

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO. 2010-0479-PST-E RN102719168 CASE NO. 39389**  
**RESPONDENT NAME: SEMERE OGBAZGI d/b/a HAMPTON SERVICE STATION AND**  
**TESFASLASSIE OGBAZGI d/b/a HAMPTON SERVICE STATION**

|  |   |   |
|--|---|---|
| <b>ORDER TYPE:</b>   |   |   |
| <input checked="" type="checkbox"/> <b>1660 AGREED ORDER</b> | <input type="checkbox"/> <b>FINDINGS AGREED ORDER</b> | <input type="checkbox"/> <b>FINDINGS ORDER FOLLOWING SOAH HEARING</b>       |
| <input type="checkbox"/> <b>FINDINGS DEFAULT ORDER</b>       | <input type="checkbox"/> <b>SHUTDOWN ORDER</b>        | <input type="checkbox"/> <b>IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER</b> |
| <input type="checkbox"/> <b>AMENDED ORDER</b>                | <input type="checkbox"/> <b>EMERGENCY ORDER</b>       |   |

|   |  |   |
|---|--|---|
| <b>CASE TYPE:</b>                                     |  |   |
| <input type="checkbox"/> <b>AIR</b>                   | <input type="checkbox"/> <b>MULTI-MEDIA</b> (check all that apply) | <input type="checkbox"/> <b>INDUSTRIAL HAZARDOUS WASTE</b>    |
| <input type="checkbox"/> <b>PUBLIC WATER SUPPLY</b>   | <input checked="" type="checkbox"/> <b>PETROLEUM STORAGE TANKS</b> | <input type="checkbox"/> <b>OCCUPATIONAL CERTIFICATION</b>    |
| <input type="checkbox"/> <b>WATER QUALITY</b>         | <input type="checkbox"/> <b>SEWAGE SLUDGE</b>                      | <input type="checkbox"/> <b>UNDERGROUND INJECTION CONTROL</b> |
| <input type="checkbox"/> <b>MUNICIPAL SOLID WASTE</b> | <input type="checkbox"/> <b>RADIOACTIVE WASTE</b>                  | <input type="checkbox"/> <b>DRY CLEANER REGISTRATION</b>      |

**SITE WHERE VIOLATION(S) OCCURRED:** 3818 North Hampton Road, Dallas, Dallas County

**TYPE OF OPERATION:** convenience store with retail sales of gasoline

**SMALL BUSINESS:**  Yes  No

**OTHER SIGNIFICANT MATTERS:** There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** No one other than the ED and Respondents expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired November 8, 2010. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Phillip M. Goodwin, P.G., Litigation Division, MC 175, (512) 239-3400  
 Lena Roberts, Litigation Division, MC 175, (512) 239-3400

**TCEQ Enforcement Coordinator:** Cheryl Thompson, Waste Enforcement Section, MC R-4, (817) 588-5886

**TCEQ Regional Contact:** Sam Barrett, DFW Regional Office, MC R-4, (817) 588-5903

**Respondent:** Semere Ogbazgi, Hampton Service Station, 3818 North Hampton Road, Dallas, TX 75212;  
 Tesfaslassie Ogbazgi, Hampton Service Station, 3818 North Hampton Road, Dallas, TX 75212

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

**RESPONDENT NAME: SEMERE OGBAZGI d/b/a HAMPTON SERVICE STATION  
AND TEFASLASSIE OGBAZGI d/b/a HAMPTON SERVICE STATION  
DOCKET NO. 2010-0479-PST-E**

| VIOLATION SUMMARY CHART:  |   |  |
|---|---|--|
| VIOLATION INFORMATION   | PENALTY CONSIDERATIONS  | CORRECTIVE ACTIONS TAKEN/REQUIRED  |
| <p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint<br/> <input checked="" type="checkbox"/> Routine<br/> <input type="checkbox"/> Enforcement Follow-up<br/> <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint:</b><br/>None</p> <p><b>Date of Investigation:</b><br/>February 24, 2010</p> <p><b>Date of NOE:</b><br/>February 25, 2010</p> <p><b>Background Facts:</b><br/>The EDRP was filed on August 12, 2010. Settlement was achieved and the agreed order was signed on September 13, 2010.</p> <p><b>Current Compliance Status:</b><br/>No outstanding Technical Requirements. Respondents' delivery certificate expires August 31, 2011.</p> <p><b>PST:</b><br/>Failed to verify proper operation of the Stage II equipment at least once every 12 months [TEX. HEALTH &amp; SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.245(2)].</p> | <p><b>Total Assessed:</b> \$3,508</p> <p><b>Total Deferred:</b> \$0<br/> <input type="checkbox"/> Expedited Order<br/> <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid/Due to General Revenue:</b><br/>\$108/\$3,400</p> <p>Respondents paid \$108 of the administrative penalty. The remaining amount of \$3,400 shall be payable in 34 monthly payments of \$100 each.</p> <p><b>Compliance History Classifications:</b><br/> <i>Person/CN</i> – Average<br/> <i>Site/RN</i> – Average</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> | <p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that Respondents verified proper operation of the Stage II equipment by having a Stage II annual test performed on March 1, 2010, with passing results.</p> |



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

|              |                 |             |                  |            |                |
|--------------|-----------------|-------------|------------------|------------|----------------|
| <b>DATES</b> | <b>Assigned</b> | 1-Mar-2010  |                  |            |                |
|              | <b>PCW</b>      | 19-Aug-2010 | <b>Screening</b> | 9-Mar-2010 | <b>EPA Due</b> |

|  |   |                           |       |  |  |
|--|---|---------------------------|-------|--|--|
| <b>RESPONDENT/FACILITY INFORMATION</b> |   |                           |       |  |  |
| <b>Respondent</b>                      | Semere Ogbazgi d/b/a Hampton Service Station and Tesfaslassie Ogbazgi d/b/a Hampton Service Station |                           |       |  |  |
| <b>Reg. Ent. Ref. No.</b>              | RN102719168   |                           |       |  |  |
| <b>Facility/Site Region</b>            | 4-Dallas/Fort Worth   | <b>Major/Minor Source</b> | Minor |  |  |

|                          |                        |                              |                    |          |  |
|--------------------------|------------------------|------------------------------|--------------------|----------|--|
| <b>CASE INFORMATION</b>  |                        |                              |                    |          |  |
| <b>Enf./Case ID No.</b>  | 39389                  | <b>No. of Violations</b>     | 1                  |          |  |
| <b>Docket No.</b>        | 2010-0479-PST-E        | <b>Order Type</b>            | 1660               |          |  |
| <b>Media Program(s)</b>  | Petroleum Storage Tank | <b>Government/Non-Profit</b> | No                 |          |  |
| <b>Multi-Media</b>       |                        | <b>Enf. Coordinator</b>      | Cheryl Thompson    |          |  |
|                          |                        | <b>EC's Team</b>             | Enforcement Team 3 |          |  |
| <b>Admin. Penalty \$</b> | <b>Limit Minimum</b>   | \$0                          | <b>Maximum</b>     | \$10,000 |  |

## Penalty Calculation Section

|   |                   |                |
|---|-------------------|----------------|
| <b>TOTAL BASE PENALTY (Sum of violation base penalties)</b> | <b>Subtotal 1</b> | <b>\$2,500</b> |
|---|-------------------|----------------|

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

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

|                           |                  |                                |              |
|---------------------------|------------------|--------------------------------|--------------|
| <b>Compliance History</b> | 7.0% Enhancement | <b>Subtotals 2, 3, &amp; 7</b> | <b>\$175</b> |
|---------------------------|------------------|--------------------------------|--------------|

|              |  |
|--------------|--|
| <b>Notes</b> | A penalty enhancement is recommended because the Respondents received one NOV for same or similar violations and one NOV for dissimilar violations within the past five years. |
|--------------|--|

|                    |    |                  |                   |            |
|--------------------|----|------------------|-------------------|------------|
| <b>Culpability</b> | No | 0.0% Enhancement | <b>Subtotal 4</b> | <b>\$0</b> |
|--------------------|----|------------------|-------------------|------------|

|              |   |
|--------------|---|
| <b>Notes</b> | The Respondents do not meet the culpability criteria. |
|--------------|---|

|  |                   |              |
|--|-------------------|--------------|
| <b>Good Faith Effort to Comply Total Adjustments</b> | <b>Subtotal 5</b> | <b>\$250</b> |
|--|-------------------|--------------|

|                         |                   |                   |            |
|-------------------------|-------------------|-------------------|------------|
| <b>Economic Benefit</b> | 0.0% Enhancement* | <b>Subtotal 6</b> | <b>\$0</b> |
|-------------------------|-------------------|-------------------|------------|

|                            |         |                                   |
|----------------------------|---------|-----------------------------------|
| Total EB Amounts           | \$1,083 | *Capped at the Total EB \$ Amount |
| Approx. Cost of Compliance | \$1,000 |                                   |

|                             |                       |                |
|-----------------------------|-----------------------|----------------|
| <b>SUM OF SUBTOTALS 1-7</b> | <b>Final Subtotal</b> | <b>\$2,425</b> |
|-----------------------------|-----------------------|----------------|

|   |       |                   |                |
|---|-------|-------------------|----------------|
| <b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b> | 44.7% | <b>Adjustment</b> | <b>\$1,083</b> |
|---|-------|-------------------|----------------|

Reduces or enhances the Final Subtotal by the indicated percentage.

|              |  |
|--------------|--|
| <b>Notes</b> | Recommended penalty enhancement to capture the avoided cost associated with the violation. |
|--------------|--|

|                             |                |
|-----------------------------|----------------|
| <b>Final Penalty Amount</b> | <b>\$3,508</b> |
|-----------------------------|----------------|

|                                   |                               |                |
|-----------------------------------|-------------------------------|----------------|
| <b>STATUTORY LIMIT ADJUSTMENT</b> | <b>Final Assessed Penalty</b> | <b>\$3,508</b> |
|-----------------------------------|-------------------------------|----------------|

|                 |                |                   |            |
|-----------------|----------------|-------------------|------------|
| <b>DEFERRAL</b> | 0.0% Reduction | <b>Adjustment</b> | <b>\$0</b> |
|-----------------|----------------|-------------------|------------|

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

|              |  |
|--------------|--|
| <b>Notes</b> | Deferral not offered for non-expedited settlement. |
|--------------|--|

|                        |                |
|------------------------|----------------|
| <b>PAYABLE PENALTY</b> | <b>\$3,508</b> |
|------------------------|----------------|

Screening Date 9-Mar-2010

Docket No. 2010-0479-PST-E

PCW

Respondent Semere Ogbazgi d/b/a Hampton Service Station and Tesfaslassie Ogbazgi d/b/a Hampton Service Station

Policy Revision 2 (September 2002)

Case ID No. 39389

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102719168

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Cheryl Thompson

### Compliance History Worksheet

#### >> Compliance History Site Enhancement (Subtotal 2)

| Component                     | Number of...   | Enter Number Here | Adjust. |
|-------------------------------|--|-------------------|---------|
| NOVs                          | Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)  | 1                 | 5%      |
|                               | Other written NOVs   | 1                 | 2%      |
| Orders                        | Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)   | 0                 | 0%      |
|                               | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 0                 | 0%      |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)  | 0                 | 0%      |
|                               | Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government  | 0                 | 0%      |
| Convictions                   | Any criminal convictions of this state or the federal government (number of counts)  | 0                 | 0%      |
| Emissions                     | Chronic excessive emissions events (number of events)  | 0                 | 0%      |
| Audits                        | Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)              | 0                 | 0%      |
|                               | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)   | 0                 | 0%      |
| <i>Please Enter Yes or No</i> |  |                   |         |
| Other                         | Environmental management systems in place for one year or more   | No                | 0%      |
|                               | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program  | No                | 0%      |
|                               | Participation in a voluntary pollution reduction program   | No                | 0%      |
|                               | Early compliance with, or offer of a product that meets future state or federal government environmental requirements  | No                | 0%      |

Adjustment Percentage (Subtotal 2) 7%

#### >> 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

A penalty enhancement is recommended because the Respondents received one NOV for same or similar violations and one NOV for dissimilar violations within the past five years.

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

Screening Date 9-Mar-2010

Docket No. 2010-0479-PST-E

PCW

Respondent Semere Ogbazgi d/b/a Hampton Service Station and Tesfaslassie  
Ogbazgi d/b/a Hampton Service Station

Policy Revision 2 (September 2002)

Case ID No. 39389

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102719168

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Cheryl Thompson

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 115.245(2) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to verify proper operation of the Stage II equipment at least once every 12 months. Specifically, the Respondents did not conduct the required annual test by the due date of May 27, 2009.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

|    |           |       |          |         |       |
|----|-----------|-------|----------|---------|-------|
| OR | Harm      |       |          | Percent |       |
|    | Release   | Major | Moderate |         | Minor |
|    | Actual    |       |          |         |       |
|    | Potential | x     |          |         | 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 the environment as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 Number of violation days 274

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

Violation Base Penalty \$2,500

One annual event is recommended for the period preceding the February 24, 2010 investigation.

Good Faith Efforts to Comply

10.0% Reduction

\$250

|               |            |                         |
|---------------|------------|-------------------------|
|               | Before NOV | NOV to EDPRP/Settlement |
| Extraordinary |            |                         |
| Ordinary      |            | x                       |
| N/A           |            | (mark with x)           |

Notes The Respondents returned to compliance on March 1, 2010.

Violation Subtotal \$2,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,083

Violation Final Penalty Total \$3,508

This violation Final Assessed Penalty (adjusted for limits) \$3,508

## Economic Benefit Worksheet

**Respondent** Semere Ogbazgi d/b/a Hampton Service Station and Tesfaslassie Ogbazgi d/b/a Hampton Service Station  
**Case ID No.** 39389  
**Reg. Ent. Reference No.** RN102719168  
**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 | 27-May-2009 | 1-Mar-2010 | 1.68 | \$83 | \$1,000 | \$1,083 |
| Other (as needed)             |         |             |            | 0.00 | \$0  | \$0     | \$0     |

Notes for AVOIDED costs

Estimated avoided cost to conduct the Stage II system compliance tests. The date required is the date the test was due. Final date is the date of compliance.

Approx. Cost of Compliance

\$1,000

**TOTAL**

\$1,083

# Compliance History Report

Customer/Respondent/Owner-Operator: CN602807109 Semere Ogbazgi and Tesfaslassie Ogbazgi Classification: AVERAGE Rating: 3.25

Regulated Entity: RN102719168 HAMPTON SERVICE STATION Classification: AVERAGE Site Rating: 3.25

ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 28326

Location: 3818 N HAMPTON RD, DALLAS, TX, 75212

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: March 26, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: March 26, 2005 to March 26, 2010

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

Name: Cheryl Thompson Phone: (817) 588-5886

## 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? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2009 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.
    - N/A
  - B. Any criminal convictions of the state of Texas and the federal government.
    - N/A
  - C. Chronic excessive emissions events.
    - N/A
  - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 

|   |            |          |  |
|---|------------|----------|--|
| 1 | 04/12/2005 | (377167) |  |
| 2 | 05/31/2005 | (392630) |  |
| 3 | 02/25/2010 | (793389) |  |
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 

|              |   |                 |          |
|--------------|---|-----------------|----------|
| Date:        | 03/29/2005 (375411)   | CN602807109     |          |
| Self Report? | NO  | Classification: | Minor    |
| Citation:    | 30 TAC Chapter 115, SubChapter C 115.246(4)   |                 |          |
| Description: | Failure to provide proof of attendance and completion of the training specified in §115.248 (State-approved Stage II training course), with the documentation of all Stage II training for each employee to be maintained as long as that employee continues to work at the facility, and for the facility representative.      |                 |          |
| Self Report? | NO  | Classification: | Moderate |
| Citation:    | 30 TAC Chapter 115, SubChapter C 115.242(3)(J)  |                 |          |
| Description: | 30 Tex. Admin. Code Section 115.242 (3)(J) - Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s), and free of defects that would impair the effectiveness of the system, including pressure/vacuum relief valv |                 |          |
| Self Report? | NO  | Classification: | Moderate |
| Citation:    | 30 TAC Chapter 115, SubChapter C 115.242(3)(A)  |                 |          |
| Description: | 30 Tex. Admin. Code Section 115.242 (3)(A) - Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s), and free of defects that would impair the effectiveness of the system, including the absence or disconnectio |                 |          |
| Date:        | 04/15/2005 (377167)   | CN602807109     |          |
| Self Report? | NO  | Classification: | Moderate |
| Citation:    | 30 TAC Chapter 115, SubChapter C 115.245(2)   |                 |          |
| Description: | Failure to verify proper operation of the Stage II equipment at least once every twelve months or upon major system replacement or modification, whichever occurs first.  |                 |          |
| Self Report? | NO  | Classification: | Moderate |
| Citation:    | 30 TAC Chapter 115, SubChapter C 115.242(5)   |                 |          |
| Description: | Failure of the owner or operator or his or her representative to remove from service all dispensing equipment for which vapor recovery has been impaired until such time as the equipment has been properly repaired, replaced, or adjusted as necessary.   |                 |          |
  - 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  
SEMERE OGBAZGI D/B/A  
HAMPTON SERVICE STATION AND  
TESFASLASSIE OGBAZGI D/B/A  
HAMPTON SERVICE STATION;  
RN102719168**

§  
§  
§  
§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2010-0479-PST-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Semere Ogbazgi d/b/a Hampton Service Station and Tesfaslassie Ogbazgi d/b/a Hampton Service Station ("Respondents") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 382. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondents appear before the Commission and together stipulate that:

1. Respondents own and operate two underground storage tanks ("USTs") and a convenience store with retail sales of gasoline located at 3818 North Hampton Road, Dallas, Dallas County, Texas (the "Station"). Respondents' USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contain a regulated petroleum substance as defined in the rules of the TCEQ. 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. HEALTH & SAFETY CODE ch. 382 and TCEQ rules.
3. The Commission and Respondents agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondents are subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondents of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of three thousand five hundred eight dollars (\$3,508.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondents paid one hundred eight dollars (\$108.00) of the administrative penalty. The remaining amount of three thousand four hundred dollars (\$3,400.00) of the administrative penalty shall be payable in 34 monthly payments of one hundred

dollars (\$100.00) 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 Respondents fail 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, Respondents' failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondents to timely and satisfactorily comply with all of the terms of this Agreed Order.

6. 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.
7. The Executive Director of the TCEQ and Respondents agree on a settlement of the matters addressed in this Agreed Order, subject to the approval of the Commission.
8. The Executive Director recognizes that Respondents verified proper operation of the Stage II equipment by having a Stage II annual test performed on March 1, 2010, with passing results.
9. 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 Respondents have not complied with one or more of the terms or conditions in this Agreed Order.
10. 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.
11. 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**

1. During an investigation conducted on February 24, 2010, a City of Dallas Air Pollution Control Program investigator documented that Respondents violated TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.245(2) by failing to verify proper operation of the Stage II equipment at least once every 12 months. Specifically, Respondents did not conduct the required annual test by the due date of May 27, 2009.
2. Respondents received notice of the violation on or about March 2, 2010.

## **III. DENIALS**

Respondents generally deny each Allegation in Section II.

#### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Respondents pay an administrative penalty as set forth in Section I, Paragraph 5, above, for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondents' 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: Semere Ogbazgi d/b/a Hampton Service Station and Tesfaslassie Ogbazgi d/b/a Hampton Service Station, Docket No. 2010-0479-PST-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. All relief not expressly granted in this Agreed Order is denied.
3. The provisions of this Agreed Order shall apply to and be binding upon Respondents. Respondents are 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.
4. If Respondents fail 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, Respondents' failure to comply is not a violation of this Agreed Order. Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondents shall notify the Executive Director within seven days after Respondents become 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 Respondents shall be made in writing to the Executive Director. Extensions are not effective until Respondents receive 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 Respondents 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 separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission,

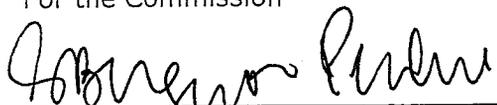
including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission" "owner" "person" "writing" and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

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 Respondents, or three days after the date on which the Commission mails notice of this Agreed Order to Respondents, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

10/15/2010  
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 failure to comply with the Ordering Provisions 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;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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

Semere Ogbazgi  
Signature

Semere Ogbazgi  
Name (Printed or typed)

Tesfaiu  
Signature

Tesfaslassie Ogbazgi  
Name (Printed or typed)

co/owner 9/13/10  
Title

9/13/10  
Date

co/  
Owner Title

