer</small>		
Extraordinary	<input type="text"/>	<input type="text"/>		
Ordinary	x	<input type="text"/>		
N/A	<input type="text"/>	<small>((mark with x))</small>		
<b>Notes</b>	The Respondent came into compliance on November 20, 2008.			
<b>Violation Subtotal</b>		<input type="text" value="\$3,750"/>		
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>		
<b>Estimated EB Amount</b>		<input type="text" value="\$1,096"/>	<b>Violation Final Penalty Total</b>	
			<input type="text" value="\$4,846"/>	
		<b>This violation Final Assessed Penalty (adjusted for limits)</b>		
		<input type="text" value="\$4,846"/>		

## Economic Benefit Worksheet

**Respondent** VIMEX ENTERPRISES, INC. dba Audrey Shell  
**Case ID No.** 36944  
**Reg. Ent. Reference No.** RN104431473  
**Media** Petroleum Storage Tank  
**Violation No.** 2

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

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

**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Samplings				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

None

**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]	\$1,000	20-Nov-2007	20-Nov-2008	1.92	\$96	\$1,000	\$1,096
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

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

Approx. Cost of Compliance

\$1,000

TOTAL

\$1,096

# Compliance History Report

Customer/Respondent/Owner-Operator:	CN603308958	VIMEX ENTERPRISES, INC.	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN104431473	Audrey Shell	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	78865
	TIRES		REGISTRATION	6013916
Location:	9637 TELEPHONE RD, HOUSTON, TX, 77075			
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	December 16, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	December 16, 2003 to December 16, 2008			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Rajesh Acharya		Phone:	(512) 239-0577

### Site Compliance History Components

- |  |     |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | No  |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | No  |
| 3. If Yes, who is the current owner?   | N/A |
| 4. If Yes, who was/were the prior owner(s)?  | N/A |
| 5. When did the change(s) in ownership occur?  | N/A |
| 6. Rating Date: 9/1/2008 Repeat Violator: NO   |     |

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
N/A
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
1 11/20/2008 (709507)
- 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  
VIMEX ENTERPRISES, INC. DBA  
AUDREY SHELL  
RN104431473

§  
§  
§  
§  
§  
§

BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

**AGREED ORDER  
DOCKET NO. 2008-1939-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 VIMEX ENTERPRISES, INC. dba Audrey Shell ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and 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 9637 Telephone Road in Houston, Harris County, Texas (the "Station").
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. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
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 December 7, 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 Nine Thousand Six Hundred Ninety-Two Dollars (\$9,692) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Three Hundred Twenty-Five Dollars (\$325) of the administrative penalty and One Thousand Nine Hundred Thirty-Eight Dollars (\$1,938) is deferred contingent upon the Respondent timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Seven Thousand Four Hundred Twenty-Nine Dollars (\$7,429) of the administrative penalty shall be payable in 23 monthly payments of Three Hundred Twenty-Three Dollars (\$323) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Station:
  - a. Successfully conducted the annual testing of the Stage II vapor recovery system on November 20, 2008; and
  - b. Successfully conducted the required piping tightness and line leak detector tests on November 20, 2008.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

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

1. Failed to verify proper operation of the Stage II equipment at least once every 12 months, in violation of 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on November 20, 2008. Specifically, annual testing of the Stage II equipment was not conducted.
2. Failed to provide release detection for the pressurized piping associated with the UST system, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a), as documented during an investigation conducted on November 20, 2008. Specifically, the Respondent did not conduct the annual piping tightness test.
3. Failed to test the line leak detectors at least once per year for performance and operational reliability, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a), as documented during an investigation conducted on November 20, 2008.

## 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: VIMEX ENTERPRISES, INC. dba Audrey Shell, Docket No. 2008-1939-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 Station operations referenced in this Agreed Order.
3. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such

an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

VIMEX ENTERPRISES, INC. dba Audrey Shell  
DOCKET NO. 2008-1939-PST-E  
Page 5

### SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

*John Sedler*  
For the Executive Director

4/17/2009  
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

*[Signature]*  
Signature

03/13/09  
Date

DANNY WILSON  
Name (Printed or typed)  
Authorized Representative of  
VIMEX ENTERPRISES, INC. dba Audrey Shell

OWNER  
Title

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

