

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 3
DOCKET NO.: 2009-0513-PST-E **TCEQ ID:** RN101774040 **CASE NO.:** 37472
RESPONDENT NAME: NMAD ENTERPRISES INC. dba Savannah Food & Deli

ORDER TYPE:		
<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	
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: Savannah Food & Deli, 1948 Savannah Avenue, Port Arthur, Jefferson 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 has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on August 31, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Judy Kluge, Enforcement Division, Enforcement Team 6, MC R-04, (817) 588-5825; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Ms. Khairunisha Maknojia, Director, NMAD ENTERPRISES INC., 3114 Waters View Drive, Sugarland, Texas 77478 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: February 6, 2009</p> <p>Date of NOV/NOE Relating to this Case: April 7, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>1) Failure to maintain the required underground storage tank ("UST") records and make them immediately available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b)].</p> <p>2) Failure to provide corrosion protection to all underground components of an UST system which is designed or used to convey, contain, or store regulated substances. Specifically, the rectifier voltage meter was broken [30 TEX. ADMIN. CODE § 334.49(a) and TEX. WATER CODE § 26.3475(d)].</p> <p>3) Failure to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel [30 TEX. ADMIN. CODE § 334.48(c)].</p> <p>4) Failure to provide proper release detection for the UST system by failing 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 [30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1)].</p>	<p>Total Assessed: \$15,784</p> <p>Total Deferred: \$3,156 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$378 (remaining \$12,250 due in 35 monthly payments of \$350 each)</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 Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Station:</p> <p>a. Submitted the required UST records to the TCEQ Beaumont Regional Office on March 5, 2009;</p> <p>b. Replaced the rectifier and successfully tested the UST system for corrosion protection on all components of the UST system on February 20, 2009;</p> <p>c. Began conducting proper inventory control procedures for all USTs on February 26, 2009;</p> <p>d. Began recording daily volume measurement and monthly reconciliation of inventory control records, and implemented statistical inventory reconciliation and inventory control as a release detection method for the UST system on February 26, 2009;</p> <p>e. Began maintaining all Stage II records at the Station on March 16, 2009;</p> <p>f. Completed the Stage II representative and in-house employee awareness training on February 19, 2009;</p> <p>g. Conducted the required annual and triennial testing of the Stage II equipment on March 4, 2009, with passing results; and</p> <p>h. Properly marked the USTs according to the UST registration and self-certification form on March 18, 2009.</p>

<p>5) Failure 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(d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>6) Failure 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(7)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>7) Failure to ensure that at least one Station representative receives training in the operation and maintenance of the Stage II vapor recovery system, and each current employee received in-house Stage II vapor recovery training regarding the purpose and operation of the vapor recovery system [30 TEX. ADMIN. CODE § 115.248(1) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>8) Failure to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification. Specifically, the Stage II annual and triennial system compliance testing had not been conducted [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>9) Failure to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form [30 TEX. ADMIN. CODE § 334.8(c)(5)(C)].</p>		
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Additional ID No(s): PST No. 12656



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	13-Apr-2009	Screening	15-Apr-2009	EPA Due	
	PCW	16-Apr-2009				

RESPONDENT/FACILITY INFORMATION			
Respondent	NMAD ENTERPRISES INC. dba Savannah Food & Deli		
Reg. Ent. Ref. No.	RN101774040		
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	37472	No. of Violations	8
Docket No.	2009-0513-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Judy Kluge
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$14,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	30.0% Enhancement	Subtotals 2, 3, & 7	\$4,200
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Notes Enhancement for one 1660 order containing a denial of liability and poor performer classification.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$3,500
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts \$1,096
 Approx. Cost of Compliance \$5,100
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$14,700
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OTHER FACTORS AS JUSTICE MAY REQUIRE	7.4%	Adjustment	\$1,084
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes Recommended enhancement to capture the avoided cost of compliance associated with violation no. 7.

Final Penalty Amount	\$15,784
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$15,784
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DEFERRAL	20.0% Reduction	Adjustment	-\$3,156
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes Deferral offered for expedited settlement.

PAYABLE PENALTY	\$12,628
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Screening Date 15-Apr-2009

Docket No. 2009-0513-PST-E

PCW

Respondent NMADE ENTERPRISES INC. dba Savannah Food & Deli

Policy Revision 2 (September 2002)

Case ID No. 37472

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101774040

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)	0	0%
	Other written NOVs	0	0%
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%

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) 20%

>> 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 one 1660 order containing a denial of liability and poor performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 30%

Screening Date 15-Apr-2009 **Docket No.** 2009-0513-PST-E **PCW**
Respondent NMAD ENTERPRISES INC. dba Savannah Food & Deli *Policy Revision 2 (September 2002)*
Case ID No. 37472 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN101774040
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Judy Kluge

Violation Number
Rule Cite(s)
Violation Description
Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Harm			Percent
		Major	Moderate	Minor	
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text" value="10%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events **Number of violation days**
mark only one with an x

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

Violation Base Penalty

Good Faith Efforts to Comply

	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
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: NMAD ENTERPRISES INC. dba Savannah Food & Deli
Case ID No.: 37472
Reg. Ent. Reference No.: RN101774040
Media: Petroleum Storage Tank
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	6-Feb-2009	5-Mar-2009	0.07	\$2	n/a	\$2
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to maintain all UST records. The date required is the investigation date and the final date is the date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$2

Screening Date 15-Apr-2009	Docket No. 2009-0513-PST-E	PCW
Respondent NMADE ENTERPRISES INC. dba Savannah Food & Deli	<small>Policy Revision 2 (September 2002)</small>	
Case ID No. 37472	<small>PCW Revision October 30, 2008</small>	
Reg. Ent. Reference No. RN101774040		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Judy Kluge		
Violation Number 2		
Rule Cite(s)	30 Tex. Admin. Code § 334.49(a) and Tex. Water Code § 26.3475(d)	
Violation Description	Failed to provide corrosion protection to all underground components of an UST system which is designed or used to convey, contain, or store regulated substances. Specifically, the rectifier voltage meter was broken.	
Base Penalty		\$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

		Major	Moderate	Minor	
Falsification	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
					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

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="checkbox"/>
weekly	<input type="checkbox"/>
monthly	<input checked="" type="checkbox"/>
quarterly	<input type="checkbox"/>
semiannual	<input type="checkbox"/>
annual	<input type="checkbox"/>
single event	<input type="checkbox"/>

Violation Base Penalty

One monthly event is recommended based documentation of the violation during the February 6, 2009 investigation to the February 20, 2009 compliance date.

Good Faith Efforts to Comply Reduction

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

Notes The Respondent came into compliance on February 20, 2009.

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: NMAD ENTERPRISES INC. dba Savannah Food & Deli
Case ID No.: 37472
Reg. Ent. Reference No.: RN101774040
Media: Petroleum Storage Tank
Violation No.: 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment	\$500	6-Feb-2009	20-Feb-2009	0.04	\$0	\$1	\$1
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

Estimated cost to replace the rectifier. The date required is the date of the investigation and the final date is the date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$1

Screening Date 15-Apr-2009 **Docket No.** 2009-0513-PST-E **PCW**
Respondent NMAD ENTERPRISES INC. dba Savannah Food & Deli *Policy Revision 2 (September 2002)*
Case ID No. 37472 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN101774040
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 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
Adjustment

Adjustment **Subtotal**

Violation Events

Number of Violation Events **Number of violation days**
mark only one with an x

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

Violation Base Penalty

Good Faith Efforts to Comply **Subtotal**

	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
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: NMAD ENTERPRISES INC. dba Savannah Food & Deli
Case ID No.: 37472
Reg. Ent. Reference No.: RN101774040
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
No commas or \$							

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$500	6-Feb-2009	26-Feb-2009	0.05	\$1	n/a	\$1
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to conduct inventory control for all USTs involved in the retail sale of petroleum substances used as motor fuel. The date required is the date of the investigation and the final date is the date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$500

TOTAL \$1

Screening Date 15-Apr-2009	Docket No. 2009-0513-PST-E	PCW	
Respondent NMAD ENTERPRISES INC. dba Savannah Food & Deli	<i>Policy Revision 2 (September 2002)</i>		
Case ID No. 37472	<i>PCW Revision October 30, 2008</i>		
Reg. Ent. Reference No. RN101774040			
Media [Statute] Petroleum Storage Tank			
Enf. Coordinator Judy Kluge			
Violation Number 4			
Rule Cite(s)	30 Tex. Admin. Code § 334.50(d)(1)(B)(ii) and (d)(1)(B)(iii)(I) and Tex. Water Code § 26.3475(c)(1)		
Violation Description	Failed to provide proper release detection for the UST system by failing 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		\$10,000	
>> Environmental, Property and Human Health Matrix			
OR	Release	Harm	
		Major Moderate Minor	
	Actual		
	Potential	x	Percent 25%
>> Programmatic Matrix			
	Falsification	Major Moderate Minor	
			Percent 0%
Matrix Notes	Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.		
Adjustment		\$7,500	
		\$2,500	
Violation Events			
	Number of Violation Events	1	Number of violation days 20
<i>mark only one with an x</i>	daily		
	weekly		
	monthly	x	
	quarterly		
	semiannual		
	annual		
	single event		
Violation Base Penalty		\$2,500	
One monthly event is recommended based on documentation of the violation during the February 6, 2009 investigation to the February 26, 2009 compliance date.			
Good Faith Efforts to Comply		25.0% Reduction	\$625
		Before NOV NOV to EDPRP/Settlement Offer	
Extraordinary			
Ordinary	x		
N/A		(mark with x)	
Notes	The Respondent came into compliance on February 26, 2009.		
Violation Subtotal		\$1,875	
Economic Benefit (EB) for this violation		Statutory Limit Test	
Estimated EB Amount	\$4	Violation Final Penalty Total	\$2,819
		This violation Final Assessed Penalty (adjusted for limits)	\$2,819

Economic Benefit Worksheet

Respondent: NMAD ENTERPRISES INC. dba Savannah Food & Deli
Case ID No.: 37472
Reg. Ent. Reference No.: RN101774040
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
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)	\$1,500	6-Feb-2009	26-Feb-2009	0.05	\$4	n/a	\$4

Notes for DELAYED costs

The estimated cost of monitoring all USTs for releases, including recording daily inventory volume measurement, and monthly reconciliation of inventory control records. The date required is the investigation date and the final date is the date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$4

Screening Date 15-Apr-2009 **Docket No.** 2009-0513-PST-E **PCW**
Respondent NMAD ENTERPRISES INC. dba Savannah Food & Deli *Policy Revision 2 (September 2002)*
Case ID No. 37472 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN101774040
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Judy Kluge

Violation Number 5
Rule Cite(s) 30 Tex. Admin. Code § 115.246(7)(A) 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.
Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent
	Major	Moderate	Minor	
	Actual			
Potential				

>> Programmatic Matrix

Falsification				Percent
Major	Moderate	Minor		
	X			10%

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

Adjustment \$9,000 \$1,000

Violation Events

Number of Violation Events 1 **Number of violation days** 38
mark only one with an x
 daily
 weekly
 monthly
 quarterly
 semiannual
 annual
 single event

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the February 6, 2009 investigation.

Good Faith Efforts to Comply 25.0% Reduction \$250

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

Notes The Respondent is in compliance as of March 16, 2009.

Violation Subtotal \$750

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$3 **Violation Final Penalty Total** \$1,127
This violation Final Assessed Penalty (adjusted for limits) \$1,127

Economic Benefit Worksheet

Respondent: NMAD ENTERPRISES INC. dba Savannah Food & Deli
Case ID No.: 37472

Reg. Ent. Reference No.: RN101774040

Media: Petroleum Storage Tank

Violation No.: 5

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	6-Feb-2009	16-Mar-2009	0.10	\$3	n/a	\$3
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to maintain Stage II records at the Station. The date required is the investigation date and the final date is the date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$3

Screening Date 15-Apr-2009	Docket No. 2009-0513-PST-E	PCW	
Respondent NMAD ENTERPRISES INC. dba Savannah Food & Deli	<small>Policy Revision 2 (September 2002)</small>		
Case ID No. 37472	<small>PCW Revision October 30, 2008</small>		
Reg. Ent. Reference No. RN101774040			
Media [Statute] Petroleum Storage Tank			
Enf. Coordinator Judy Kluge			
Violation Number 6			
Rule Cite(s)	30 Tex. Admin. Code § 115.248(1) and Tex. Health & Safety Code § 382.085(b)		
Violation Description	Failed to ensure that at least one Station representative receives training in the operation and maintenance of the Stage II vapor recovery system, and each current employee received in-house Stage II vapor recovery training regarding the purpose and operation of the vapor recovery system.		
Base Penalty		\$10,000	
>> Environmental, Property and Human Health Matrix			
OR	Harm		
	Major	Moderate	Minor
Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Potential	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Percent			10%
>> Programmatic Matrix			
Falsification			
Major			Moderate
Minor			
<input type="checkbox"/>			<input type="checkbox"/>
<input type="checkbox"/>			<input type="checkbox"/>
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		1	Number of violation days
		13	
<small>mark only one with an x</small>	daily	<input type="checkbox"/>	Violation Base Penalty
	weekly	<input type="checkbox"/>	
	monthly	<input type="checkbox"/>	
	quarterly	<input checked="" type="checkbox"/>	
	semiannual	<input type="checkbox"/>	
	annual	<input type="checkbox"/>	
	single event	<input type="checkbox"/>	
Violation Base Penalty			\$1,000
One quarterly event is recommended based on documentation of the violation during the February 6, 2009 investigation to the February 19, 2009 compliance date.			
Good Faith Efforts to Comply		25.0% Reduction	
		<small>Before NOV NOV to EDPRP/Settlement Offer</small>	
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>	Violation Subtotal
Ordinary	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
N/A	<input type="checkbox"/>	<small>(mark with x)</small>	
Notes	The Respondent came into compliance on February 19, 2009.		
Violation Subtotal		\$750	
Economic Benefit (EB) for this violation		Statutory Limit Test	
Estimated EB Amount		Violation Final Penalty Total	
\$1		\$1,127	
		This violation Final Assessed Penalty (adjusted for limits)	
		\$1,127	

Economic Benefit Worksheet

Respondent: NMAD ENTERPRISES INC. dba Savannah Food & Deli
Case ID No.: 37472
Reg. Ent. Reference No.: RN101774040
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
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	\$500	6-Feb-2009	19-Feb-2009	0.04	\$1	n/a	\$1
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost of training a Stage II Station representative and in-house employee Stage II training. The date required is the investigation date and the final date is the date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$1

Screening Date 15-Apr-2009 **Docket No.** 2009-0513-PST-E **PCW**
Respondent NMA ENTERPRISES INC. dba Savannah Food & Deli *Policy Revision 2 (September 2002)*
Case ID No. 37472 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN101774040
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 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
Adjustment

Violation Events

Number of violation days
mark only one with an x

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

Violation Base Penalty

Good Faith Efforts to Comply

	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
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: NMAD ENTERPRISES INC. dba Savannah Food & Deli
Case ID No.: 37472
Reg. Ent. Reference No.: RN101774040
Media: Petroleum Storage Tank
Violation No.: 7

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$1,000	1-Jun-2008	4-Mar-2009	1.67	\$84	\$1,000	\$1,084
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. The date required is the date of ownership change and the final date is the date of compliance.

Approx. Cost of Compliance

\$1,000

TOTAL

\$1,084

Screening Date 15-Apr-2009	Docket No. 2009-0513-PST-E	PCW		
Respondent NMAD ENTERPRISES INC. dba Savannah Food & Deli	<small>Policy Revision 2 (September 2002)</small>			
Case ID No. 37472	<small>PCW Revision October 30, 2008</small>			
Reg. Ent. Reference No. RN101774040				
Media [Statute] Petroleum Storage Tank				
Enf. Coordinator Judy Kluge				
Violation Number 8				
Rule Cite(s)	30 Tex. Admin. Code § 334.8(c)(5)(C)			
Violation Description	Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form.			
Base Penalty		\$10,000		
>> Environmental, Property and Human Health Matrix				
OR	Harm			Percent
	Major	Moderate	Minor	
Release				0%
Actual				
Potential				
>> Programmatic Matrix				
	Major	Moderate	Minor	Percent
Falsification				
	x			10%
Matrix Notes	100% of the rule requirement was not met.			
Adjustment				\$9,000
				\$1,000
Violation Events				
	1	40	Number of violation days	
<i>mark only one with an x</i>	daily			Violation Base Penalty
	weekly			
	monthly			
	quarterly			
	semiannual			
	annual			
	single event	x		
One single event is recommended based on documentation of the violation during the February 6, 2009 investigation.				
Good Faith Efforts to Comply		25.0% Reduction		\$250
		Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary				
Ordinary	x			
N/A		(mark with x)		
Notes	The Respondent came into compliance on March 18, 2009.			
Violation Subtotal				\$750
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount	\$1	Violation Final Penalty Total	\$1,127	
This violation Final Assessed Penalty (adjusted for limits)				\$1,127

Economic Benefit Worksheet

Respondent NMAD ENTERPRISES INC. dba Savannah Food & Deli
Case ID No. 37472
Reg. Ent. Reference No. RN101774040
Media Petroleum Storage Tank
Violation No. 8

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	\$100	6-Feb-2009	18-Mar-2009	0.11	\$1	n/a	\$1

Notes for DELAYED costs

The estimated cost includes the amount required to permanently affix a metal label to each UST fill tube. The date required is the investigation date and the final date is the date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$100

TOTAL \$1

Compliance History Report

Customer/Respondent/Owner-Operator: CN603459645 NMAD ENTERPRISES INC. Classification: POOR Rating: 165.00
Regulated Entity: RN101774040 Savannah Food & Deli Classification: POOR Site Rating: 165.00
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 12656
Location: 1948 SAVANNAH AVE, PORT ARTHUR, TX, 77640
TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: April 13, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: April 13, 2004 to April 13, 2009

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/operator of the site during the compliance period? Yes
3. If Yes, who is the current owner/operator? NMAD ENTERPRISES INC.
4. If Yes, who was/were the prior owner(s)/operator(s) ? Yousef, Sari M
5. When did the change(s) in owner or operator occur? 06/01/2008
6. Rating Date: 9/1/2008 Repeat Violator? No

Components (Multimedia) for the Site :

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

Effective Date: 08/07/2005 ADMINORDER 2004-0692-PST-E
Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(d)
30 TAC Chapter 334, SubChapter C 334.49(c)(4)
Description: Failure to inspect and test corrosion protection systems within three to six months after installation and once every three years thereafter.
Classification: Minor
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(d)
30 TAC Chapter 334, SubChapter C 334.49(c)(2)(C)
Description: Failure to check the cathodic protection rectifier at least once every sixty days to determine if the impressed current system is operating properly.
Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)
30 TAC Chapter 334, SubChapter C 334.50(d)(1)(B)(ii)
Description: Failure to reconcile inventory control records on a monthly basis which are sufficiently accurate to detect a release which equals or exceeds the sum of 1% of the flow through plus 130 gallons.
Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)
30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)
Description: Failure to monitor UST systems for releases at least once per month.
Classification: Minor
Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)
Description: Failure to amend, update, or change registration information to reflect the new owner/operator.
Classification: Minor
Citation: 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(C)
Description: Failure to physically label all tank fill pipes according to the Registration and Self-Certification

Form.

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.45(c)(3)(A)

Description: Failure to install and maintain a secure anchor at the base of each UL-listed emergency shutoff valve in a piping system in which regulated substances are conveyed under pressure to an aboveground dispensing unit.

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.246(4)

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

Description: Failure to maintain proof of attendance and completion of training as specified in 115.248 (state approved Stage II training course).

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.246(5)

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

Description: Failure to maintain a record of the results of testing conducted at the facility according to 115.245 (Testing Requirements).

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.246(1)

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

Description: Failure for the owner or operator to maintain a copy of the current Stage II CARB Executive Order on site and available for review.

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)

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

Description: Failed to verify proper operation of the Stage II equipment by performing testing at least once every 12 months or upon mayor system replacement or modification.

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)

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

Description: Failure for the Stage II system to be operated in accordance with applicable CARB and/or manufacturer's requirements or correct operating condition which reduces system's effectiveness.

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(d)

30 TAC Chapter 334, SubChapter C 334.49(a)

Description: Failure for a UST system to be equipped with corrosion protection.

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 04/07/2009 (735742)

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

N/A

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
NMAD ENTERPRISES INC. DBA
SAVANNAH FOOD & DELI
RN101774040

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§
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BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2009-0513-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 NMAD ENTERPRISES INC. dba Savannah Food & Deli ("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 1948 Savannah Avenue in Port Arthur, Jefferson County, Texas (the "Station").
2. The Respondent's three 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 April 12, 2009.
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 Fifteen Thousand Seven Hundred Eighty-Four Dollars (\$15,784) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Three Hundred Seventy-Eight Dollars (\$378) of the administrative penalty and Three Thousand One Hundred Fifty-Six Dollars (\$3,156) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Twelve Thousand Two Hundred Fifty Dollars (\$12,250) of the administrative penalty shall be payable in 35 monthly payments of Three Hundred Fifty Dollars (\$350) 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. Submitted the required UST records to the TCEQ Beaumont Regional Office on March 5, 2009;
 - b. Replaced the rectifier and successfully tested the UST system for corrosion protection on all components of the UST system on February 20, 2009;
 - c. Began conducting proper inventory control procedures for all USTs on February 26, 2009;
 - d. Began recording daily volume measurement and monthly reconciliation of inventory control records, and implemented statistical inventory reconciliation and inventory control as a release detection method for the UST system on February 26, 2009;
 - e. Began maintaining all Stage II records at the Station on March 16, 2009;
 - f. Completed the Stage II representative and in-house employee awareness training on February 19, 2009;

- g. Conducted the required annual and triennial testing of the Stage II equipment on March 4, 2009, with passing results; and
 - h. Properly marked the USTs according to the UST registration and self-certification form on March 18, 2009.
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 maintain the required UST records and make them immediately available for inspection upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 334.10(b), as documented during an investigation conducted on February 6, 2009.
2. Failed to provide corrosion protection to all underground components of an UST system which is designed or used to convey, contain, or store regulated substances, in violation of 30 TEX. ADMIN. CODE § 334.49(a) and TEX. WATER CODE § 26.3475(d), as documented during an investigation conducted on February 6, 2009. Specifically, the rectifier voltage meter was broken.
3. Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel, in violation of 30 TEX. ADMIN. CODE § 334.48(c), as documented during an investigation conducted on February 6, 2009.
4. Failed to provide proper release detection for the UST system by failing 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, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on February 6, 2009.
5. 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(d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on February 6, 2009.

6. 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(7)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on February 6, 2009.
7. Failed to ensure that at least one Station representative receives training in the operation and maintenance of the Stage II vapor recovery system, and each current employee receives in-house Stage II vapor recovery training regarding the purpose and operation of the vapor recovery system, in violation of 30 TEX. ADMIN. CODE § 115.248(1) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on February 6, 2009.
8. Failed to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, in violation of 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on February 6, 2009. Specifically, the Stage II annual and triennial system compliance testing had not been conducted.
9. Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(C), as documented during an investigation conducted on February 6, 2009.

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: NMAD ENTERPRISES INC. dba Savannah Food & Deli, Docket No. 2009-0513-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 Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

[Signature]
For the Executive Director

8/6/2009
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 surcharge 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

08/04/09
Date

KHAIRUNNISA MAKNOVA
Name (Printed or typed)
Authorized Representative of
NMAD ENTERPRISES INC. dba Savannah Food & Deli

DIRECTOR
Title

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