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EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-0865-PST-E TCEQ ID: RN102906633 CASE NO.: 35943
RESPONDENT NAME: LEEMAK 529 LLC DBA 529 SHELL CHURCHS

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 VIOLATION(S) OCCURRED: 13111 FM 529, Houston, Harris County

TYPE OF OPERATION: Convenience store with retail sales of gasoline

SMALL BUSINESS: Yes No

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

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 April 26, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Stephanie Frazee, Litigation Division, MC 175, (512) 239-3693
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Mr. Tom Greimel, Waste Enforcement Section, MC 128, (512) 239-5690

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

Respondent: Mr. Fazil Malik, Managing Member, Leemak 529 LLC, 17171 Park Row Drive, Ste. 295, Houston, Texas 77084

Respondent's Attorney: Mr. Keith Shuley, K&L Gates LLP, 111 Congress Avenue, Suite 900, Austin, Texas 78701

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: April 1, 2008</p> <p>Date of NOE Relating to this Case: May 16, 2008</p> <p>Background Facts: The case was referred to the Litigation Division on September 29, 2008. The EDRP was filed on January 26, 2009. The Respondent filed an answer and the case was referred to SOAH. Settlement was achieved and the agreed order was signed on January 21, 2010.</p> <p>Current Compliance Status: No outstanding technical requirements. The Respondent's delivery certificate expired on April 31, 2010.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system [30 TEX. ADMIN CODE § 115.242(3) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. Failed to maintain a copy of the California Air Resources Board ("CARB") Executive Order or third-party certification for the Stage II vapor recovery system at the Station [30 TEX. ADMIN CODE § 115.246(1) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. Failed to ensure that each current employee received in-house Stage II vapor recovery training regarding the purpose and operation of the vapor recovery system [30 TEX. ADMIN CODE § 115.248(1) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. Failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form to the TCEQ at least 30 days before the expiration date [30 TEX. ADMIN CODE § 334.8(c)(4)(A)(vii) and 334.8(c)(5)(B)(ii)]. 	<p>Total Assessed: \$62,316</p> <p>Total Deferred: \$31,158 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay <input checked="" type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid/Due to General Revenue: \$5,208/\$25,950</p> <p>The Respondent paid \$5,208 of the undeferred administrative penalty. The remaining amount of \$25,950 shall be payable in 25 monthly payments of \$1,038 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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The ED recognizes that the Respondent implemented the following corrective actions:</p> <ol style="list-style-type: none"> Repaired and tested the Stage II vapor recovery system for proper operation on May 10, 2008; Began to maintain a copy of the California Air Resources Board ("CARB") Executive Order or third-party certification for the Stage II vapor recovery system at the Station on April 2, 2008; Ensured that each current employee received in-house Stage II vapor recovery training regarding the purpose and operation of the vapor recovery system on April 10, 2008; Renewed a previously issued UST delivery certificate on April 8, 2008; Began making a current UST delivery certificate available to a common carrier before accepting delivery of a regulated substance into the USTs on April 8, 2008; Began to maintain the required UST records on April 18, 2008; and Tested the line leak detectors and began to provide release detection for the pressurized piping associated with the USTs on May 5, 2008.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>5. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs [30 TEX. ADMIN CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)].</p> <p>6. Failed to maintain the required UST records and make them immediately available for inspection upon request by agency personnel [30 TEX. ADMIN CODE § 334.10(b)].</p> <p>7. Failed to provide proper release detection for the pressurized piping associated with the USTs and failed to test the line leak detectors at least once per year for performance and operational reliability [30 TEX. ADMIN CODE § 334.50(b)(2) and (b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a)].</p>		

Attachment A

Docket Number: 2008-0865-PST –E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	Leemak 529 LLC dba 529 Shell Churchs
Penalty Amount:	Sixty-two thousand three hundred sixteen dollars (\$62,316.00)
SEP Offset Amount:	Thirty-one thousand one hundred fifty-eight dollars (\$31,158.00)
Type of SEP:	Pre-approved SEP
Third-Party Recipient:	Texas Association of Resource Conservation & Development Areas, Inc. (“RC&D”) <i>Abandoned Tire Clean Up Project</i>
Location of SEP:	San Jacinto River Basin 10

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project (“SEP”). The offset is equal to the SEP Offset Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The SEP contribution will be used by the *Texas Association of Resource Conservation and Development Areas, Inc. (“RC&D”)* for the *Abandoned Tire Clean Up* project. Specifically, the contribution will be used to clean up sites where tires have been disposed of illegally. SEP Funds will be used to pay for the labor and disposal costs associated with proper clean up and disposal of abandoned tires. Eligible clean up sites will be limited to those where a responsible party cannot be found and where reasonable efforts have been made to prevent the dumping. Any SEP Funds remaining after completion of this project may, upon approval of the Executive Director, be applied to another approved RC&D project.

The projects will be administered in accordance with federal, state, and local environmental laws and regulations. The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by providing for the proper disposal of tires and by reducing health threats associated with illegally dumped tires. Illegal tire dumpsites can become breeding grounds for mosquitoes and rodents which carry disease. The potential for tire fires is also reduced by removing illegally dumped tires. Tire fires can result in the contamination of surface water, ground water, and soil.

C. Minimum Expenditure

The Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent shall begin making monthly contributions to the Third Party Recipient on the following payment schedule: one payment of \$1,056.00 and 29 monthly payments of \$1,038.00 each for a total of \$31,158.00 to the Third Party Recipient. The first payment in the amount of \$1,056.00 shall be paid within 30 days after the effective date of this Agreed Order. The subsequent monthly payments in the amount of \$1,038.00 shall be paid not later than 30 days following the due date of the previous payment. SEP monthly contributions shall be made payable to “Texas Association of Resource Conservation and Development Areas, Inc.” and sent to the address below. The Respondent shall mail a copy of the Agreed Order to the Third Party Recipient within 30 days of the effective date of the Agreed Order, to the address listed below:

Texas Association of Resource Conservation and Development Areas, Inc.
1716 Briarcrest Drive Suite 510
Bryan, Texas 77802-2700

3. Records and Reporting

Concurrent with the payment of each SEP Offset Amount payment, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Offset Amount as described in Section 2, above, and submittal of the required reporting described in Section 3, above, the Executive Director may require immediate payment of all or part of the SEP Offset Amount.

In the event of incomplete performance, the Respondent shall submit a check for any remaining amount due made payable to “Texas Commission on Environmental Quality” with the notation “SEP Refund” and the docket number of the case, and shall send it 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

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP Offset Amount identified in this Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

TCEQ

DATES	Assigned	19-May-2008			
	PCW	12-Nov-2009	Screening	21-May-2008	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	Leemak 529 LLC dba 529 Shell Churches				
Reg. Ent. Ref. No.	RN102906633				
Facility/Site Region	12-Houston	Major/Minor Source	Major		

CASE INFORMATION					
Enf./Case ID No.	35943	No. of Violations	7		
Docket No.	2008-0865-PST-E	Order Type	1660		
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Thomas Greimel		
		EC's Team	Enforcement Team 7		
Admin. Penalty \$ Limit	Minimum	\$0	Maximum	\$10,000	

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$79,500
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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	2.0% Enhancement	Subtotals 2, 3, & 7	\$1,590
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Notes: Enhancement for one previous NOV without same or similar violations.

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	\$19,875
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$1,107	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$2,750	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$61,215
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OTHER FACTORS AS JUSTICE MAY REQUIRE	1.8%	Adjustment	\$1,101
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Reduces or enhances the Final Subtotal by the indicated percentage.

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

Final Penalty Amount	\$62,316
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$62,316
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$62,316
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Screening Date 21-May-2008

Docket No. 2008-0865-PST-E

PCW

Respondent Leemak 529 LLC dba 529 Shell Churches

Policy Revision 2 (September 2002)

Case ID No. 35943

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN102906633

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

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>)	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	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 (<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) 2%

>> **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 previous NOV without same or similar violations.

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

Screening Date 21-May-2008 **Docket No.** 2008-0865-PST-E **PCW**
Respondent Leemak 529 LLC dba 529 Shell Churchs *Policy Revision 2 (September 2002)*
Case ID No. 35943 *PCW Revision June 12, 2008*
Reg. Ent. Reference No. RN102906633
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Thomas Greimel

Violation Number 1
Rule Cite(s) 30 Tex. Admin. Code § 115.242(3) and Tex. Health & Safety Code § 382.085(b)
Violation Description Failed to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system. Specifically, the spill bucket to the plus unleaded was cracked.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent
	Major	Moderate	Minor	
	Actual			
	Potential	x		25%

>> Programmatic Matrix

	Major	Moderate	Minor	Percent
Falsification				
				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 \$7,500

\$2,500

Violation Events

Number of Violation Events 1 39 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 from the investigation date of April 1, 2008 to the compliance date of May 10, 2008.

Good Faith Efforts to Comply 25.0% Reduction \$625

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

Notes The Respondent came into compliance on May 10, 2008 prior to the NOE dated May 16, 2008.

Violation Subtotal \$1,875

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

Estimated EB Amount \$1 **Violation Final Penalty Total** \$1,960

This violation Final Assessed Penalty (adjusted for limits) \$1,960

Economic Benefit Worksheet

Respondent Leemak 529 LLC dba 529 Shell Churches
Case ID No. 35943
Reg. Ent. Reference No. RN102906633
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	\$150	1-Apr-2008	10-May-2008	0.11	\$0	\$1	\$1
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to repair the spill bucket. The Date Required is the investigation date. The Final Date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$150

TOTAL

\$1

Screening Date 21-May-2008 **Docket No.** 2008-0865-PST-E **PCW**
Respondent Leemak 529 LLC dba 529 Shell Churches *Policy Revision 2 (September 2002)*
Case ID No. 35943 *PCW Revision June 12, 2008*
Reg. Ent. Reference No. RN102906633
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Thomas Greimel

Violation Number 2
Rule Cite(s) 30 Tex. Admin. Code § 115.246(1) and Tex. Health & Safety Code § 382.085(b)
Violation Description Failed to maintain a copy of the California Air Resources Board ("CARB") Executive Order or third-party certification for the Stage II vapor recovery system at the Station.

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			25%

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 1 Number of violation days

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

Violation Base Penalty \$2,500

One single event is recommended based on documentation of the violation during the April 1, 2008 investigation.

Good Faith Efforts to Comply 25.0% Reduction \$625

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

Notes The Respondent came into compliance on April 2, 2008 prior to the NOE dated May 16, 2008.

Violation Subtotal \$1,875

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

Estimated EB Amount \$0 **Violation Final Penalty Total** \$1,960

This violation Final Assessed Penalty (adjusted for limits) \$1,960

Economic Benefit Worksheet

Respondent Leemak 529 LLC dba 529 Shell Churches
Case ID No. 35943
Reg. Ent. Reference No. RN102906633
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

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	1-Apr-2008	2-Apr-2008	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 implement and maintain a recordkeeping system. The Date Required is the investigation date.
The Final Date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$0

Screening Date 21-May-2008 **Docket No.** 2008-0865-PST-E **PCW**
Respondent Leemak 529 LLC dba 529 Shell Churches *Policy Revision 2 (September 2002)*
Case ID No. 35943 *PCW Revision June 12, 2008*
Reg. Ent. Reference No. RN102906633
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Thomas Greimel

Violation Number 3
Rule Cite(s) 30 Tex. Admin. Code § 115.248(1) and Tex. Health & Safety Code § 382.085(b)
Violation Description Failed to ensure that each current employee received in-house Stage II vapor recovery training regarding the purpose and operation of the vapor recovery system.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				25%
	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 \$7,500

\$2,500

Violation Events

Number of Violation Events 1 9 Number of violation days

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$2,500

One single event is recommended based on documentation of the violation during the April 1, 2008 investigation.

Good Faith Efforts to Comply 25.0% Reduction \$625

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

Notes The Respondent came into compliance on April 10, 2008 prior to the NOE dated May 16, 2008.

Violation Subtotal \$1,875

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$1,960

This violation Final Assessed Penalty (adjusted for limits) \$1,960

Economic Benefit Worksheet

Respondent Leemak 529 LLC dba 529 Shell Churchs
Case ID No. 35943
Reg. Ent. Reference No. RN102906633
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				0.00	\$0	n/a	\$0
Training/Sampling	\$500	1-Apr-2008	10-Apr-2008	0.02	\$1	n/a	\$1
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost of training a Stage II Station representative and conducting in-house Stage II training for the employees. The Date Required is the investigation date. The Final Date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$1

Screening Date 21-May-2008 **Docket No.** 2008-0865-PST-E **PCW**
Respondent Leemak 529 LLC dba 529 Shell Churches *Policy Revision 2 (September 2002)*
Case ID No. 35943 *PCW Revision June 12, 2008*
Reg. Ent. Reference No. RN102906633
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Thomas Greimel

Violation Number 4
Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)
Violation Description Failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form to the TCEQ at least 30 days before the expiration date. Specifically, the delivery certificate expired on August 31, 2007.

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			25%

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 221 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$2,500

One single event is recommended based on documentation of the violation during the April 1, 2008 investigation.

Good Faith Efforts to Comply 25.0% Reduction \$625

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

Notes The Respondent came into compliance on April 8, 2008, prior to the NOE date of May 16, 2008.

Violation Subtotal \$1,875

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

Estimated EB Amount \$3 **Violation Final Penalty Total** \$1,960

This violation Final Assessed Penalty (adjusted for limits) \$1,960

Economic Benefit Worksheet

Respondent Leemak 529 LLC dba 529 Shell Churches
Case ID No. 35943
Reg. Ent. Reference No. RN102906633
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
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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)	\$100	1-Aug-2007	8-Apr-2008	0.69	\$3	n/a	\$3

Notes for DELAYED costs

Estimated cost to obtain a current TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form. The Date Required is 30 days before the expiration date. The Final Date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$3

Screening Date 21-May-2008 **Docket No.** 2008-0865-PST-E **PCW**
Respondent Leemak 529 LLC dba 529 Shell Churches *Policy Revision 2 (September 2002)*
Case ID No. 35943 *PCW Revision June 12, 2008*
Reg. Ent. Reference No. RN102906633
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Thomas Greimel

Violation Number 5
Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(A)(i) and Tex. Water Code § 26.3467(a)
Violation Description Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, 62 fuel deliveries were accepted without a delivery certificate.
Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

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

Adjustment \$9,000
 \$1,000

Violation Events

Number of Violation Events 62 62 Number of violation days
 mark only one with an x
 daily
 monthly
 quarterly
 semiannual
 annual
 single event x
Violation Base Penalty \$62,000

Sixty-Two single events are recommended for accepting sixty-two fuel deliveries.

Good Faith Efforts to Comply 25.0% Reduction \$15,500

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

Notes The Respondent came into compliance on April 8, 2008, prior to the NOE date of May 16, 2008.

Violation Subtotal \$46,500

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

Estimated EB Amount \$0 **Violation Final Penalty Total** \$48,599
This violation Final Assessed Penalty (adjusted for limits) \$48,599

Economic Benefit Worksheet

Respondent Leemak 529 LLC dba 529 Shell Churches
Case ID No. 35943
Reg. Ent. Reference No. RN102906633
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				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

Economic benefit included in Violation No.4.

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

\$0

TOTAL

\$0

Screening Date 21-May-2008 **Docket No.** 2008-0865-PST-E **PCW**
Respondent Leemak 529 LLC dba 529 Shell Churches *Policy Revision 2 (September 2002)*
Case ID No. 35943 *PCW Revision June 12, 2008*
Reg. Ent. Reference No. RN102906633
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Thomas Greimel

Violation Number
Rule Cite(s)
Violation Description
Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
<input type="text" value="100% of the rule requirement was not met."/>					
Adjustment					<input type="text" value="\$7,500"/>

Violation Events

Number of Violation Events Number of violation days
mark only one with an x
 daily
 monthly
 quarterly
 semiannual
 annual
 single event
Violation Base Penalty

Good Faith Efforts to Comply Reduction

Before NOV NOV to EDPRP/Settlement Offer
 Extraordinary
 Ordinary
 N/A (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 Leemak 529 LLC dba 529 Shell Churches
Case ID No. 35943
Reg. Ent. Reference No. RN102906633
Media Petroleum Storage Tank
Violation No. 6

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	1-Apr-2008	18-Apr-2008	0.05	\$1	n/a	\$1
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to establish a record keeping system. The Date Required is the investigation date. The Final Date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$1

Screening Date 21-May-2008 **Docket No.** 2008-0865-PST-E **PCW**
Respondent Leemak 529 LLC dba 529 Shell Churchs *Policy Revision 2 (September 2002)*
Case ID No. 35943 *PCW Revision June 12, 2008*
Reg. Ent. Reference No. RN102906633
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Thomas Greimel

Violation Number 7
Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(2) and (b)(2)(A)(i)(III) and Tex. Water Code § 26.3475(a)
Violation Description Failed to provide proper release detection for the pressurized piping associated with the USTs. Failed to test the line leak detectors at least once per year for performance and operational reliability.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate		Minor
	Actual				
	Potential	x			
				Percent 50%	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
					Percent 0%

Matrix Notes Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$5,000

\$5,000

Violation Events

	1	34	Number of violation days	
<i>mark only one with an x</i>	daily			Violation Base Penalty \$5,000
	monthly			
	quarterly	x		
	semiannual			
	annual			
	single event			

One quarterly event is recommended from the investigation date of April 1, 2008 to the compliance date of May 5, 2008.

Good Faith Efforts to Comply 25.0% Reduction \$1,250

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

Notes The Respondent came into compliance on May 5, 2008, prior to the NOE date of May 16, 2008.

Violation Subtotal \$3,750

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

Estimated EB Amount \$1,101 **Violation Final Penalty Total** \$3,919

This violation Final Assessed Penalty (adjusted for limits) \$3,919

Economic Benefit Worksheet

Respondent Leemak 529 LLC dba 529 Shell Churches
Case ID No. 35943
Reg. Ent. Reference No. RN102906633
Media Petroleum Storage Tank
Violation No. 7

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

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

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$1,000	1-Apr-2007	5-May-2008	2.01	\$101	\$1,000	\$1,101
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to conduct annual piping tightness and line leak detector tests. Date Required is one year prior to the investigation. The Final Date is the date of compliance.

Approx. Cost of Compliance

\$1,000

TOTAL

\$1,101

Compliance History

Customer/Respondent/Owner-Operator:	CN603182890 Leemak 529 LLC	Classification: AVERAGE	Rating: 2.10
Regulated Entity:	RN102906633 529 SHELL CHURCHS	Classification: AVERAGE	Site Rating: 1.20
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	69783
Location:	13111 FM 529 RD, HOUSTON, TX, 77041	Rating Date: 9/1/2007	Repeat Violator: NO
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	June 17, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	June 17, 2003 to June 17, 2008		

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

Name: Steven Lopez Phone: 512-239-1896

Site Compliance History Components

- | | |
|--|---------------------------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | Yes |
| 3. If Yes, who is the current owner? | <u>Leemak 529 LLC</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>G B A K Properties, Inc.</u> |
| 5. When did the change(s) in ownership occur? | <u>04/13/2007</u> |

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.)

1	08/10/2004	(288136)
2	01/11/2006	(439172)
3	04/19/2006	(459673)
4	05/16/2008	(654649)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	03/02/2006	(459673)	
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 115, SubChapter C 115.245(2)		
Description:	Failure to have annual and/or triennial testing successfully conducted.		
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 115, SubChapter C 115.242(5)		
Description:	Failure to remove malfunctioning equipment from service.		
- 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	§	BEFORE THE
AN ENFORCEMENT ACTION	§	
AGAINST LEEMAK 529 LLC DBA	§	TEXAS COMMISSION ON
529 SHELL CHURCHS;	§	
RN102906633	§	ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2008-0865-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 Leemak 529 LLC dba 529 Shell Churches (“Leemak”) 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 Leemak, represented by Mr. Keith Shuley of the law firm of K&L Gates LLP, appear before the Commission and together stipulate that:

1. Leemak owns and operates a convenience store with retail sales of gasoline located at 13111 FM 529, Houston, Harris County, Texas (the “Station”). Leemak’s three underground storage tanks (“USTs”) are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Leemak’s USTs contain a regulated petroleum substance as defined in the rules of the Commission. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
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 Leemak agree that the Commission has jurisdiction to enter this Agreed Order, and that Leemak 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 Leemak of any violation alleged in Section II (“Allegations”), nor of any statute or rule.

5. An administrative penalty in the amount of sixty-two thousand three hundred sixteen dollars (\$62,316.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Pursuant to TEX. WATER CODE § 7.067, thirty-one thousand one hundred fifty-eight dollars (\$31,158.00) of the administrative penalty shall be conditionally offset by Leemak's completion of a Supplemental Environmental Project ("SEP") as defined in Attachment A, incorporated herein by reference. The conditionally offset amount of thirty-one thousand one hundred fifty-eight dollars (\$31,158.00) shall be payable to the SEP in one initial payment of one thousand fifty-six dollars (\$1,056.00) and 29 monthly payments of one thousand thirty-eight dollars (\$1,038.00) each. The initial payment of one thousand fifty-six dollars (\$1,056.00) shall be paid within 30 days after the effective date of this Agreed Order. The subsequent monthly payments of one thousand thirty-eight dollars (\$1,038.00) shall be paid not later than 30 days following the due date of the previous payment. Leemak's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.

Leemak paid five thousand two hundred eight dollars (\$5,208.00) of the administrative penalty. The remaining amount of twenty-five thousand nine hundred fifty dollars (\$25,950.00) of the administrative penalty not conditionally offset by the completion of the SEP shall be payable in 25 monthly payments of one thousand thirty-eight dollars (\$1,038.00) each. The first monthly payment shall be paid to TCEQ within 30 months 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 Leemak fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedules, 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, Leemak's failure to meet the payment schedules of this Agreed Order constitutes the failure by Leemak 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 Leemak agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. The Executive Director recognizes that Leemak implemented the following corrective measures at the Station in response to this enforcement action:
 - a. Repaired and tested the Stage II vapor recovery system for proper operation on May 10, 2008.

- b. Began to maintain a copy of the California Air Resources Board (“CARB”) Executive Order or third-party certification for the Stage II vapor recovery system at the Station on April 2, 2008.
 - c. Ensured that each current employee received in-house Stage II vapor recovery training regarding the purpose and operation of the vapor recovery system on April 10, 2008.
 - d. Renewed a previously issued UST delivery certificate on April 8, 2008.
 - e. Began making a current UST delivery certificate available to a common carrier before accepting delivery of a regulated substance into the USTs on April 8, 2008.
 - f. Began to maintain the required UST records on April 18, 2008.
 - g. Tested the line leak detectors and began to provide release detection for the pressurized piping associated with the USTs on May 5, 2008.
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 Leemak has 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 April 1, 2008, a TCEQ Houston Regional Office investigator documented that Leemak violated:
 - a. 30 TEX. ADMIN CODE § 115.242(3) and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system. Specifically, the spill bucket to the plus unleaded was cracked.
 - b. 30 TEX. ADMIN CODE § 115.246(1) and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to maintain a copy of the CARB Executive Order or third-party certification for the Stage II vapor recovery system at the Station.

- c. 30 TEX. ADMIN CODE § 115.248(1) and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to ensure that each current employee received in-house Stage II vapor recovery training regarding the purpose and operation of the vapor recovery system.
 - d. 30 TEX. ADMIN CODE § 334.8(c)(4)(A)(vii) and 334.8(c)(5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form to the TCEQ at least 30 days before the expiration date. Specifically, Leemak's delivery certificate expired on August 31, 2007.
 - e. 30 TEX. ADMIN CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, 62 fuel deliveries were accepted without a delivery certificate.
 - f. 30 TEX. ADMIN CODE § 334.10(b), by failing to maintain the required UST records and make them immediately available for inspection upon request by agency personnel.
 - g. 30 TEX. ADMIN CODE § 334.50(b)(2) and (b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a), by failing to provide proper release detection for the pressurized piping associated with the USTs and by failing to test the line leak detectors at least once per year for performance and operational reliability.
2. Leemak received notice of the violations on or about May 21, 2008.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Leemak pay an administrative penalty as set forth in Section I, Paragraph 5 for violations of TCEQ rules and state statutes. The payment of this administrative penalty and Leemak'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 for any portion of the administrative penalty not offset by a Supplemental Environmental Project or for any portion of the Supplemental Environmental Project deemed by the Executive Director as not complete shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Leemak 529 LLC dba 529 Shell Churchs, Docket No. 2008-0865-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

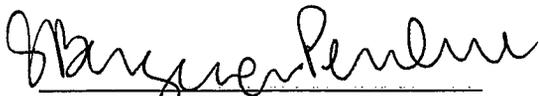
2. Leemak shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 5 above, thirty-one thousand one hundred fifty-eight dollars (\$31,158.00) of the administrative penalty shall be offset with the condition that Leemak implement the SEP defined in Attachment A, incorporated herein by reference. Leemak's obligation to pay the conditionally offset portion of the administrative penalty shall be discharged upon final completion of all provisions of the SEP agreement.
3. The provisions of this Agreed Order shall apply to and be binding upon Leemak. Leemak is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Station operations referenced in this Agreed Order.
4. If Leemak 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, Leemak's failure to comply is not a violation of this Agreed Order. Leemak shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Leemak shall notify the Executive Director within seven days after Leemak 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 Leemak shall be made in writing to the Executive Director. Extensions are not effective until Leemak 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 Leemak 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 the Agreed Order to Leemak, or three days after the date on which the Commission mails notice of this Agreed Order to Leemak, 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

5/12/2010

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

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



Signature

1/21/10

Date

Fazil Malik

Name (Printed or typed)
Authorized representative of
Leemak 529 dba 529 Shell Churchs

Managing Member of Leemak GP LLC,
which is the Managing Member of Leemak
529 LLC

Title

Attachment A

Docket Number: 2008-0865-PST –E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	Leemak 529 LLC dba 529 Shell Churchs
Penalty Amount:	Sixty-two thousand three hundred sixteen dollars (\$62,316.00)
SEP Offset Amount:	Thirty-one thousand one hundred fifty-eight dollars (\$31,158.00)
Type of SEP:	Pre-approved SEP
Third-Party Recipient:	Texas Association of Resource Conservation & Development Areas, Inc. (“RC&D”) <i>Abandoned Tire Clean Up Project</i>
Location of SEP:	San Jacinto River Basin 10

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project (“SEP”). The offset is equal to the SEP Offset Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The SEP contribution will be used by the *Texas Association of Resource Conservation and Development Areas, Inc. (“RC&D”)* for the *Abandoned Tire Clean Up* project. Specifically, the contribution will be used to clean up sites where tires have been disposed of illegally. SEP Funds will be used to pay for the labor and disposal costs associated with proper clean up and disposal of abandoned tires. Eligible clean up sites will be limited to those where a responsible party cannot be found and where reasonable efforts have been made to prevent the dumping. Any SEP Funds remaining after completion of this project may, upon approval of the Executive Director, be applied to another approved RC&D project.

The projects will be administered in accordance with federal, state, and local environmental laws and regulations. The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by providing for the proper disposal of tires and by reducing health threats associated with illegally dumped tires. Illegal tire dumpsites can become breeding grounds for mosquitoes and rodents which carry disease. The potential for tire fires is also reduced by removing illegally dumped tires. Tire fires can result in the contamination of surface water, ground water, and soil.

C. Minimum Expenditure

The Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent shall begin making monthly contributions to the Third Party Recipient on the following payment schedule: one payment of \$1,056.00 and 29 monthly payments of \$1,038.00 each for a total of \$31,158.00 to the Third Party Recipient. The first payment in the amount of \$1,056.00 shall be paid within 30 days after the effective date of this Agreed Order. The subsequent monthly payments in the amount of \$1,038.00 shall be paid not later than 30 days following the due date of the previous payment. SEP monthly contributions shall be made payable to “Texas Association of Resource Conservation and Development Areas, Inc.” and sent to the address below. The Respondent shall mail a copy of the Agreed Order to the Third Party Recipient within 30 days of the effective date of the Agreed Order, to the address listed below:

Texas Association of Resource Conservation and Development Areas, Inc.
1716 Briarcrest Drive Suite 510
Bryan, Texas 77802-2700

3. Records and Reporting

Concurrent with the payment of each SEP Offset Amount payment, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Offset Amount as described in Section 2, above, and submittal of the required reporting described in Section 3, above, the Executive Director may require immediate payment of all or part of the SEP Offset Amount.

In the event of incomplete performance, the Respondent shall submit a check for any remaining amount due made payable to “Texas Commission on Environmental Quality” with the notation “SEP Refund” and the docket number of the case, and shall send it 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

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP Offset Amount identified in this Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.