

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-1114-PST-E TCEQ ID: RN102071529 CASE NO.: 36160
RESPONDENT NAME: ELEGANT, INC. dba Sunnys Food Store

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Sunnys Food Store, 9715 Stella Link Road, Houston, Harris County</p> <p>TYPE OF OPERATION: Convenience store with retail sales of gasoline</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on July 5, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Rajesh Acharya, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-0577; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Piyar Ali, President, ELEGANT, INC., 9715 Stella Link Road, Houston, Texas 77025 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: May 9, 2008</p> <p>Date of NOV/NOE Relating to this Case: June 18, 2008 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>1) Failure to notify the agency of any change or additional information regarding underground storage tanks ("USTs") within 30 days from the date of occurrence of the change or addition. Specifically, the registration was not updated to reflect that one UST has been changed to store diesel rather than gasoline [30 TEX. ADMIN. CODE § 334.7(d)(3)].</p> <p>2) Failure to ensure that a legible tag, label, or marking with the UST identification number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form [30 TEX. ADMIN. CODE § 334.8(c)(5)(C)].</p> <p>3) Failure to provide a release detection method capable of detecting a release from any portion of the UST system which contained regulated substances [30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>4) Failure to report a suspected release to the TCEQ within 24 hours of the discovery. Specifically, statistical inventory reconciliation ("SIR") results for January 2008 indicated a suspected release that was not reported [30 TEX. ADMIN. CODE § 334.72(3)(B)].</p>	<p>Total Assessed: \$14,360</p> <p>Total Deferred: \$2,872 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$323 (remaining \$11,165 due in 35 monthly payments of \$319 each)</p> <p>Site Compliance History Classification <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 15 days after the effective date of this Agreed Order, conduct an investigation of the suspected release and implement appropriate corrective measures.</p> <p>b. Within 30 days after the effective date of this Agreed Order:</p> <p>i. Install and implement a release detection method for all USTs at the Facility;</p> <p>ii. Properly mark the top of the fill tube or the immediate area of the fill tube of each UST as per UST registration and self-certification; and</p> <p>iii. Establish and implement a process of reporting a suspected release.</p> <p>c. Within 45 days after the effective date of this Agreed Order, submit an amended registration to indicate that the type of regulated substance in one UST has been changed to store diesel rather than gasoline; and</p> <p>d. Within 60 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a. through c.</p>

<p>5) Failure to investigate a suspected release of regulated substances within 30 days of discovery. Specifically, SIR results for January 2008 indicated a suspected release that was not investigated [30 TEX. ADMIN. CODE § 334.74].</p>		
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Additional ID No(s): PST 39697



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

TCEQ

DATES	Assigned	1-Jul-2008	Screening	2-Jul-2008	EPA Due	
	PCW	7-Jul-2008				

RESPONDENT/FACILITY INFORMATION

Respondent	ELEGANT, INC. dba Sunnys Food Store				
Reg. Ent. Ref. No.	RN102071529				
Facility/Site Region	12-Houston	Major/Minor Source	Minor		

CASE INFORMATION

Enf./Case ID No.	36160	No. of Violations	5
Docket No.	2008-1114-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Rajesh Acharya
Admin. Penalty \$	Limit Minimum \$0	Maximum	\$10,000
		EC's Team	Enforcement Team 6

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement Subtotals 2, 3, & 7

Notes

Culpability Enhancement Subtotal 4

Notes

Good Faith Effort to Comply Total Adjustments Subtotal 5

Economic Benefit Enhancement* Subtotal 6

Total EB Amounts	\$220
Approx. Cost of Compliance	\$3,300

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty

DEFERRAL Reduction Adjustment

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

Notes

PAYABLE PENALTY

Screening Date 2-Jul-2008

Docket No. 2008-1114-PST-E

PCW

Respondent ELEGANT, INC. dba Sunnys Food Store

Policy Revision 2 (September 2002)

Case ID No. 36160

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN102071529

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	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 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%
<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)

>> **Repeat Violator (Subtotal 3)**

Adjustment Percentage (Subtotal 3)

>> **Compliance History Person Classification (Subtotal 7)**

Adjustment Percentage (Subtotal 7)

>> **Compliance History Summary**

Compliance History Notes

Reduction for high performer classification and enhancement for one NOV without same or similar violations.

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

Screening Date 2-Jul-2008	Docket No. 2008-1114-PST-E	PCW	
Respondent ELEGANT, INC. dba Sunnys Food Store	<i>Policy Revision 2 (September 2002)</i>		
Case ID No. 36160	<i>PCW Revision June 12, 2008</i>		
Reg. Ent. Reference No. RN102071529			
Media [Statute] Petroleum Storage Tank			
Enf. Coordinator Rajesh Acharya			
Violation Number 1			
Rule Cite(s)	30 Tex. Admin. Code § 334.7(d)(3)		
Violation Description	Failed to notify the agency of any change or additional information regarding USTs within 30 days from the date of occurrence of the change or addition. Specifically, the registration was not updated to reflect that one UST has been changed to store diesel rather than gasoline.		
Base Penalty		\$10,000	
>> Environmental, Property and Human Health Matrix			
Harm			
Release	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
OR			Percent 0%
>> Programmatic Matrix			
Falsification			
Major	Moderate	Minor	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Percent 10%
Matrix Notes	100% of the rule requirement was not met.		
Adjustment		\$9,000	
			\$1,000
Violation Events			
Number of Violation Events	1	Number of violation days	54
<i>mark only one with an x</i>	daily	<input type="text"/>	
	monthly	<input type="text"/>	
	quarterly	<input type="text"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input checked="" type="checkbox"/>	Violation Base Penalty \$1,000
One single event is recommended based on documentation of the violation during the investigation date of May 9, 2008.			
Good Faith Efforts to Comply		0.0% Reduction	\$0
	Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary	<input type="text"/>	<input type="text"/>	
Ordinary	<input type="text"/>	<input type="text"/>	
N/A	<input checked="" type="checkbox"/>	(mark with x)	
Notes	The Respondent does not meet the good faith criteria for this violation.		
Violation Subtotal			\$1,000
Economic Benefit (EB) for this violation		Statutory Limit Test	
Estimated EB Amount	\$3	Violation Final Penalty Total	\$926
		This violation Final Assessed Penalty (adjusted for limits)	\$926

Economic Benefit Worksheet

Respondent ELEGANT, INC. dba Sunnys Food Store
Case ID No. 36160
Reg. Ent. Reference No. RN102071529
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)	\$100	9-May-2008	9-Jan-2009	0.67	\$3	n/a	\$3

Notes for DELAYED costs

Estimated cost to prepare and submit a UST registration. 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 \$100

TOTAL \$3

Screening Date 2-Jul-2008	Docket No. 2008-1114-PST-E	PCW			
Respondent ELEGANT, INC. dba Sunnys Food Store		<small>Policy Revision 2 (September 2002)</small>			
Case ID No. 38180		<small>PCW Revision June 12, 2008</small>			
Reg. Ent. Reference No. RN102071529					
Media [Statute] Petroleum Storage Tank					
Enf. Coordinator Rajesh Acharya					
Violation Number	<input type="text" value="2"/>				
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 334.8(c)(5)(C)"/>				
Violation Description	<input type="text" value="Failed to ensure that a legible tag, label, or marking with the UST identification number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form."/>				
Base Penalty		<input type="text" value="\$10,000"/>			
>> Environmental, Property and Human Health Matrix					
OR	Harm				
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
				Percent <input type="text" value="0%"/>	
>> Programmatic Matrix					
		Falsification	Major	Moderate	Minor
		<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>
					Percent <input type="text" value="10%"/>
Matrix Notes	<input type="text" value="100% of the rule requirement was not met."/>				
Adjustment				<input type="text" value="\$9,000"/>	
				<input type="text" value="\$1,000"/>	
Violation Events					
Number of Violation Events		<input type="text" value="1"/>	Number of violation days		
		<input type="text" value="54"/>			
<small>mark only one with an x</small>	daily	<input type="text"/>			
	monthly	<input type="text"/>			
	quarterly	<input type="text"/>			
	semiannual	<input type="text"/>			
	annual	<input type="text"/>			
	single event	<input checked="" type="text" value="x"/>			
Violation Base Penalty		<input type="text" value="\$1,000"/>			
<input type="text" value="One single event is recommended based on documentation of the violation during the May 9, 2008 investigation."/>					
Good Faith Efforts to Comply		0.0%	Reduction		
		<small>Before NOV</small>	<small>NOV to EDRP/Settlement Offer</small>		
Extraordinary	<input type="text"/>	<input type="text"/>			
Ordinary	<input type="text"/>	<input type="text"/>			
N/A	<input checked="" type="text" value="x"/>	<input type="text"/>	<small>(mark with x)</small>		
Notes	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>				
Violation Subtotal		<input type="text" value="\$1,000"/>			
Economic Benefit (EB) for this violation			Statutory Limit Test		
Estimated EB Amount		<input type="text" value="\$3"/>	Violation Final Penalty Total		
			<input type="text" value="\$926"/>		
This violation Final Assessed Penalty (adjusted for limits)			<input type="text" value="\$926"/>		

Economic Benefit Worksheet

Respondent: ELEGANT, INC. dba Sunnys Food Store

Case ID No: 36160

Reg. Ent. Reference No: RN102071529

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				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	9-May-2008	9-Jan-2009	0.67	\$3	n/a	\$3

Notes for DELAYED costs

Estimated cost to label the tank fill ports. 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

\$100

TOTAL

\$3

Screening Date 2-Jul-2008	Docket No. 2008-1114-PST-E	PCW		
Respondent ELEGANT, INC. dba Sunnys Food Store	<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 36160	<i>PCW Revision June 12, 2008</i>			
Reg. Ent. Reference No. RN102071529				
Media [Statute] Petroleum Storage Tank				
Enf. Coordinator Rajesh Acharya				
Violation Number	3			
Rule Cite(s)	30 Tex. Admin. Code § 334.50(a)(1)(A) and Tex. Water Code § 26.3475(c)(1)			
Violation Description	Failed to provide a release detection method capable of detecting a release from any portion of the UST system which contained regulated substances.			
Base Penalty		\$10,000		
>> Environmental, Property and Human Health Matrix				
Harm				
Release	Major	Moderate	Minor	
Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Percent		25%		
>> Programmatic Matrix				
Falsification				
Major			Moderate	Minor
<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>
Percent		0%		
Matrix Notes	Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.			
Adjustment		\$7,500		
		\$2,500		
Violation Events				
Number of Violation Events		1	Number of violation days	
		54		
<i>mark only one with an x</i>	daily	<input type="checkbox"/>	Violation Base Penalty	
	monthly	<input type="checkbox"/>		
	quarterly	<input checked="" type="checkbox"/>		
	semiannual	<input type="checkbox"/>		
	annual	<input type="checkbox"/>		
	single event	<input type="checkbox"/>		
One quarterly event is recommended based on documentation of the violation during the May 9, 2008 investigation to the July 2, 2008 screening date.			\$2,500	
Good Faith Efforts to Comply		0.0% Reduction	\$0	
		Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>		
Ordinary	<input type="checkbox"/>	<input type="checkbox"/>		
N/A	<input checked="" type="checkbox"/>	(mark with x)		
Notes	The Respondent does not meet the good faith criteria for this violation.			
Violation Subtotal		\$2,500		
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount		\$50	Violation Final Penalty Total	
			\$2,316	
This violation Final Assessed Penalty (adjusted for limits)		\$2,316		

Economic Benefit Worksheet

Respondent ELEGANT, INC. dba Sunnys Food Store
Case ID No. 38180
Reg. Ent. Reference No. RN102071529
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
Delayed Costs							
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	9-May-2008	9-Jan-2009	0.67	\$50	n/a	\$50

Notes for DELAYED costs: Estimated cost to provide release detection for the UST system. Date Required is the date of investigation. Final Date is the estimated date of compliance.

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs:

Approx. Cost of Compliance TOTAL

\$1,500	\$50
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Screening Date 2-Jul-2008	Docket No. 2008-1114-PST-E	PCW		
Respondent ELEGANT, INC. dba Sunnys Food Store	<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 36160	<i>PCW Revision June 12, 2008</i>			
Reg. Ent. Reference No. RN102071529				
Media [Statute] Petroleum Storage Tank				
Enf. Coordinator Rajesh Acharya				
Violation Number	4			
Rule Cite(s)	30 Tex. Admin. Code § 334.72(3)(B)			
Violation Description	Failed to report a suspected release to the TCEQ within 24 hours of the discovery. Specifically, statistical inventory reconciliation ("SIR") results for January 2008 indicated a suspected release that was not reported.			
Base Penalty		\$10,000		
>> Environmental, Property and Human Health Matrix				
Harm				
Release	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Percent			0%	
OR				
>> Programmatic Matrix				
Falsification				
Major			Moderate	Minor
<input type="text"/>			<input checked="" type="text"/>	<input type="text"/>
Percent			10%	
Matrix Notes	100% of the rule requirement was not met.			
Adjustment		\$9,000		
		\$1,000		
Violation Events				
Number of Violation Events		1	Number of violation days	
		1		
<i>mark only one with an x</i>	daily	<input type="text"/>	Violation Base Penalty	
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input checked="" type="text"/>		
One single event is recommended.			\$1,000	
Good Faith Efforts to Comply				
		0.0% Reduction	\$0	
		Before NOV NOV to EDRP/Settlement Offer		
Extraordinary	<input type="text"/>			
Ordinary	<input type="text"/>			
N/A	X	(mark with x)		
Notes	The Respondent does not meet the good faith criteria for this violation.			
Violation Subtotal		\$1,000		
Economic Benefit (EB) for this violation				
Estimated EB Amount		\$100		
Statutory Limit Test				
Violation Final Penalty Total		\$926		
This violation Final Assessed Penalty (adjusted for limits)		\$926		

Economic Benefit Worksheet

Respondent ELEGANT, INC. dba Sunnys Food Store
Case ID No. 38160
Reg. Ent. Reference No. RN102071529
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)				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]	\$100	1-Feb-2008	2-Feb-2008	0.00	\$0	\$100	\$100
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to report a suspected release. Date Required is the date of the suspected release. Final Date is the date the report was due.

Approx. Cost of Compliance

\$100

TOTAL

\$100

Screening Date 2-Jul-2008		Docket No. 2008-1114-PST-E		PCW									
Respondent ELEGANT, INC. dba Sunnys Food Store		<i>Policy Revision 2 (September 2002)</i>											
Case ID No. 36160		<i>PCW Revision June 12, 2008</i>											
Reg. Ent. Reference No. RN102071529													
Media [Statute] Petroleum Storage Tank													
Enf. Coordinator Rajesh Acharya													
Violation Number	5												
Rule Cite(s)	30 Tex. Admin. Code § 334.74												
Violation Description	Failed to investigate a suspected release of regulated substances within 30 days of discovery. Specifically, SIR results for January 2008 indicated a suspected release that was not investigated.												
Base Penalty				\$10,000									
>> Environmental, Property and Human Health Matrix													
Harm													
	Major	Moderate	Minor										
OR	<table style="width:100%; border-collapse: collapse;"> <tr> <td style="border: none;">Actual</td> <td style="border: 1px solid black; width: 50px; height: 15px;"></td> <td style="border: 1px solid black; width: 50px; height: 15px;"></td> <td style="border: 1px solid black; width: 50px; height: 15px;"></td> </tr> <tr> <td style="border: none;">Potential</td> <td style="border: 1px solid black; text-align: center;">x</td> <td style="border: 1px solid black;"></td> <td style="border: 1px solid black;"></td> </tr> </table>			Actual				Potential	x			Percent	25%
Actual													
Potential	x												
>> Programmatic Matrix													
Falsification													
	Major	Moderate	Minor										
<table style="width:100%; border-collapse: collapse;"> <tr> <td style="border: 1px solid black; width: 50px; height: 15px;"></td> <td style="border: 1px solid black; width: 50px; height: 15px;"></td> <td style="border: 1px solid black; width: 50px; height: 15px;"></td> </tr> </table>						Percent	0%						
Matrix Notes	Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.												
Adjustment				\$7,500									
				\$2,500									
Violation Events													
Number of Violation Events		4	Number of violation days										
		122											
<i>mark only one with an x</i>	daily												
	monthly	x											
	quarterly												
	semiannual												
	annual												
	single event												
Four monthly events are recommended from the release investigation due date of March 2, 2008 to the July 2, 2008 screening date.				Violation Base Penalty									
				\$10,000									
Good Faith Efforts to Comply													
		0.0%	Reduction										
		Before NOV	NOV to EDRP/Settlement Offer										
Extraordinary													
Ordinary													
N/A	x	(mark with x)											
Notes	The Respondent does not meet the good faith criteria for this violation.												
Violation Subtotal				\$10,000									
Economic Benefit (EB) for this violation													
Statutory Limit Test													
Estimated EB Amount		\$63	Violation Final Penalty Total										
			\$9,265										
This violation Final Assessed Penalty (adjusted for limits)				\$9,265									

Economic Benefit Worksheet

Respondent ELEGANT, INC. dba Sunnys Food Store
Case ID No. 36160
Reg. Ent. Reference No. RN102071529
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)	\$1,500	2-Mar-2008	1-Jan-2009	0.84	\$63	n/a	\$63

Notes for DELAYED costs

Estimated costs to investigate a suspected release. Date Required is 30 days after the discovery of the suspected release. Final Date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$63

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
ELEGANT, INC. DBA SUNNYS FOOD
STORE
RN102071529

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2008-1114-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding ELEGANT, INC. dba Sunnys Food Store ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a convenience store with retail sales of gasoline at 9715 Stella Link Road in Houston, Harris County, Texas (the "Facility").
2. The Respondent's three underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about June 23, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Fourteen Thousand Three Hundred Sixty Dollars (\$14,360) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). The Respondent has paid Three Hundred Twenty-Three Dollars (\$323) of the administrative penalty and Two Thousand Eight Hundred Seventy-Two Dollars (\$2,872) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Eleven Thousand One Hundred Sixty-Five Dollars (\$11,165) of the administrative penalty shall be payable in 35 monthly payments of Three Hundred Nineteen Dollars (\$319) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
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

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to notify the agency of any change or additional information regarding USTs within 30 days from the date of occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3), as documented during an investigation conducted on May 9, 2008. Specifically, the registration was not updated to reflect that one UST has been changed to store diesel rather than gasoline.

2. Failed to ensure that a legible tag, label, or marking with the UST identification number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(C), as documented during an investigation conducted on May 9, 2008.
3. Failed to provide a release detection method capable of detecting a release from any portion of the UST system which contained regulated substances, in violation of 30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on May 9, 2008.
4. Failed to report a suspected release to the TCEQ within 24 hours of the discovery, in violation of 30 TEX. ADMIN. CODE § 334.72(3)(B), as documented during an investigation conducted on May 9, 2008. Specifically, statistical inventory reconciliation ("SIR") results for January 2008 indicated a suspected release that was not reported.
5. Failed to investigate a suspected release of regulated substances within 30 days of discovery, in violation of 30 TEX. ADMIN. CODE § 334.74, as documented during an investigation conducted on May 9, 2008. Specifically, SIR results for January 2008 indicated a suspected release that was not investigated.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: ELEGANT, INC. dba Sunnys Food Store, Docket No. 2008-1114-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. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 15 days after the effective date of this Agreed Order, conduct an investigation of the suspected release and implement appropriate corrective measures, in accordance with 30 TEX. ADMIN. CODE § 337.74.
 - b. Within 30 days after the effective date of this Agreed Order:

- i. Install and implement a release detection method for all USTs at the Facility, in accordance with 30 TEX. ADMIN. Code § 334.50;
 - ii. Properly mark the top of the fill tube or the immediate area of the fill tube of each UST as per UST registration and self-certification, in accordance with TEX. ADMIN. CODE § 334.8; and
 - iii. Establish and implement a process of reporting a suspected release, in accordance with 30 TEX. ADMIN. CODE § 334.72.
- c. Within 45 days after the effective date of this Agreed Order, submit an amended registration to indicate that type of regulated substance in one UST has been changed to store diesel rather than gasoline, in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

Registration and Reporting Section
Permitting & Remediation Support Division, MC 138
Texas Commission on Environmental Quality
P.O. Box 12087
Austin, Texas 78711-308700

- d. Within 60 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.c. 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."

The certification shall be submitted to:

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

with a copy to:

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

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
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 the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement 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), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

ELEGANT, INC. dba Sunnys Food Store
DOCKET NO. 2008-1114-PST-E
Page 6

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Jodi Szollos

For the Executive Director

6/17/2010
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or 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, any falsification of any compliance documents may result in criminal prosecution.

[Signature]

Signature

Nov. 9th 2008
Date

Piyar Ali

Name (Printed or typed)
Authorized Representative of
ELEGANT, INC. dba Sunnys Food Store

President

Title

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