

**Executive Summary – Enforcement Matter – Case No. 40181  
Abass Sayegh and Ray Sanjib d/b/a David's Exxon  
RN101489730  
Docket No. 2010-1302-PST-E**

**Order Type:**

Default Shutdown Order

**Findings Order Justification:**

N/A

**Media:**

PST

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

1801 West 2nd Street, Taylor, Williamson County

**Type of Operation:**

underground storage tank system and a convenience store with retail sales of gasoline

**Other Significant Matters:**

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

**Texas Register Publication Date:** August 5, 2011

**Comments Received:** None

***Penalty Information***

**Total Penalty Assessed:** \$7,129

**Amount Deferred for Expedited Settlement:** N/A

**Amount Deferred for Financial Inability to Pay:** N/A

**Total Paid to General Revenue:** \$0

**Total Due to General Revenue:** \$7,129

**Compliance History Classifications:**

Person/CN – Average (Abass Sayegh); Not Yet Rated (Ray Sanjib)  
Site/RN – Average by Default

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

***Investigation Information***

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** June 23, 2010  
**Date(s) of NOV(s):** N/A  
**Date(s) of NOE(s):** July 30, 2010

***Violation Information***

1. Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form [30 TEX. ADMIN. CODE § 334.8(c)(5)(C)].
2. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b)].
3. Failed to conduct effective manual or automatic inventory control procedures for the USTs involved in the retail sale of petroleum substances used a motor fuel [30 TEX. ADMIN. CODE § 334.48(c)].
4. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring)[ 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].
5. Failed to provide release detection for the pressurized piping associated with the USTs [30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a)].
6. 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)(A)(i)(III) and TEX. WATER CODE § 26.3475(a)].
7. Failed to conduct reconciliation of detailed inventory control records at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons [30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1)].
8. Failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tanks each operating day [30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1)]

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

1. Immediately shut down operations of all USTs at the Facility:
  - a. Cease dispensing fuel from the USTs;
  - b. Cease receiving deliveries of regulated substances into the USTs;
  - c. Padlock the dispensers;
  - d. Empty the USTs of all regulated substances; and
  - e. Temporarily remove the USTs from service.

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Abass Sayegh and Ray Sanjib d/b/a David's Exxon  
RN101489730  
Docket No. 2010-1302-PST-E**

2. The USTs shall remain out of service until such time as Respondent demonstrates to the satisfaction of the Executive Director that the release detection and corrosion protection violations have been corrected.
3. Respondent's UST fuel delivery certificate is revoked immediately. Respondent shall cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements.
4. Within 10 days, Respondent shall surrender its UST fuel delivery certificate.
5. Within 15 days, submit a detailed written report documenting the steps taken to comply with Technical Requirements Nos. 1 and 4.
6. Prior to receiving deliveries of gasoline and resuming sales of gasoline:
  - a. Begin conducting effective manual or automatic inventory control procedures for all USTs (Violation No. 3);
  - b. Permanently apply or affix tags, labels, or markings to the UST fill tubes with an identification number that matches the number listed on the UST registration and self-certification form (Violation No. 1);
  - c. Begin maintaining all UST records (Violation No. 2);
  - d. Conduct the annual piping tightness and line leak detector tests and implement a release detection method for all pressurized piping and USTs including volume measurement and reconciliation of inventory control records (Violation Nos. 4 through 8); and
  - e. Obtain a new fuel delivery certificate.
7. Upon obtaining a new fuel delivery certificate, post the fuel delivery certificate in a location at the Facility where the delivery certificate is clearly visible at all times.
8. Within 10 days of resuming sales of gasoline, submit written certification to demonstrate compliance with Technical Requirements Nos. 6 and 7.

***Litigation Information***

**Date Petition(s) Filed:** February 18, 2011  
**Date(s) Green Card(s) Signed:** February 22, 2011  
**Date(s) Answer(s) Filed:** N/A  
**SOAH Referral Date:** N/A  
**Hearing Date(s):** N/A

***Contact Information***

**TCEQ Attorneys:** Kari L. Gilbreth, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
**TCEQ Enforcement Coordinator:** Michael Pace, Waste Enforcement Section, (817) 588-5933  
**TCEQ Regional Contact:** Barry Kalda, Austin Regional Office, (512) 339-2929  
**Respondents:** Abass Sayegh and Ray Sanjib, 13461 Gent Drive, Austin, Texas 78729  
**Respondent's Attorney:** N/A

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# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	9-Aug-2010	<b>Screening</b>	10-Aug-2010	<b>EPA Due</b>	
	<b>PCW</b>	7-Feb-2011				

<b>RESPONDENT/FACILITY INFORMATION</b>			
<b>Respondent</b>	Abass Sayegh and Ray Sanjib d/b/a David's Exxon		
<b>Reg. Ent. Ref. No.</b>	RN101489730		
<b>Facility/Site Region</b>	11-Austin	<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	40181	<b>No. of Violations</b>	4
<b>Docket No.</b>	2010-1302-PST-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Mike Pace
		<b>EC's Team</b>	Enforcement Team 6
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$7,000</b>
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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.

<b>Compliance History</b>	<b>0.0%</b> Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$0</b>
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<b>Notes</b>	No adjustment for Compliance History.
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<b>Culpability</b>	<b>No</b>	<b>0.0%</b> Enhancement	<b>Subtotal 4</b>	<b>\$0</b>
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<b>Notes</b>	The Respondents do not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>\$0</b>
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<b>Economic Benefit</b>	<b>0.0%</b> Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts	\$233	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$2,718	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$7,000</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	<b>1.8%</b>	<b>Adjustment</b>	<b>\$129</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	Recommended enhancement to capture the avoided cost of compliance associated with violation no. 4.
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<b>Final Penalty Amount</b>	<b>\$7,129</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$7,129</b>
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<b>DEFERRAL</b>	<b>0.0%</b> Reduction	<b>Adjustment</b>	<b>\$0</b>
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>Notes</b>	Deferral not offered for non-expedited settlement.
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<b>PAYABLE PENALTY</b>	<b>\$7,129</b>
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Screening Date 10-Aug-2010

Docket No. 2010-1302-PST-E

PCW

Respondent Abass Sayegh and Ray Sanjib d/b/a David's Exxor

Policy Revision 2 (September 2002)

Case ID No. 40181

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101489730

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Mike Pace

### Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("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	0	0%
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)** 0%

#### >> Repeat Violator (Subtotal 3)

No

**Adjustment Percentage (Subtotal 3)** 0%

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

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%

#### >> Compliance History Summary

Compliance History Notes

No adjustment for Compliance History.

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

Screening Date 10-Aug-2010

Docket No. 2010-1302-PST-E

PCW

Respondent Abass Sayegh and Ray Sanjib d/b/a David's Exxon

Policy Revision 2 (September 2002)

Case ID No. 40181

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101489730

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Mike Pace

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(C)

Violation Description Failed to ensure that a legible tag, label or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube for each regulated underground storage tank ("UST") according to the UST registration and self-certification form.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (10%).

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 47 Number of violation days

Table for frequency: daily, weekly, monthly, quarterly, semiannual, annual, single event (marked with x).

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the June 23, 2010 investigation.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (marked with x).

Notes The Respondents do 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 \$4

Violation Final Penalty Total \$1,018

This violation Final Assessed Penalty (adjusted for limits) \$1,018

## Economic Benefit Worksheet

**Respondent** Abass Sayegh and Ray Sanjib d/b/a David's Exxon  
**Case ID No.** 40181  
**Req. Ent. Reference No.** RN101489730  
**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	23-Jun-2010	10-May-2011	0.88	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to label the tank fill ports. The date required is the investigation date and the final date is the expected compliance date.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

**TOTAL**

\$4

**Screening Date** 10-Aug-2010 **Docket No.** 2010-1302-PST-E  
**Respondent** Abass Sayegh and Ray Sanjib d/b/a David's Exxon  
**Case ID No.** 40181  
**Reg. Ent. Reference No.** RN101489730  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Mike Pace

**PCW**

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

**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	Harm			Percent
		Major	Moderate	Minor	
	<input type="text"/>	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>
<input type="text" value="100% of the rule requirement was not met."/>					

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

*mark only one with an x*

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text" value="x"/>

**Violation Base Penalty**

**Good Faith Efforts to Comply**

Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	(mark with x)

**Notes**

**Violation Subtotal**

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount**

**Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** Abass Sayegh and Ray Sanjib d/b/a David's Exxon  
**Case ID No.** 40181  
**Req. Ent. Reference No.** RN101489730  
**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	23-Jun-2010	10-Apr-2011	0.80	\$20	n/a	\$20
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 maintain UST records. The date required is the investigation date and the final date is the expected compliance date.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

**TOTAL**

\$20

**Screening Date** 10-Aug-2010 **Docket No.** 2010-1302-PST-E  
**Respondent** Abass Sayegh and Ray Sanjib d/b/a David's Exxon  
**Case ID No.** 40181  
**Reg. Ent. Reference No.** RN101489730  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Mike Pace

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

**Violation Number** 3  
**Rule Cite(s)** 30 Tex. Admin. Code § 334.48(c)  
**Violation Description** Failed to conduct effective manual or automatic inventory control procedures for the USTs involved in the retail sale of petroleum substances used as a motor fuel.

**Base Penalty** \$10,000

>> **Environmental, Property and Human Health Matrix**

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

>> **Programmatic Matrix**

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0%
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 47 Number of violation days

<i>mark only one with an x</i>	daily		<b>Violation Base Penalty</b> \$2,500
	weekly		
	monthly		
	quarterly	x	
	semiannual		
	annual		
	single event		

One quarterly event is recommended based on documentation of the violation during the June 23, 2010 investigation to the August 10, 2010 screening date.

**Good Faith Efforts to Comply**

0.0% Reduction \$0

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

**Notes** The Respondents do 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** \$20 **Violation Final Penalty Total** \$2,546

**This violation Final Assessed Penalty (adjusted for limits)** \$2,546

## Economic Benefit Worksheet

**Respondent** Abass Sayegh and Ray Sanjib d/b/a David's Exxon  
**Case ID No.** 40181  
**Req. Ent. Reference No.** RN101489730  
**Media** Petroleum Storage Tank  
**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	23-Jun-2010	10-Apr-2011	0.80	\$20	n/a	\$20
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 conduct proper inventory control procedures. The date required is the investigation date and the final date is the expected compliance date.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

**TOTAL**

\$20

Screening Date 10-Aug-2010

Docket No. 2010-1302-PST-E

PCW

Respondent Abass Sayegh and Ray Sanjib d/b/a David's Exxon

Policy Revision 2 (September 2002)

Case ID No. 40181

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101489730

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Mike Pace

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A), (b)(2), (b)(2)(A)(i)(III), (d)(1)(B)(ii) and (d)(1)(B)(iii)(I) and Tex. Water Code § 26.3475(a) and(c)(1)

Violation Description

Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Failed to provide release detection for the pressurized piping associated with the USTs. Specifically, the Respondents did not conduct the annual piping tightness test. Failed to test the line leak detectors at least once per year for performance and operational reliability. Failed to conduct reconciliation of detailed inventory control records at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons. Also, failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tanks each operating day.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
				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 47 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,500

One quarterly event is recommended based on documentation of the violation during the June 23, 2010 investigation to the August 10, 2010 screening date.

Good Faith Efforts to Comply

0.0% Reduction \$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondents do 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 \$189

Violation Final Penalty Total \$2,546

This violation Final Assessed Penalty (adjusted for limits) \$2,546

## Economic Benefit Worksheet

**Respondent** Abass Sayegh and Ray Sanjib d/b/a David's Exxon  
**Case ID No.** 40181  
**Req. Ent. Reference No.** RN101489730  
**Media** Petroleum Storage Tank  
**Violation No.** 4

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	23-Jun-2010	10-Apr-2011	0.80	\$60	n/a	\$60

Notes for DELAYED costs

Estimated cost to provide release detection for the UST including volume measurement and monthly reconciliation of inventory control records. The date required is the investigation date and the final date is the expected compliance date.

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$118	23-Jun-2009	23-Jun-2010	1.92	\$11	\$118	\$129
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct the annual piping tightness and leak detector tests. The date required is one year prior to the investigation date and the final date is the investigation date.

Approx. Cost of Compliance

\$1,618

**TOTAL**

\$189

# Compliance History Report

Customer/Respondent/Owner-Operator:	CN600405526	Abass Sayegh	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN101489730	David's Exxon	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	14388	
Location:	1801 W 2ND ST, TAYLOR, TX, 76574			
TCEQ Region:	REGION 11 - AUSTIN			
Date Compliance History Prepared:	August 10, 2010			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	August 10, 2005 to August 10, 2010			

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

Name: Mike Pace Phone: (817) 588-5933

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2009 Repeat Violator: NO

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court 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 07/30/2010 (828778)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
  - F. Environmental audits. N/A
  - G. Type of environmental management systems (EMSs). N/A
  - H. Voluntary on-site compliance assessment dates. N/A
  - I. Participation in a voluntary pollution reduction program. N/A
  - J. Early compliance. N/A
- Sites Outside of Texas  
N/A

# Compliance History

Customer/Respondent/Owner-Operator:	CN603803560 Sanjib, Ray	Classification:	Rating:
Regulated Entity:	RN101489730 David's Exxon	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	14388
Location:	1801 W 2ND ST, TAYLOR, TX, 76574		
TCEQ Region:	REGION 11 - AUSTIN		
Date Compliance History Prepared:	July 27, 2011		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	August 10, 2005 to August 10, 2010		

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

Name: Mike Pace Phone: (817) 588-5933

### Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2010 Repeat Violator: NO

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
  - B. Any criminal convictions of the state of Texas and the federal government.  
N/A
  - C. Chronic excessive emissions events.  
N/A
  - D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
1 07/30/2010 (828778)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
  - F. Environmental audits.  
N/A
  - G. Type of environmental management systems (EMSs).  
N/A
  - H. Voluntary on-site compliance assessment dates.  
N/A
  - I. Participation in a voluntary pollution reduction program.  
N/A
  - J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN** §  
**ENFORCEMENT ACTION** §  
**CONCERNING** §  
**ABASS SAYEGH AND RAY SANJIB** §  
**D/B/A DAVID'S EXXON;** §  
**RN101489730** §

**BEFORE THE**  
**TEXAS COMMISSION ON**  
**ENVIRONMENTAL QUALITY**

## **DEFAULT AND SHUTDOWN ORDER**

### **DOCKET NO. 2010-1302-PST-E**

At its \_\_\_\_\_ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty, corrective action of the respondents, and revocation of the respondents' fuel delivery certificate. The Commission also considered the Executive Director's Motion requesting the entry of an Order requiring the respondents to shutdown and remove from service the underground storage tanks ("USTs") located at 1801 West 2nd Street in Taylor, Williamson County, Texas. The respondents made the subject of this Order are Abass Sayegh and Ray Sanjib d/b/a David's Exxon (collectively "Respondents").

The Commission makes the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. Abass Sayegh owns, as defined in 30 TEX. ADMIN. CODE § 334.2(73), and Ray Sanjib operates, as defined in 30 TEX. ADMIN. CODE § 334.2(70), an underground storage tank ("UST") system and a convenience store with retail sales of gasoline located at 1801 West 2nd Street in Taylor, Williamson County, Texas (the "Facility"). The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contain a regulated petroleum substance as defined in the rules of the TCEQ.
2. During an investigation conducted on June 23, 2010, a TCEQ Austin Regional Office investigator documented that Respondents:
  - a. Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form;
  - b. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel. Specifically, the Certificate of Insurance, verification of UST construction material, and spill bucket inspection logs were not available for review;

- c. Failed to conduct effective manual or automatic inventory control procedures for the USTs involved in the retail sale of petroleum substances used as a motor fuel;
  - d. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring);
  - e. Failed to provide release detection for the pressurized piping associated with the USTs. Specifically, Respondents did not conduct the annual piping tightness test;
  - f. Failed to test the line leak detectors at least once per year for performance and operational reliability;
  - g. Failed to conduct reconciliation of detailed inventory control records at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; and
  - h. Failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tanks each operating day.
3. By letter dated July 30, 2010, TCEQ Austin Regional Office staff provided Respondents with notice of the violations and of TCEQ's authority to shut down and remove from service USTs not in compliance with release detection, spill and/or overfill prevention, corrosion protection, and/or financial assurance requirements if the violations are not corrected.
  4. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Abass Sayegh and Ray Sanjib d/b/a David's Exxon" (the "EDPRP") in the TCEQ Chief Clerk's office on February 18, 2011.
  5. By letters dated February 18, 2011, sent to each Respondents' last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondents with notice of the EDPRP. According to the return receipt "green cards," each Respondent received notice of the EDPRP on February 22, 2011, as evidenced by the signatures on the cards.
  6. More than 20 days have elapsed since Respondents received notice of the EDPRP provided by the Executive Director. Respondents failed to file an answer and failed to request a hearing.
  7. By letter dated July 19, 2011, the Executive Director provided both Respondents with notice of TCEQ's intent to order the USTs at the Facility to be shut down and removed from service if Respondents failed to correct the release detection violations within 30 days after Respondents' receipt of the notice.

8. As of the date of entry of this Order, Respondents have not provided the Executive Director with documentation demonstrating that the release detection violations alleged in Finding of Fact Nos. 2.d. through 2.h. have been corrected.
9. The USTs at the Facility do not have release detection as required by 30 TEX. ADMIN. CODE §§ 334.50(b)(1)(A), (b)(2), (b)(2)(A)(i)(III), (d)(1)(B)(ii) and (d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(a) and (c)(1) and may be releasing petroleum products to the environment. Therefore, conditions at the Facility constitute an imminent peril to public health, safety, and welfare.

### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, Respondents are subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondents failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(C).
3. As evidenced by Finding of Fact No. 2.b., Respondents failed to maintain UST records and make them immediately available for inspection upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 334.10(b).
4. As evidenced by Finding of Fact No. 2.c., Respondents failed to conduct effective manual or automatic inventory control procedures for the USTs involved in the retail sale of petroleum substances used a motor fuel, in violation of 30 TEX. ADMIN. CODE § 334.48(c).
5. As evidenced by Finding of Fact No. 2.d., Respondents failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1).
6. As evidenced by Finding of Fact No. 2.e., Respondents failed to provide release detection for the pressurized piping associated with the USTs, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a).
7. As evidenced by Finding of Fact No. 2.f., Respondents failed to test the line leak detectors at least once per year for performance and operational reliability, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a).
8. As evidenced by Finding of Fact No. 2.g., Respondents failed to conduct reconciliation of detailed inventory control records at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1).

9. As evidenced by Finding of Fact No. 2.h., Respondents failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tanks each operating day, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1).
10. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondents with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
11. As evidenced by Finding of Fact No. 6, Respondents failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondents and assess the penalty recommended by the Executive Director.
12. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondents for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
13. An administrative penalty in the amount of seven thousand one hundred twenty-nine dollars (\$7,129.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
14. As evidenced by Findings of Fact Nos. 3, 7 and 8, Respondents failed to correct documented violations of Commission release detection requirements within 30 days after Respondents received notice of the violations and notice of the Executive Director's intent to shut down the Facility.
15. TEX. WATER CODE §§ 26.3475(e) and 26.352(i) authorize the Commission to order a UST owner or operator to shut down a UST system if, within 30 days after receiving notice of the violations, the owner or operator fails to correct violations of Commission regulatory requirements relating to release detection for tanks and/or piping, spill and/or overfill protection for tanks, corrosion protection for tanks and/or piping, and/or acceptable financial assurance.
16. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.
17. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Respondents' UST fuel delivery certificate if the Commission finds that good cause exists.
18. Good cause for revocation of Respondents' UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2 and 4 through 6 and Conclusions of Law Nos. 2 through 11.
19. As evidenced by Findings of Fact Nos. 8 and 9, current conditions at the Facility constitute an imminent peril to public health, safety, and welfare. Therefore, pursuant to the Administrative Procedure Act, TEX. GOV'T CODE § 2001.144(a)(3), this Order is final and effective on the date rendered.

### ORDERING PROVISIONS

NOW, THEREFORE, IT IS ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. Immediately upon the effective date of this Order, Respondents shall take the following steps to shut down operations of all USTs at the Facility:
  - a. Cease dispensing fuel from the USTs;
  - b. Cease receiving deliveries of regulated substances into the USTs;
  - c. Padlock the dispensers;
  - d. Empty the USTs of all regulated substances in accordance with 30 TEX. ADMIN. CODE § 334.54(d); and
  - e. Temporarily remove the USTs from service in accordance with 30 TEX. ADMIN. CODE § 334.54.
2. Respondents' USTs shall remain out of service, pursuant to TEX. WATER CODE § 26.3475 and as directed by Ordering Provision Nos. 1.a. through 1.e., until such time as Respondents demonstrate to the satisfaction of the Executive Director that the release detection violation noted in Findings of Fact Nos. 2.d. through 2.h. and Conclusions of Law Nos. 5 through 9 have been corrected.
3. If Respondents elect to permanently remove from service any portion of the UST system at the Facility, Respondents shall, immediately upon the effective date of the Order, permanently remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.55, and within 15 days after the effective date of this Order, shall submit a written report documenting compliance with 30 TEX. ADMIN. CODE § 334.55 to:

Petroleum Storage Tank Registration Team, MC 138  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087
4. Respondents' UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Respondents shall cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ in accordance with 30 TEX. ADMIN. CODE §§ 334.7 and 334.8. Respondents may submit an application for a new fuel delivery certificate only after Respondents have complied with all of the requirements set forth in this Order.
5. Within 10 days after the effective date of this Order, Respondents shall send their UST fuel delivery certificate to:

Petroleum Storage Tank Registration Team, MC 138  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

6. Within 15 days after the effective date of this Order, Respondents shall submit a detailed written report documenting the steps taken to comply with Ordering Provision Nos. 1.a. through 1.e. and 5. The written report shall include detailed supporting documentation such as photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall 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, written report, and supporting documentation shall be submitted to:

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

and:

Barry Kalda, Waste Section Manager  
Austin Regional Office  
Texas Commission on Environmental Quality  
2800 S. IH 35, Suite 100  
Austin, Texas 78704-5712

7. Respondents are assessed an administrative penalty in the amount of seven thousand one hundred twenty-nine dollars (\$7,129.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondents' compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here.
8. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Abass Sayegh and Ray Sanjib d/b/a David's Exxon; Docket No. 2010-1302-PST-E" to:

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

9. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline, Respondents shall undertake the following technical requirements:
  - a. Begin conducting effective manual or automatic inventory control procedures for all USTs, in accordance with 30 TEX. ADMIN. CODE § 334.48 (Conclusion of Law No. 4);
  - b. Permanently apply or affix tags, labels, or markings to the UST fill tubes with an identification number that matches the number listed on the UST registration and self-certification form, in accordance with 30 TEX. ADMIN. CODE 334.8 (Conclusion of Law No. 2);
  - c. Begin maintaining all UST records, in accordance with 30 TEX. ADMIN. CODE § 334.10 (Conclusion of Law No. 3);
  - d. Conduct the annual piping tightness and line leak detector tests and implement a release detection method for all pressurized piping and USTs including volume measurement and reconciliation of inventory control records, in accordance with 30 TEX. ADMIN. CODE § 334.50 (Conclusions of Law Nos. 5 through 9); and
  - e. Obtain a new fuel delivery certificate from the TCEQ.
10. Upon obtaining a new fuel delivery certificate, Respondents shall post the fuel delivery certificate in a location at the Facility where the delivery certificate is clearly visible at all times, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii).
11. Within 10 days of resuming retail sales of gasoline, Respondents shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provisions Nos. 9 and 10. The certification shall be notarized by a State of Texas Notary Public and shall 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."

Respondents shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and:

Barry Kalda, Waste Section Manager  
Austin Regional Office  
Texas Commission on Environmental Quality  
2800 S. IH 35, Suite 100  
Austin, Texas 78704-5712

12. All relief not expressly granted in this Order is denied.
13. The provisions of this Order shall apply to and be binding upon Respondents. Respondents are ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
14. If Respondents fail to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondents' failure to comply is not a violation of this Order. Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondents shall notify the Executive Director within seven days after Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
15. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondents shall be made in writing to the Executive Director. Extensions are not effective until Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
16. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondents if the Executive Director determines that Respondents have not complied with one or more of the terms or conditions in this Order.
17. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
18. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date this Order was rendered, pursuant to TEX. GOV'T CODE § 2001.144(a)(3).

**S I G N A T U R E   P A G E**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF KARI L. GILBRETH**

STATE OF TEXAS                   §  
  §  
COUNTY OF TRAVIS               §

"My name is Kari L. Gilbreth. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Abass Sayegh and Ray Sanjib d/b/a David's Exxon" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on February 18, 2011.

The EDPRP was mailed to each Respondent's last known address on February 18, 2011, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green cards," each Respondent received notice of the EDPRP on February 22, 2011, as evidenced by the signatures on the cards.

More than 20 days have elapsed since Respondents received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

By letter dated July 19, 2011, sent via first class mail and certified mail, return receipt requested article no. 7011 0470 0000 2420 7850, I provided Abass Sayegh d/b/a David's Exxon with notice of the TCEQ's intent to order the USTs at the Facility shut down and removed from service if the violations pertaining to release detection were not corrected within 30 days of his receipt of the letter. According to the return receipt "green card," Abass Sayegh d/b/a David's Exxon received the notice on July 20, 2011.

By letter dated July 19, 2011, sent via first class mail and certified mail, return receipt requested article no. 7011 0470 0000 2420 7867, I provided Ray Sanjib d/b/a David's Exxon with notice of the TCEQ's intent to order the USTs at the Facility shut down and removed from service if the violations pertaining to release detection were not corrected within 30 days of his receipt of the letter. According to the return receipt "green card," Ray Sanjib d/b/a David's Exxon received the notice on July 20, 2011.

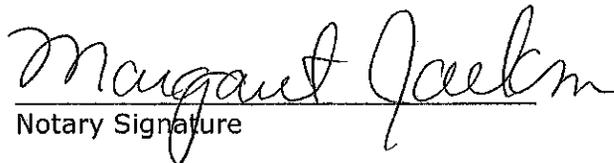
As of the date of this affidavit, I am not aware of any evidence that indicates that Respondents have corrected the violations noted during the June 23, 2010 investigation."

  
Kari L. Gilbreth, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

**Affidavit of Kari L. Gilbreth**  
**Page 2**

Before me, the undersigned authority, on this day personally appeared Kari L. Gilbreth, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 29<sup>th</sup> day of August, A.D. 2011.

  
Notary Signature

