

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-0660-PST-E TCEQ ID: RN101192136 CASE NO.: 35796
RESPONDENT NAME: IMKAN ENTERPRISES, INC. DBA ROSE HILL COUNTRY 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 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 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

SITE WHERE VIOLATIONS OCCURRED: 17835 Farm-to-Market Road 2920, Tomball, Harris County

TYPE OF OPERATION: Convenience store with retail sales of gasoline

SMALL BUSINESS: 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 expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired August 10, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Gary K. Shiu, Litigation Division, MC R-12, (713) 422-8916
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Ms. Judy Kluge, Waste Enforcement Section, MC R-4, (817) 588-5825

TCEQ Regional Contact: Ms. Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623

Respondent: Mr. Bismu P. Pathak, Vice President, Imkan Enterprises, Inc., 5401 Chimney Rock #918, Houston, Texas 77081

Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: January 9, 2008</p> <p>Date of NOE Relating to this Case: April 7, 2008</p> <p>Background Facts: The EDRP was filed September 19, 2008. Service was unsuccessful. The EDRP was re-filed on January 23, 2009, however, service was again unsuccessful. New addresses were obtained and the EDRP was re-filed on March 3, 2009. The United States Postal Service returned the wrapper sent by certified mail on March 3, 2009, as "unclaimed." The first class mail has not been returned. The Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: The Executive Director recognizes that Respondent no longer owns or operates the Station.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel [30 TEX. ADMIN. CODE § 115.246(4) and (6) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. Failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date [30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)]. Failed to make available to a common carrier a valid, current delivery certificate before accepting delivery of a regulated substance into the USTs [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)]. Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly and failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years [30 TEX. ADMIN. CODE 	<p>Total Assessed: \$29,386</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: \$29,386</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Action Taken: The Executive Director recognizes that Respondent no longer owns or operates the Station and the USTs as of June 30, 2008.</p>

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>§ 334.49(c)(2)(C) and (c)(4) and TEX. WATER CODE § 26.3475(d)].</p> <p>5. Failed to ensure that all USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring); failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons; and failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day [30 TEX. ADMIN. CODE § 334.50(b)(1)(A), (d)(1)(B)(ii), and (d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>6. Failed to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system, including, but not limited to absence or disconnection of any component that is a part of the approved system [30 TEX. ADMIN. CODE § 115.242(3)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>		



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision March 8, 2008

TCEQ

DATES	Assigned	14-Apr-2008	Screening	21-Apr-2008	EPA Due	
	PCW	15-Jul-2008				

RESPONDENT/FACILITY INFORMATION			
Respondent	IMKAN ENTERPRISES, INC. dba Rose Hill Country Store		
Reg. Ent. Ref. No.	RN101192136		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	35796	No. of Violations	6	
Docket No.	2008-0660-PST-E	Order Type	1660	
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Judy Kluge	
Multi-Media		EC's Team	Enforcement Team 6	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* **\$20,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 37% Enhancement *Subtotals 2, 3, & 7* **\$7,585**

Notes: Enhancement for Poor Performer classification, one 1660, one NOV with same or similar violations, and one NOV without same or similar violations.

Culpability No 0% Enhancement *Subtotal 4* **\$0**

Notes: The Respondent does not meet the culpability criteria.

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

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

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

Good Faith Effort to Comply 0% Enhancement* *Subtotal 6* **\$0**

Total EB Amounts	\$1,422	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$3,700	

SUM OF SUBTOTALS 1-7 *Final Subtotal* **\$28,085**

OTHER FACTORS AS JUSTICE MAY REQUIRE 5% *Adjustment* **\$1,301**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided costs of compliance associated with Violation No. 4.

Final Penalty Amount **\$29,386**

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* **\$29,386**

DEFERRAL 0% Reduction *Adjustment* **\$0**

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

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY **\$29,386**

Screening Date 21-Apr-2008

Docket No. 2008-0660-PST-E

PCW

Respondent IMKAN ENTERPRISES, INC. dba Rose Hill Country Stor

Policy Revision 2 (September 2002)

Case ID No. 35796

PCW Revision March 8, 2008

Reg. Ent. Reference No. RN101192136

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	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 27%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Poor Performer

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance History Notes

Enhancement for Poor Performer classification, one 1660, one NOV with same or similar violations, and one NOV without same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 37%

Screening Date 21-Apr-2008	Docket No. 2008-0660-PST-E	PCW
Respondent IMKAN ENTERPRISES, INC. dba Rose Hill Country Store	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 35796	<i>PCW Revision March 8, 2008</i>	
Reg. Ent. Reference No. RN101192136		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Judy Kluge		
Violation Number	1	
Rule Cite(s)	30 Tex. Admin. Code § 115.246(4) and (6) and Tex. Health & Safety Code § 382.085(b)	
Violation Description	Failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel. Specifically, records not available for review included current daily inspection records and Stage II employee training records.	
Base Penalty		\$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

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

Adjustment

Violation Events

Number of Violation Events	<input type="text" value="1"/>		<input type="text" value="103"/>	Number of violation days
<i>mark only one with an x</i>	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$1,000"/>	
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input checked="" type="text" value="x"/>		
One single event is recommended based on documentation of the violation during the January 9, 2008 investigation.				

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$22"/>	Violation Final Penalty Total <input type="text" value="\$1,433"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,433"/>	

Economic Benefit Worksheet

Respondent IMKAN ENTERPRISES, INC. dba Rose Hill Country Store

Case ID No. 35796

Reg. Ent. Reference No. RN101192136

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
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No commas or \$

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	\$500	9-Jan-2008	23-Nov-2008	0.9	\$22	n/a	\$22
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 maintain Stage II records as required. The date required is the investigation date and the final date is the expected compliance date.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$22

Screening Date 21-Apr-2008	Docket No. 2008-0660-PST-E	PCW
Respondent IMKAN ENTERPRISES, INC. dba Rose Hill Country Store		<i>Policy Revision 2 (September 2002)</i>
Case ID No. 35796		<i>PCW Revision March 8, 2008</i>
Reg. Ent. Reference No. RN101192136		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Judy Kluge		
Violation Number	2	
Rule Cite(s)	30 Tex. Admin. Code § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)	
Violation Description	Failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date. Specifically, the delivery certificate expired on July 31, 2007.	
Base Penalty		\$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

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

Adjustment

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty

One single event is recommended based on documentation of the violation during the January 9, 2008 investigation.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$3"/>	Violation Final Penalty Total <input type="text" value="\$1,433"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,433"/>	

Economic Benefit Worksheet

Respondent: IMKAN ENTERPRISES, INC. dba Rose Hill Country Store

Case ID No.: 35796

Reg. Ent. Reference No.: RN101192136

Media: Petroleum Storage Tank

Violation No.: 2

Percent Interest	Years of Depreciation
5.0	15

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

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	\$100	1-Jul-2007	29-Jan-2008	0.6	\$3	n/a	\$3
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

The delayed cost includes the estimated amount required to timely renew a previously issued delivery certificate by submitting a properly completed UST registration and self-certification form. The date required is 30 days before the expiration date and the final date is the expected date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$3

Screening Date 21-Apr-2008	Docket No. 2008-0660-PST-E	PCW
Respondent IMKAN ENTERPRISES, INC. dba Rose Hill Country Store	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 35796	<i>PCW Revision March 8, 2008</i>	
Reg. Ent. Reference No. RN101192136		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Judy Kluge		
Violation Number <input type="text" value="3"/>		
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 334.8(c)(5(A)(i) and Tex. Water Code § 26.3467(a)"/>	
Violation Description	<input type="text" value="Failed to make available to a common carrier a valid, current delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, the Respondent received 13 deliveries of fuel without a delivery certificate."/>	
Base Penalty	<input type="text" value="\$10,000"/>	

>> Environmental, Property and Human Health Matrix

OR	Harm				
		Major	Moderate		Minor
	Release	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text"/>	<input type="text" value="x"/>	<input type="text"/>	
				Percent <input type="text" value="5%"/>	

>> Programmatic Matrix

	Falsification				
		Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
				Percent <input type="text" value="0%"/>	
Matrix Notes	<input type="text" value="Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation."/>				
				Adjustment <input type="text" value="\$9,500"/>	

Violation Events

Number of Violation Events <input type="text" value="13"/>	<input type="text" value="13"/>	Number of violation days											
mark only one with an x <table border="1" style="margin-left: 20px;"> <tr><td>daily</td><td><input type="text"/></td></tr> <tr><td>monthly</td><td><input type="text"/></td></tr> <tr><td>quarterly</td><td><input type="text"/></td></tr> <tr><td>semiannual</td><td><input type="text"/></td></tr> <tr><td>annual</td><td><input type="text"/></td></tr> <tr><td>single event</td><td><input type="text" value="x"/></td></tr> </table>	daily	<input type="text"/>	monthly	<input type="text"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input type="text" value="x"/>	Violation Base Penalty <input type="text" value="\$6,500"/>
daily	<input type="text"/>												
monthly	<input type="text"/>												
quarterly	<input type="text"/>												
semiannual	<input type="text"/>												
annual	<input type="text"/>												
single event	<input type="text" value="x"/>												

Thirteen single events are recommended for acceptance of 13 deliveries of fuel.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$0"/>	Violation Final Penalty Total <input type="text" value="\$9,318"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$9,318"/>	

Economic Benefit Worksheet

Respondent: IMKAN ENTERPRISES, INC. dba Rose Hill Country Store
Case ID No. 35796
Reg. Ent. Reference No. RN101192136
Media: Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Economic Benefit is calculated in Violation No. 2.

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

Approx. Cost of Compliance \$0

TOTAL \$0

Screening Date 21-Apr-2008 **Docket No.** 2008-0660-PST-E **PCW**

Respondent IMKAN ENTERPRISES, INC. dba Rose Hill Country Store *Policy Revision 2 (September 2002)*

Case ID No. 35796 *PCW Revision March 8, 2008*

Reg. Ent. Reference No. RN101192136

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number

Rule Cite(s)

Violation Description

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="25%"/>
Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

>> 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

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input checked="" type="text" value="x"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$1,301"/>	Violation Final Penalty Total <input type="text" value="\$7,167"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$7,167"/>	

Economic Benefit Worksheet

Respondent IMKAN ENTERPRISES, INC. dba Rose Hill Country Store
Case ID No. 35796
Reg. Ent. Reference No. RN101192136
Media Petroleum Storage Tank
Violation No. 4

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)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

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]	\$100	10-Nov-2007	9-Jan-2008	1.1	\$5	\$100	\$105
Other (as needed)	\$1,000	9-Jan-2005	9-Jan-2008	3.9	\$196	\$1,000	\$1,196

Notes for AVOIDED costs

Estimated avoided cost to conduct bimonthly inspections of the cathodic protection system. The date required is 60 days prior to the January 9, 2008 investigation, and the final date is the investigation date. Estimated avoided cost for completing the triennial test. The date required is three years before the investigation date and the final date is the investigation date.

Approx. Cost of Compliance	\$1,100	TOTAL	\$1,301
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Screening Date 21-Apr-2008	Docket No. 2008-0660-PST-E	PCW			
Respondent IMKAN ENTERPRISES, INC. dba Rose Hill Country Store	<i>Policy Revision 2 (September 2002)</i>				
Case ID No. 35796	<i>PCW Revision March 8, 2008</i>				
Reg. Ent. Reference No. RN101192136					
Media [Statute] Petroleum Storage Tank					
Enf. Coordinator Judy Kluge					
Violation Number <input type="text" value="5"/>					
Rule Cite(s)	30 Tex. Admin. Code § 334.50(b)(1)(A), (d)(1)(B)(ii), (d)(1)(B)(iii)(I) and Tex. Water Code § 26.3475(c)(1)				
Violation Description	Failed to ensure that all USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring). Specifically, the automatic tank gauge was not being put into test mode monthly. Failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons. Also, failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day.				
Base Penalty		<input type="text" value="\$10,000"/>			
>> Environmental, Property and Human Health Matrix					
OR	Harm				
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>		
		Percent	<input type="text" value="25%"/>		
>> Programmatic Matrix					
		Falsification	Major	Moderate	Minor
		<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
		Percent			<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		<input type="text" value="\$7,500"/>			
		<input type="text" value="\$2,500"/>			
Violation Events					
Number of Violation Events		<input type="text" value="2"/>	Number of violation days		
		<input type="text" value="103"/>			
<i>mark only one with an x</i>	daily	<input type="text"/>			
	monthly	<input type="text"/>			
	quarterly	<input type="text" value="x"/>			
	semiannual	<input type="text"/>			
	annual	<input type="text"/>			
	single event	<input type="text"/>			
		Violation Base Penalty			<input type="text" value="\$5,000"/>
Two quarterly events are recommended based on documentation of the violation during January 9, 2008 investigation to the April 21, 2008 screening date.					
Economic Benefit (EB) for this violation			Statutory Limit Test		
Estimated EB Amount		<input type="text" value="\$66"/>	Violation Final Penalty Total		<input type="text" value="\$7,167"/>
			This violation Final Assessed Penalty (adjusted for limits)		<input type="text" value="\$7,167"/>

Economic Benefit Worksheet

Respondent IMKAN ENTERPRISES, INC. dba Rose Hill Country Store
Case ID No. 35796
Reg. Ent. Reference No. RN101192136
Media Petroleum Storage Tank
Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

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

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)	\$1,500	9-Jan-2008	23-Nov-2008	0.9	\$66	n/a	\$66

Notes for DELAYED costs The estimated cost of monitoring all USTs for releases, to include recording daily inventory volume measurements, and monthly reconciliation of inventory control records. The date required is the investigation date and the final date is date expected 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
Bimonthly Inspections				0.0	\$0	\$0	\$0
Triennial Test				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$1,500

TOTAL \$66

Screening Date 21-Apr-2008

Docket No. 2008-0660-PST-E

PCW

Respondent IMKAN ENTERPRISES, INC. dba Rose Hill Country Store

Policy Revision 2 (September 2002)

Case ID No. 35796

PCW Revision March 8, 2008

Reg. Ent. Reference No. RN101192136

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 6

Rule Cite(s) 30 Tex. Admin. Code § 115.242(3)(A) and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system, including, but not limited to absence or disconnection of any component that is a part of the approved system. Specifically, the swivel adaptors were not installed on the Stage I dry breaks.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual					10%
Potential		x			

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2 103 Number of violation days

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

Violation Base Penalty \$2,000

Two quarterly events are recommended based on documentation of the violation during January 9, 2008 investigation to the April 21, 2008 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$31

Violation Final Penalty Total \$2,867

This violation Final Assessed Penalty (adjusted for limits) \$2,867

Economic Benefit Worksheet

Respondent IMKAN ENTERPRISES, INC. dba Rose Hill Country Store

Case ID No. 35796

Reg. Ent. Reference No. RN101192136

Media Petroleum Storage Tank

Violation No. 6

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	\$500	9-Jan-2008	23-Nov-2008	0.9	\$1	\$29	\$31
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 properly operate and maintain the Stage II vapor recovery system as specified including installing the adapters. The date required is the investigation date and the final date is the expected date of compliance.

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL \$31

Compliance History

Customer/Respondent/Owner-Operator:	CN603346743	IMKAN ENTERPRISES, INC.	Classification: POOR	Rating: 220.50
Regulated Entity:	RN101192136	ROSE HILL COUNTRY STORE	Classification: POOR	Site Rating: 220.50
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY		REGISTRATION	1012308
	PETROLEUM STORAGE TANK		REGISTRATION	41224
	REGISTRATION			
Location:	WATER LICENSING		LICENSE	1012308
	17835 FM 2920 RD, TOMBALL, TX, 77377			
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	April 21, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	April 21, 2003 to April 21, 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? IMKAN ENTERPRISES, INC.
4. If Yes, who was/were the prior owner(s)? M A S Brothers, Inc.
5. When did the change(s) in ownership occur? March 23, 2007

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
- Effective Date: 08/31/2007 ADMINORDER 2005-0889-PST-E
- Classification: Moderate
- Citation: 2D TWC Chapter 26, SubChapter A 26.3475(a)
30 TAC Chapter 334, SubChapter C 334.50(b)(2)
- Description: Failed to provide proper release detection for the piping associated with UST system.
- Classification: Moderate
- Citation: 2D TWC Chapter 26, SubChapter A 26.3475(d)
30 TAC Chapter 334, SubChapter C 334.49(c)(4)
- Description: Failed to have cathodic protection system tested by a qualified corrosion specialist or corrosion technician within three to six months after installation and at a subsequent frequency of at least once every three years.
- Classification: Moderate
- Citation: 2D TWC Chapter 26, SubChapter A 26.3475(d)
30 TAC Chapter 334, SubChapter C 334.49(c)(2)(C)
- Description: Failed to have the impressed current cathodic protection system regularly inspected at least once every 60 days by the owner or operator to ensure that the rectifier and other system components are operating properly.
- Classification: Moderate
- Citation: 2D TWC Chapter 26, SubChapter A 26.3475(a)
30 TAC Chapter 334, SubChapter C 334.50(b)(2)(A)(I)(III)
- Description: Failed to test a line leak detector at least once per year for performance and operational reliability.
- Classification: Moderate
- Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)
30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)
- Description: Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).
- Classification: Moderate
- Citation: 30 TAC Chapter 115, SubChapter C 115.246(7)(A)

5C THC Chapter 382, SubChapter D 382.085(b)

Description: Failed to maintain records on-site at facilities ordinarily manned during business hours, and make immediately available for review upon request by authorized representatives of the TCEQ.

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.246(6)
5C THC Chapter 382, SubChapter D 382.085(b)

Description: Failed to maintain a daily inspection log.

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.246(4)
5C THC Chapter 382, SubChapter D 382.085(b)

Description: Failed to maintain proof of attendance and completion of training and documentation of all SII training for each employee.

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)
5C THC Chapter 382, SubChapter D 382.085(b)

Description: Failed to verify proper operation of the SII equipment at least once every twelve months or upon major system replacement or modification.

Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(A)
5C THC Chapter 382, SubChapter D 382.085(b)

Description: Failed to maintain all components of the SII System in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order(s), and free of defects that would impair the effectiveness of the system.

Classification: Minor

Citation: 2A TWC Chapter 5, SubChapter A 5.702
30 TAC Chapter 334, SubChapter B 334.22(a)

Description: Failed to pay UST Registration fees for Petroleum Storage Tank Facility ID No. 41224, TCEQ Financial Administration Account No. 0052297U, for fiscal year 2005.

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	10/22/2003	(151723)
2	02/28/2007	(539816)
3	08/02/2007	(569482)
4	04/07/2008	(614419)

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

Date: 03/15/2007 (539816)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(1)(F)

Description: Failure to make available sanitary control easement for the well at the time of inspection.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(1)(A)

Description: Failure to locate ground water sources so that there will be no danger of pollution from insanitary surroundings.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(v)

Description: Failure to install all water system electrical wiring in compliance with a local or national electrical code.

Date: 08/02/2007 (569482)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.248(1)

Description: At the time of the investigation, there was no Stage II trained facility representative for this facility.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.246(3)

Description: At the time of the investigation, the Stage II maintenance log had not been updated since March 3, 2005.

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
IMKAN ENTERPRISES, INC. DBA
ROSE HILL COUNTRY STORE;
RN101192136**

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§
§
§
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§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2008-0660-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty. The respondent made the subject of this Order is Imkan Enterprises, Inc. dba Rose Hill Country Store ("Respondent").

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

FINDINGS OF FACT

1. Respondent owned and operated a convenience store with retail sales of gasoline at 17835 Farm-to-Market Road 2920 in Tomball, Harris County, Texas (the "Station").
2. Respondent's two underground storage tanks ("USTs") were not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Respondent's USTs contain a regulated petroleum substance as defined in the rules of the Commission. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. During an inspection on January 9, 2008, a TCEQ Houston Regional Office investigator documented that Respondent:
 - a. Failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel. Specifically, records not available for review included current daily inspection records and Stage II employee training records;

- b. Failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date. Specifically, the delivery certificate expired on July 31, 2007;
 - c. Failed to make available to a common carrier a valid, current delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, the Respondent received 13 deliveries of fuel without a delivery certificate;
 - d. Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly. Specifically, bi-monthly inspections of the impressed current cathodic protection system were not being conducted. Failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years. Specifically, the triennial test had not been conducted;
 - e. Failed to ensure that all USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring). Specifically, the automatic tank gauge was not being put into test mode monthly. Failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons. Failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; and
 - f. Failed to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system, including, but not limited to absence or disconnection of any component that is a part of the approved system. Specifically, the swivel adaptors were not installed on the Stage I dry breaks.
4. Respondent received notice of the violations on or about April 12, 2008.
5. The Executive Director recognizes that Respondent no longer owns or operates the Station and the USTs as of June 30, 2008.

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 Imkan Enterprises, Inc. dba Rose Hill Country Store" (the "EDPRP") in the TCEQ Chief Clerk's office on September 19, 2008. Service was not achieved.
7. 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 Imkan Enterprises, Inc. dba Rose Hill Country Store" (the "EDPRP") in the TCEQ Chief Clerk's office on January 23, 2009. Service was not achieved.
8. 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 Imkan Enterprises, Inc. dba Rose Hill Country Store" (the "EDPRP") in the TCEQ Chief Clerk's office on March 3, 2009.
9. By letter dated March 3, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed". The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.
10. More than 20 days have elapsed since Respondent received notice of the EDPRP, provided by the Executive Director. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Respondent failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 115.246(4) and (6) and TEX. HEALTH & SAFETY CODE § 382.085(b).

3. As evidenced by Finding of Fact No. 3.b., Respondent failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii).
4. As evidenced by Finding of Fact No. 3.c., Respondent failed to make available to a common carrier a valid, current delivery certificate before accepting delivery of a regulated substance into the USTs, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a).
5. As evidenced by Finding of Fact No. 3.d., Respondent failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly and failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years, in violation of 30 TEX. ADMIN. CODE § 334.49(c)(2)(C) and (c)(4) and TEX. WATER CODE § 26.3475(d).
6. As evidenced by Finding of Fact No. 3.e., Respondent failed to ensure that all USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring); failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons; and failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A), (d)(1)(B)(ii) and (d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1).
7. As evidenced by Finding of Fact No. 3.f., Respondent failed to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system, including, but not limited to absence or disconnection of any component that is a part of the approved system, in violation of 30 TEX. ADMIN. CODE § 115.242(3)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b).
8. As evidenced by Finding of Fact Nos. 8 and 9, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
9. As evidenced by Finding of Fact No. 10, Respondent failed to file a timely answer 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 Respondent and assess the penalty recommended by the Executive Director.

10. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
11. An administrative penalty in the amount of twenty-nine thousand three hundred eighty-six dollars (\$29,386.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
12. 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.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of twenty-nine thousand three hundred eighty-six dollars (\$29,386.00) for violations of state statutes and TCEQ rules. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Imkan Enterprises, Inc. dba Rose Hill Country Store; Docket No. 2008-0660-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. All relief not expressly granted in this Order is denied.
3. The provisions of this Order shall apply to and be binding upon Respondent.

4. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
5. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
6. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF GARY K. SHIU

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

“My name is Gary K. Shiu. 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.

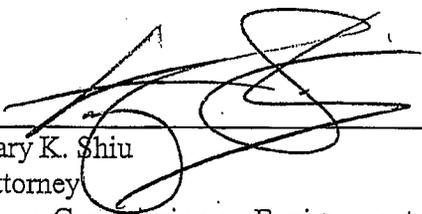
On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Imkan Enterprises, Inc. dba Rose Hill Country Store” with the Office of the Chief Clerk on September 19, 2008. Service was not achieved.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I 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 Imkan Enterprises, Inc. dba Rose Hill Country Store” with the Office of the Chief Clerk on January 23, 2009. Service was not achieved.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I 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 Imkan Enterprises, Inc. dba Rose Hill Country Store” (the “EDPRP”) with the Office of the Chief Clerk on March 3, 2009.

I sent the EDPRP to Respondent at its last known address on March 3, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed”. The first class mail has not been returned, indicating the respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

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

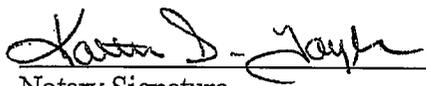


Gary K. Shiu
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Gary K. Shiu, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 24 day of July, A.D., 2009.

Notary Stamp


Notary Signature

