

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2008-1038-PST-E: TCEQ ID RN101444404: CASE NO.: 36119
RESPONDENT NAME: JUAN G. RIVAS DBA EXELL AUTO SERVICE E FUEL

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 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: 2401 Finley Road, Irving, Dallas County

TYPE OF OPERATION: convenience store with retail sales of gasoline

SMALL BUSINESS: Yes No N/A

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 December 7, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-3400
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Mr. Rajesh Acharya, Waste Enforcement Section, MC 128, (512) 239-0577

TCEQ Regional Contact: Mr. Sam Barrett, Dallas/Fort Worth Regional Office, MC R-4, (817) 588-5903

Respondent: Mr. Juan G. Rivas, Owner, Exell Auto Service E Fuel, 2401 Finley Road, Irving, Texas 75062

Respondent's Attorney: Mr. Rickey D. Jones, Attorney at Law, P.O. Box 142416, Austin, Texas 78714

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 of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: May 14, 2008</p> <p>Date of NOE Relating to this Case: June 10, 2008</p> <p>Background Facts: The EDRP was filed on February 18, 2009. The Respondent filed an answer and the case was referred to SOAH. Settlement was achieved and the agreed order was signed on September 25, 2009.</p> <p>Current Compliance Status: The Respondent has not yet submitted documentation to certify compliance with the technical requirements. The Respondent's delivery certificate expired in July 2008.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifold and dynamic back pressure test at least once every 36 months or upon major system replacement or modification, whichever occurs first [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. Failed to upgrade the Stage II vapor recovery system to onboard fueling vapor recovery ("ORVR") compatible systems, and 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(1)(C) and (3)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. Failed to maintain Stage II records at the Station ordinarily manned during business hours, 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>Total Assessed: \$13,071</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid/Due to General Revenue: \$471/\$12,600</p> <p>The Respondent paid \$471 of the administrative penalty. The remaining amount of \$12,600 shall be payable in 35 monthly payments of \$360 each.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent performed the following corrective actions at the Station:</p> <ol style="list-style-type: none"> Conducted annual testing of the Stage II vapor recovery system on January 30, 2009 (violation 1). Conducted triennial testing of the Stage II vapor recovery system on January 30, 2009 (violation 1). Installed ORVR compatible equipment, installed vapor adaptors, and conducted successful Stage II vapor recovery testing after completing the ORVR upgrade (violation 2). <p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Immediately: <ol style="list-style-type: none"> Begin conducting effective manual or automatic inventory control procedures for all USTs (violation 5); and Begin maintaining all Stage II records at the Station (violation 3). Within 30 days, implement a release detection method for all USTs, and begin recording volume measurements and reconciliation of inventory control records (violation 4). Within 45 days, submit written certification demonstrating compliance.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>4. Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), failed to conduct reconciliation of detailed inventory control records at least once each month sufficiently accurate to detect a release as small as the sum of 1.0% 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 for 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>5. Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel [30 TEX. ADMIN. CODE § 334.48(c)].</p>		



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

TCEQ

DATES	Assigned	19-Jun-2008			
	PCW	21-Jan-2009	Screening	25-Jun-2008	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	Juan G. Rivas dba Exell Auto Service E Fuel				
Reg. Ent. Ref. No.	RN101444404				
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	36119	No. of Violations	5		
Docket No.	2008-1038-PST-E	Order Type	1660		
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Rajesh Acharya		
		EC's Team	Enforcement Team 6		
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000		

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$9,500
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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	25.0% Enhancement	Subtotals 2, 3, & 7	\$2,375
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Notes: Enhancement for one NOV with same or similar violations and one 1660 order.

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	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$1,392
Approx. Cost of Compliance	\$6,500

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$11,875
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OTHER FACTORS AS JUSTICE MAY REQUIRE	10.1%	Adjustment	\$1,196
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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.1.

Final Penalty Amount **\$13,071**

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$13,071
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$13,071
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Screening Date 25-Jun-2008 **Docket No.** 2008-1038-PST-E
Respondent Juan G. Rivas dba Exell Auto Service E Fuel
Case ID No. 36119
Reg. Ent. Reference No. RN101444404
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Rajesh Acharya

PCW

Policy Revision 2 (September 2002)
 PCW Revision June 12, 2008

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 (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	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 (<i>number of judgements or consent decrees meeting criteria</i>)	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 (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	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 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	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) 25%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same or similar violations and one 1660 order.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 25%

Screening Date 25-Jun-2008 **Docket No.** 2008-1038-PST-E **PCW**
Respondent Juan G. Rivas dba Exell Auto Service E Fuel *Policy Revision 2 (September 2002)*
Case ID No. 36119 *PCW Revision June 12, 2008*
Reg. Ent. Reference No. RN101444404
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Rajesh Acharya

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent
	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	
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"/>	

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 type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text" value="x"/>

Violation Base Penalty

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	(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 Juan G. Rivas dba Exell Auto Service E Fuel

Case ID No. 36119

Reg. Ent. Reference No. RN101444404

Media Petroleum Storage Tank

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

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

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$1,000	14-May-2005	14-May-2008	3.92	\$196	\$1,000	\$1,196
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost for annual and triennial testing to verify proper operation of the Stage II equipment. Date Required is three years prior to the investigation date. Final Date is the investigation date.

Approx. Cost of Compliance \$1,000

TOTAL \$1,196

Screening Date 25-Jun-2008 **Docket No.** 2008-1038-PST-E **PCW**
Respondent Juan G. Rivas dba Exell Auto Service E Fuel *Policy Revision 2 (September 2002)*
Case ID No. 36119 *PCW Revision June 12, 2008*
Reg. Ent. Reference No. RN101444404
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Rajesh Acharya

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 115.242(1)(C), 115.242(3)(A) and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to upgrade the Stage II vapor recovery system to onboard refueling vapor recovery ("ORVR") compatible systems. Also, 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 USTs were not equipped with product and Stage I vapor adaptors which prevent loosening and over-tightening.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

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 1 42 Number of violation days

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$1,000

One quarterly event is recommended based on documentation of the violation during the May 14, 2008 investigation to the screening date of June 25, 2008.

Good Faith Efforts to Comply

0.0% Reduction

\$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 for this violation.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$123

Violation Final Penalty Total \$1,376

This violation Final Assessed Penalty (adjusted for limits) \$1,376

Economic Benefit Worksheet

Respondent Juan G. Rivas dba Exell Auto Service E Fuel

Case ID No. 36119

Reg. Ent. Reference No. RN101444404

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	\$3,000	14-May-2008	14-Dec-2008	0.59	\$6	\$117	\$123
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 upgrade the Stage II equipment to ORVR compatible systems and to install vapor adaptors.
Date Required is the date of investigation. Final Date is the estimated compliance date.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance	\$3,000	TOTAL	\$123
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Screening Date 25-Jun-2008 **Docket No.** 2008-1038-PST-E **PCW**
Respondent Juan G. Rivas dba Exell Auto Service E Fuel *Policy Revision 2 (September 2002)*
Case ID No. 36119 *PCW Revision June 12, 2008*
Reg. Ent. Reference No. RN101444404
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Rajesh Acharya

Violation Number 3

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 ordinarily manned during business hours, and make them immediately available for review upon request by agency personnel .

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual					0%
Potential					

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
		x			10%

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 42 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the May 14, 2008 investigation.

Good Faith Efforts to Comply 0.0% Reduction \$0

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

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,000

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

Estimated EB Amount \$15 **Violation Final Penalty Total** \$1,376

This violation Final Assessed Penalty (adjusted for limits) \$1,376

Economic Benefit Worksheet

Respondent Juan G. Rivas dba Exell Auto Service E Fuel

Case ID No. 36119

Reg. Ent. Reference No. RN101444404

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

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	14-May-2008	14-Dec-2008	0.59	\$15	n/a	\$15
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 maintain Stage II records. Date Required is the investigation date. Final Date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.00	\$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

TOTAL

Screening Date 25-Jun-2008 **Docket No.** 2008-1038-PST-E **PCW**
Respondent Juan G. Rivas dba Exell Auto Service E Fuel *Policy Revision 2 (September 2002)*
Case ID No. 36119 *PCW Revision June 12, 2008*
Reg. Ent. Reference No. RN101444404
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Rajesh Acharya

Violation Number 4
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 monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Specifically, the automatic tank gauge was not put into test mode at least once per month. Failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0% 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 for each operating day.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				25%
	Potential	x			

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes
 Human health or 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 42 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$2,500

One quarterly event is recommended based on documentation of the violation during the May 14, 2008 investigation to the screening date of June 25, 2008.

Good Faith Efforts to Comply 0.0% Reduction \$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 for this violation.

Violation Subtotal \$2,500

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

Estimated EB Amount \$44 **Violation Final Penalty Total** \$3,440

This violation Final Assessed Penalty (adjusted for limits) \$3,440

Economic Benefit Worksheet

Respondent Juan G. Rivas dba Exell Auto Service E Fuel

Case ID No. 36119

Reg. Ent. Reference No. RN101444404

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	14-May-2008	14-Dec-2008	0.59	\$44	n/a	\$44

Notes for DELAYED costs

Estimated cost to monitor USTs for releases to include recording daily volume measurements and monthly reconciliation of inventory control records. Date Required is the date of investigation. Final Date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.00	\$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

\$44

Screening Date 25-Jun-2008 **Docket No.** 2008-1038-PST-E **PCW**
Respondent Juan G. Rivas dba Exell Auto Service E Fuel *Policy Revision 2 (September 2002)*
Case ID No. 36119 *PCW Revision June 12, 2008*
Reg. Ent. Reference No. RN101444404
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Rajesh Acharya

Violation Number 5
Rule Cite(s) 30 Tex. Admin. Code § 334.48(c)
Violation Description Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				25%
	Potential	x			

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Human health or 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 42 Number of violation days
 mark only one with an x
 daily
 monthly
 quarterly x
 semiannual
 annual
 single event

Violation Base Penalty \$2,500

One quarterly event is recommended based on documentation of the violation during the May 14, 2008 investigation to the screening date of June 25, 2008.

Good Faith Efforts to Comply 0.0% Reduction \$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 for this violation.

Violation Subtotal \$2,500

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

Estimated EB Amount \$15 **Violation Final Penalty Total** \$3,440

This violation Final Assessed Penalty (adjusted for limits) \$3,440

Economic Benefit Worksheet

Respondent Juan G. Rivas dba Exell Auto Service E Fuel

Case ID No. 36119

Reg. Ent. Reference No. RN101444404

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	14-May-2008	14-Dec-2008	0.59	\$15	n/a	\$15
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 amount to conduct proper inventory control procedures. Date Required is the date on investigation.
Final Date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.00	\$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 \$15

Compliance History

Customer/Respondent/Owner-Operator:	CN603359159 RIVAS, JUAN G.	Classification: AVERAGE	Rating: 17.33
Regulated Entity:	RN101444404 EXELL AUTO SERVICE E FUEL	Classification: AVERAGE	Site Rating: 17.33
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	13582
Location:	2401 FINLEY RD, IRVING, TX, 75062		
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	June 26, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	June 26, 2003 to June 26, 2008		

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

Name: Rajesh Acharya Phone: (512) 239-0577

Site Compliance History Components

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

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: 01/30/2004 ADMINORDER 2003-0815-PST-E
- Classification: Moderate
- Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)
30 TAC Chapter 37, SubChapter I 37.815(b)
- Description: Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental release arising from the operation of petroleum underground storage tanks.
- 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 | 08/29/2005 | (402580) |
| 2 | 10/03/2005 | (433359) |
| 3 | 06/10/2008 | (671130) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | | |
|--------------|---|----------|-----------------|----------|
| Date: | 08/30/2005 | (402580) | | |
| Self Report? | NO | | Classification: | Moderate |
| Citation: | 30 TAC Chapter 334, SubChapter C 334.48(c) | | | |
| Description: | Failure to conduct inventory control for all underground storage tanks involved in the retail sale of petroleum substances used as a motor fuel each operating day. | | | |
| Self Report? | NO | | Classification: | Moderate |
| Citation: | 30 TAC Chapter 334, SubChapter C 334.50(d)(1)(B)(ii) | | | |
| Description: | Failure 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 flowthrough for the month plus 130 gallons. | | | |
| Self Report? | NO | | Classification: | Minor |
| Citation: | 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(A)(iii) | | | |
| Description: | Failure to ensure that a valid, current TCEQ delivery certificate is posted at the facility and is in a location that is clearly visible at all times. | | | |

- 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
JUAN G. RIVAS DBA EXELL
AUTO SERVICE E FUEL;
RN101444404**

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2008-1038-PST-E**

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Juan G. Rivas dba Exell Auto Service E Fuel ("Mr. Rivas") under the authority of TEX. WATER CODE chs. 7 and 26 and TEX. HEALTH & SAFETY CODE ch. 382. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Rivas, represented by Rickey Jones, attorney at law, appear before the Commission and together stipulate that:

1. Mr. Rivas owns and operates a convenience store with retail sales of gasoline located at 2401 Finley Road in Irving, Dallas County, Texas (the "Station"). Mr. Rivas' five underground storage tanks 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).
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 382, and TCEQ rules.
3. The Commission and Mr. Rivas agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Rivas is subject to the Commission's jurisdiction.
4. Mr. Rivas received notice of the violations alleged in Section II ("Allegations") on or about June 15, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Rivas of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of thirteen thousand seventy-one dollars (\$13,071.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Rivas paid four hundred seventy-one dollars (\$471.00) of the administrative penalty. The remaining amount of twelve thousand six hundred dollars (\$12,600.00) of the administrative penalty shall be payable in 35 monthly payments of three hundred sixty dollars (\$360.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Mr. Rivas fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his 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, Mr. Rivas' failure to meet the payment schedule of this Agreed Order constitutes the failure by Mr. Rivas to timely and satisfactorily comply with all of 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 Mr. Rivas 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 Mr. Rivas implemented the following corrective measures at the Station in response to this enforcement action:
 - a. Mr. Rivas conducted annual testing of the Stage II vapor recovery system on January 30, 2009.
 - b. Mr. Rivas conducted triennial testing of the Stage II vapor recovery system on January 30, 2009.
 - c. Mr. Rivas installed onboard refueling vapor recovery ("ORVR") compatible equipment, installed vapor adaptors, and conducted successful Stage II vapor recovery testing after completing the ORVR upgrade.
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 Mr. Rivas 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

During an investigation conducted on May 14, 2008, a TCEQ DFW Regional Office investigator documented that Mr. Rivas violated:

- a. 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to verify proper operation of the Stage II equipment at least once every 12 months and Stage II vapor space manifolding and dynamic back pressure test at least once every 36 months or upon major system replacement or modification, whichever occurs first. Specifically, Stage II annual and triennial system compliance testing had not been conducted.
- b. 30 TEX. ADMIN. CODE § 115.242(1)(C) and (3)(A), and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to upgrade the Stage II vapor recovery system to ORVR compatible systems. Also, Mr. Rivas 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 USTs were not equipped with product and Stage I vapor adaptors which prevent loosening and over-tightening.
- c. 30 TEX. ADMIN. CODE § 115.246(7)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to maintain Stage II records at the Station ordinarily manned during business hours, and make them immediately available for review upon request by agency personnel.
- d. 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) by failing to monitor USTs for releases at a frequency

of at least once every month (not to exceed 35 days between each monitoring). Specifically, the automatic tank gauge was not put into test mode at least once per month. Mr. Rivas also failed to conduct reconciliation of detailed inventory control records at least once each month sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons. Also, Mr. Rivas failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank for each operating day.

- e. 30 TEX. ADMIN. CODE § 334.48(c) by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel.

III. DENIALS

Mr. Rivas generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Rivas pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Rivas' 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 considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Juan Rivas dba Exell Auto Service E Fuel, Docket No. 2008-1038-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. Mr. Rivas shall undertake the following technical requirements:

- a. Immediately upon the effective date of this Agreed Order, Mr. Rivas shall:
 - i. Begin conducting effective manual or automatic inventory control procedures for all USTs, in accordance with 30 TEX. ADMIN. CODE § 334.48; and
 - ii. Begin maintaining all Stage II records at the Station, in accordance with 30 TEX. ADMIN. CODE § 115.246.
- b. Within 30 days after the effective date of this Agreed Order, Mr. Rivas shall implement a release detection method for all USTs, and begin recording volume measurements and reconciliation of inventory control records, in accordance with 30 TEX. ADMIN. CODE § 334.50.
- c. Within 45 days after the effective date of this Agreed Order, Mr. Rivas shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. The certifications shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Mr. Rivas shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. to:

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

and:

Mr. Sam Barrett, Waste Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Rivas. Mr. Rivas is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Station operations referenced in this Agreed Order.
4. If Mr. Rivas 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, Mr. Rivas' failure to comply is not a violation of this Agreed Order. Mr. Rivas shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Rivas shall notify the Executive Director within seven days after Mr. Rivas becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. 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 Mr. Rivas shall be made in writing to the Executive Director. Extensions are not effective until Mr. Rivas receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Rivas 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.
7. 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.
8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of this Agreed Order to Mr. Rivas, or three days after the date on which the Commission mails notice of this Agreed Order to Mr. Rivas, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Juan G. Rivas dba Exell Auto Service E Fuel
Docket No. 2008-1038-PST-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Burgess Purdie
For the Executive Director

12/22/09
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, 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 my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on Mr. Rivas' compliance history;
- Greater scrutiny of any permit applications submitted by Mr. Rivas;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against Mr. Rivas;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Mr. Rivas; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Juan G. Rivas
Signature

09-25-09
Date

Juan G Rivas
Name (Printed or typed)
Authorized representative of
Juan Rivas dba Exell Auto Service E Fuel

OWNER
Title