EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-0713-PST-E TCEQ ID RN103915146 CASE NO.: 37625
RESPONDENT NAME: HARBOR SEAFOOD, INC.

ORDER TYPE:		
_X_1660 AGREED ORDER	__FINDINGS AGREED ORDER	___FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	___IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
___AIR	___MULTI-MEDIA (check all that apply)	___INDUSTRIAL HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	_X_PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
___WATER QUALITY	___SEWAGE SLUDGE	___UNDERGROUND INJECTION CONTROL
___MUNICIPAL SOLID WASTE	___RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 2629 Avenue R, San Leon, Galveston County

TYPE OF OPERATION: marine vessel refueling facility

SMALL BUSINESS: __X__ Yes ____ No

OTHER SIGNIFICANT MATTERS: One complaint was received, alleging that two 5,000 gallon storage tanks appeared to have been tipped over and remained on their sides; visual signs of chronic diesel releases were evident in the form of soil staining and stained and distressed vegetation and strong vapors when downwind from the Site. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: The complainant has not expressed a desire to protest this action or to speak at agenda. No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired January 18, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503
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: Ms. Nicolle Bealle, Houston Regional Office, MC R-12, (713) 767-3623
Respondent: Mr. Phat Ma, President, Harbor Seafood, Inc., 1219 Antoine Dr., Houston, TX 77055
Respondent's Attorney: Not represented by counsel on this enforcement matter.

RESPONDENT NAME: HARBOR SEAFOOD, INC.
DOCKET NO.: 2009-0713-PST-E

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: _X_ Complaint ___ Routine ___ Enforcement Follow-up ___ Records Review **Date of Complaint Relating to this Case**: April 13, 2009 **Date of Investigation Relating to this Case**: April 13, 2009 **Date of NOE Relating to this Case**: June 7, 2009 **Background Facts**: The EDPRP was filed on August 28, 2009. The agreed order was signed on November 9, 2009. A revised agreed order was signed on January 4, 2010. **Current Compliance Status:** The Respondent has not yet submitted documentation to certify compliance with the technical requirements. **PST:** Failed to perform initial response actions within 24 hours of confirmation of a release from an above-ground storage tank ("AST") [30 TEX. ADMIN. CODE § 334.76].	**Total Assessed**: $2,500 **Total Deferred**: $0 ___ Expedited Order ___ Financial Inability to Pay ___ SEP Conditional Offset **Total Paid/Due to General Revenue**: $108/$2,392 The Respondent paid $108 of the administrative penalty. The remaining amount of $2,392 shall be payable in 23 monthly payments of $104 each. **Site Compliance History Classification:** __ High _X_ Average ___ Poor **Person Compliance History Classification:** __ High _X_ Average ___ Poor **Major Source**: ___ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** The Respondent shall undertake the following technical requirements: 1. Immediately, mitigate hazards, conduct a site check, initiate abatement activities, and implement appropriate corrective measures. 2. Within 15 days, submit written certification demonstrating compliance with Ordering Provision No. 1.

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) *PCW Revision October 30, 2008*

TCEQ

DATES					
Assigned	11-May-2009				
PCW	13-Aug-2009	Screening	13-May-2009	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	HARBOR SEAFOOD, INC.		
Reg. Ent. Ref. No.	RN103915146		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	37625	No. of Violations	1
Docket No.	2009-0713-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* $2,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 0.0% Enhancement *Subtotals 2, 3, & 7* $0

Notes: No adjustment due to compliance history.

Culpability No 0.0% Enhancement *Subtotal 4* $0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments *Subtotal 5* $0

Economic Benefit 0.0% Enhancement* *Subtotal 6* $0

Total EB Amounts $168
Approx. Cost of Compliance $5,000

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 *Final Subtotal* $2,500

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0% *Adjustment* $0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount $2,500

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* $2,500

DEFERRAL 0.0% Reduction *Adjustment* $0

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 $2,500

Screening Date	13-May-2009	**Docket No.**	2009-0713-PST-E	**PCW**
Respondent	HARBOR SEAFOOD, INC.			*Policy Revision 2 (September 2002)*
Case ID No.	37625			*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN103915146			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Rajesh Acharya			

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

Adjustment Percentage (Subtotal 2) 0%

>> 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

No adjustment due to compliance history.

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

Screening Date	13-May-2009	**Docket No.** 2009-0713-PST-E	**PCW**
Respondent	HARBOR SEAFOOD, INC.		*Policy Revision 2 (September 2002)*
Case ID No.	37625		*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN103915146		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Rajesh Acharya		

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.76

Violation Description Failed to perform initial response actions within 24 hours of confirmation of a release from a Aboveground Storage Tank ("AST") system. Specifically, the Respondent did not report to the TCEQ a release of diesel fuel within 24 hours. Furthermore, the Respondent did not take immediate action to prevent further release, or identify and mitigate fire, explosive and vapor hazards.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm: Major	Moderate	Minor
	Actual		x	
	Potential			

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment has been exposed to significant amounts of pollutants which do not 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 — 30 Number of violation days

mark only one with an x

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 April 13, 2009 investigation to the May 13, 2009 screening date.

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

Estimated EB Amount $168

Statutory Limit Test

Violation Final Penalty Total $2,500

This violation Final Assessed Penalty (adjusted for limits) $2,500

Economic Benefit Worksheet

Respondent HARBOR SEAFOOD, INC.
Case ID No. 37625
Reg. Ent. Reference No. RN103915146
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	$5,000	13-Apr-2009	14-Dec-2009	0.67	$168	n/a	$168

Notes for DELAYED costs: Etimated cost to report an AST release, properly clean up and dispose of contaminated soils. 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 $5,000

TOTAL $168

Compliance History Report

Customer/Respondent/Owner-Operator:	CN600667042	HARBOR SEAFOOD, INC.	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN103915146	Harbor Seafood	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	65659	
Location:	2629 AVE R, SAN LEON, TX, 77539			
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	May 13, 2009			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	May 13, 2004 to May 13, 2009			

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/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: 9/1/2008 Repeat Violator: NO

Components (Multimedia) for the Site :

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

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

04/13/2009 (613164)

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 HARBOR SEAFOOD, INC.; RN103915146	**§ § § § §**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2009-0713-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 HARBOR SEAFOOD, INC. ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent appear before the Commission and together stipulate that:

1. Respondent owns and operates a marine vessel refueling facility located at 2629 Avenue R, San Leon, Galveston County, Texas (the "Facility").

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 and TCEQ rules.

3. The Commission and Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondent is 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 Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

5. An administrative penalty in the amount of two thousand five hundred dollars ($2,500.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Respondent paid one hundred eight dollars ($108.00) of the administrative penalty. The remaining amount of two thousand three hundred ninety-two dollars ($2,392.00) of the administrative penalty shall be payable in 23 monthly payments of one hundred four dollars ($104.00) 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 Respondent 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, Respondent's failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondent 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 Respondent agree on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

8. 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 Respondent has not complied with one or more of the terms or conditions in this Agreed Order.

9. 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.

10. 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 April 13, 2009, a TCEQ Houston Regional Office investigator documented that Respondent violated 30 TEX. ADMIN. CODE § 334.76 by failing to perform initial response actions within 24 hours of confirmation of a release from an above-ground storage tank ("AST"). Specifically, Respondent did not report a release, take immediate action to prevent further release, or identify and mitigate fire, explosive and vapor hazards.

2. Respondent received notice of the violation on or about June 12, 2009.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Respondent pay an administrative penalty as set forth in Section I, Paragraph 5, above. The payment of this administrative penalty and 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 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: HARBOR SEAFOOD, INC., Docket No. 2009-0713-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. Respondent shall undertake the following technical requirements:

   a. Immediately upon the effective date of this Agreed Order, Respondent shall mitigate hazards, conduct a site check, initiate abatement activities, and implement appropriate corrective measures, in accordance with 30 TEX. ADMIN. CODE §§ 334.76, 334.77, and 334.78; and

   b. Within 15 days after the effective date of this Agreed Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision No. 2.a. The certification 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."

      Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision No. 2.a. to:

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

and

Mr. Todd Thompson, Waste Section Manager
Texas Commission on Environmental Quality
Houston Regional Office
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

3. The provisions of this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

4. If 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, Respondent‘s failure to comply is not a violation of this Agreed Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent 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 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.

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

HARBOR SEAFOOD, INC.
Docket No. 2009-0713-PST-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

For the Executive Director

4/14/2010
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 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 Respondent's compliance history;
- Greater scrutiny of any permit applications submitted by Respondent;
- 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 Respondent;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Respondent; and
- TCEQ seeking other relief as authorized by law.

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

Signature

1-4-10
Date

Don Mc

Name (Printed or typed)
Authorized representative of
HARBOR SEAFOOD, INC.

PRESIDENT
Title