

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO. 2010-0910-PST-E**

**RN101737138**

**CASE NO. 39805**

**RESPONDENT NAME: SAMI H. AWAD D/B/A SAMMYS MEMORIAL TEXACO**

<b>ORDER TYPE:</b>		
<input type="checkbox"/> AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input checked="" type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 14403 Memorial Drive, Houston, Harris County</p> <p><b>TYPE OF OPERATION:</b> convenience store with retail sales of gasoline</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints related to this enforcement action. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and Respondent expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired April 4, 2011. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Tammy L. Mitchell, Litigation Division, MC 175, (512) 239-3400                  Lena Roberts, Litigation Division, MC 175, (512) 239-3400  <b>TCEQ Enforcement Coordinator:</b> Thomas Greimel, Waste Enforcement Section, MC 128, (512) 239-5690  <b>TCEQ Regional Contact:</b> Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623  <b>Respondent:</b> Sammy H. Awad, 14403 Memorial Dr., Houston, TX 77079  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter.</p>		

<b>VIOLATION SUMMARY CHART:</b>		
<b>VIOLATION INFORMATION</b>	<b>PENALTY CONSIDERATIONS</b>	<b>CORRECTIVE ACTIONS TAKEN/REQUIRED</b>
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint:</b> none</p> <p><b>Date of Investigation:</b> April 20, 2010</p> <p><b>Date of NOE:</b> May 14, 2010</p> <p><b>Background Facts:</b> The EDPRP was filed on October 13, 2010, and mailed to Respondent via first class mail and certified mail, return receipt requested. According to the return receipt "green card," Respondent received the EDPRP on October 15, 2010. Respondent failed to file an answer and failed to request a hearing.</p> <p><b>Current Compliance Status:</b> Respondent has not yet submitted documentation demonstrating compliance with the technical requirements. Respondent's delivery certificate expired June 30, 2006.</p> <p><b>PST:</b></p> <ol style="list-style-type: none"> <li>Failed to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition, and failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days prior to the expiration date [30 TEX. ADMIN. CODE §§ 334.7(d)(3) and 334.8(c)(5)(B)(ii)].</li> <li>Failed to make available to the common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)].</li> <li>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 conduct reconciliation of inventory control</li> </ol>	<p><b>Total Assessed:</b> \$15,997</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>Total Due to General Revenue:</b> \$15,997</p> <p>This is a Default Order. Respondent has not actually paid any of the assessed administrative penalty but will be required to do so within 30 days under the terms of this Order.</p> <p><b>Compliance History Classifications:</b>  <i>Person/CN – Average</i>  <i>Site/RN – Average</i></p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>Respondent shall take the following steps to shut down operations of all USTs at the Station:</p> <ol style="list-style-type: none"> <li>Immediately: <ol style="list-style-type: none"> <li>Cease dispensing fuel from the USTs;</li> <li>Cease receiving deliveries of regulated substances into the USTs;</li> <li>Padlock the dispensers;</li> <li>Empty the USTs of all regulated substances; and</li> <li>Temporarily remove the USTs from service.</li> </ol> </li> <li>Respondent's USTs shall remain out of service until such time as Respondent demonstrates to the satisfaction of the Executive Director that violation nos. 3 and 6 have been corrected.</li> <li>If Respondent elects to permanently remove from service any portion of the UST system, Respondent shall immediately permanently remove the UST system from service, and within 15 days submit a written report documenting compliance.</li> <li>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 set forth in the Order.</li> <li>Within 10 days, Respondent shall send his UST fuel delivery certificate to the TCEQ.</li> <li>Within 15 days, Respondent shall submit documentation certifying compliance with Ordering Provision Nos. 1 and 5.</li> <li>Prior to receiving deliveries of gasoline and resuming retail sales of gasoline Respondent shall:</li> </ol>

**RESPONDENT NAME: SAMI H. AWAD  
DBA SAMMYS MEMORIAL TEXACO  
DOCKET NO. 2010-0910-PST-E**

<b>VIOLATION SUMMARY CHART:</b>		
<b>VIOLATION INFORMATION</b>	<b>PENALTY CONSIDERATIONS</b>	<b>CORRECTIVE ACTIONS TAKEN/REQUIRED</b>
<p>records at least once a 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 failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day [30 TEX. ADMIN. CODE § 334.50(b)(1)(A), (d)(1)(B)(ii) and (d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>4. Failed to conduct effective manual or automatic inventory control procedures for the UST system at the Station [30 TEX. ADMIN. CODE § 334.48(c)].</p> <p>5. Failed to ensure that a legible tag, label, or marking with the tank number, according to the UST registration and self-certification form, 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 on each UST at the Station [30 TEX. ADMIN. CODE § 334.8(c)(5)(C)].</p> <p>6. Failed to ensure that all spill and overfill prevention devices are maintained in good operating condition; and failed to provide proper overfill prevention equipment [30 TEX. ADMIN. CODE § 334.51(a)(6) and (b)(2)(C) and TEX. WATER CODE § 26.3475(c)(2)].</p> <p>7. Failed to maintain a record at the Station of the dates on which gasoline was delivered to the dispensing Station [30 TEX. ADMIN. CODE § 115.226(1) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p>		<p>a. Submit a properly completed UST registration and self-certification form;</p> <p>b. Install and implement a release detection method for all USTs at the Station, including volume measurement and reconciliation of inventory control records;</p> <p>c. Begin conducting effective manual or automatic inventory control procedures;</p> <p>d. 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;</p> <p>e. Install and maintain all spill and overfill prevention equipment;</p> <p>f. Begin maintaining fuel delivery records at the Station; and</p> <p>g. Obtain a new fuel delivery certificate from the TCEQ.</p> <p>8. Upon obtaining a new delivery certificate, Respondent shall post the fuel delivery certificate in a location at the Station where the delivery certificate is clearly visible at all times.</p> <p>9. Within 10 days, submit written certification demonstrating compliance with Ordering Provision Nos. 7 and 8.</p>

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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>	17-May-2010			
	<b>PCW</b>	16-Sep-2010	<b>Screening</b>	28-May-2010	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>					
<b>Respondent</b>	Sami H. Awad dba Sammys Memorial Texaco				
<b>Reg. Ent. Ref. No.</b>	RN101737138				
<b>Facility/Site Region</b>	12-Houston	<b>Major/Minor Source</b>	Minor		

<b>CASE INFORMATION</b>					
<b>Enf./Case ID No.</b>	39805	<b>No. of Violations</b>	7		
<b>Docket No.</b>	2010-0910-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>	Thomas Greimel		
		<b>EC's Team</b>	Enforcement Team 7		
<b>Admin. Penalty \$ Limit</b>	<b>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>	\$12,500
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	25.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$3,125
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<b>Notes</b>	Enhancement for one previous NOV with a same or similar violation and one 1660 order.
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<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$559	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$4,450	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$15,625
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	2.4%	<b>Adjustment</b>	\$372
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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. 1.
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<b>Final Penalty Amount</b>	\$15,997
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$15,997
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<b>DEFERRAL</b>	0.0%	Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>Notes</b>	Deferral not offered for non-expedited settlement.
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<b>PAYABLE PENALTY</b>	\$15,997
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**Screening Date** 28-May-2010

**Docket No.** 2010-0910-PST-E

**PCW**

**Respondent** Sami H. Awad dba Sammays Memorial Texaco

*Policy Revision 2 (September 2002)*

**Case ID No.** 39805

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN101737138

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** Thomas Greimel

### Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	1	20%
	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)** 25%

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

No

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

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

Average Performer

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

**>> Compliance History Summary**

**Compliance History Notes**

Enhancement for one previous NOV with a same or similar violation and one 1660 order.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 25%

Screening Date 28-May-2010

Docket No. 2010-0910-PST-E

PCW

Respondent Sami H. Awad dba Sammys Memorial Texaco

Policy Revision 2 (September 2002)

Case ID No. 39805

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101737138

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 334.7(d)(3) and 334.8(c)(5)(B)(ii)

Violation Description Failed to provide an amended registration for any change or additional information regarding the underground storage tanks ("USTs") within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the out-of-service status of the super grade UST. Failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self certification at least 30 days prior to the expiration date. Specifically, the delivery certificate expired on July 1, 2006.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

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

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 4 1457 Number of violation days

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

Violation Base Penalty \$4,000

Four annual events are recommended.

Good Faith Efforts to Comply

0.0% Reduction \$0

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

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$4,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$378

Violation Final Penalty Total \$5,119

This violation Final Assessed Penalty (adjusted for limits) \$5,119

## Economic Benefit Worksheet

**Respondent** Sami H. Awad dba Sammys Memorial Texaco  
**Case ID No.** 39805  
**Reg. Ent. Reference No.** RN101737138  
**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)	\$100	20-Apr-2010	30-Jan-2011	0.78	\$0	\$5	\$5
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

#### Notes for DELAYED costs

Estimated cost to accurately prepare and submit an updated UST registration and obtain a current TCEQ delivery certificate. The Date Required is the investigation date. The Final Date is the date 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]	\$300	1-Jun-2006	20-Apr-2010	4.81	\$72	\$300	\$372
Other (as needed)				0.00	\$0	\$0	\$0

#### Notes for AVOIDED costs

Estimated avoided cost (\$100 per full year) to accurately prepare and submit an updated UST registration and obtain a TCEQ delivery certificate. The Date Required is 30 days prior to the expiration date of the delivery certificate and the Final Date is the date of the investigation.

Approx. Cost of Compliance

\$400

**TOTAL**

\$378

**Screening Date** 28-May-2010 **Docket No.** 2010-0910-PST-E **PCW**  
**Respondent** Sami H. Awad dba Sammys Memorial Texaco *Policy Revision 2 (September 2002)*  
**Case ID No.** 39805 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN101737138  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Thomas Greimel

**Violation Number**   
**Rule Cite(s)**   
**Violation Description**

**Base Penalty**

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="5%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text" value="x"/>	

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

**Matrix Notes**

**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"/>	<input type="text" value="(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** Sami H. Awad dba Sammys Memorial Texaco  
**Case ID No.** 39805  
**Reg. Ent. Reference No.** RN101737138  
**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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Economic benefit included in Violation No. 1.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

**TOTAL**

\$0

<b>Screening Date</b>	28-May-2010	<b>Docket No.</b>	2010-0910-PST-E	<b>PCW</b>
<b>Respondent</b>	Sami H. Awad dba Sammys Memorial Texaco			<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b>	39805			<i>PCW Revision October 30, 2008</i>
<b>Reg. Ent. Reference No.</b>	RN101737138			
<b>Media [Statute]</b>	Petroleum Storage Tank			
<b>Enf. Coordinator</b>	Thomas Greimel			
<b>Violation Number</b>	3			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 334.50(b)(1)(A), (d)(1)(B)(ii), and (d)(1)(B)(iii)(I) and Tex. Water Code § 26.3475(c)(1)			
<b>Violation Description</b>	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 conduct reconciliation of inventory control records at least once a 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. Failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day.			
		<b>Base Penalty</b>	\$10,000	

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

<b>OR</b>		<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor	
	Actual				<b>Percent</b> 25%
Potential	x				

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
					<b>Percent</b> 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      38 Number of violation days

<i>mark only one with an x</i>	daily	
	weekly	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

**Violation Base Penalty** \$2,500

One quarterly event is recommended from the April 20, 2010 investigation date to the May 28, 2010 screening date.

**Good Faith Efforts to Comply**      0.0% Reduction      \$0

	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** \$2,500

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

Estimated EB Amount \$59      Violation Final Penalty Total \$3,199

**This violation Final Assessed Penalty (adjusted for limits)** \$3,199

## Economic Benefit Worksheet

**Respondent** Sami H. Awad dba Sammys Memorial Texaco  
**Case ID No.** 39805  
**Reg. Ent. Reference No.** RN101737138  
**Media** Petroleum Storage Tank  
**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				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	20-Apr-2010	30-Jan-2011	0.78	\$59	n/a	\$59

Notes for DELAYED costs

Estimated cost to provide a method of release detection for the UST system including volume measurement and reconciliation of inventory control records. The Date Required is the investigation date. The 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**

\$59

**Screening Date** 28-May-2010 **Docket No.** 2010-0910-PST-E **PCW**  
**Respondent** Sami H. Awad dba Sammys Memorial Texaco *Policy Revision 2 (September 2002)*  
**Case ID No.** 39805 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN101737138  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Thomas Greimel

**Violation Number** 4  
**Rule Cite(s)** 30 Tex. Admin. Code § 334.48(c)  
**Violation Description** Failed to conduct effective manual or automatic inventory control procedures for the UST system at the Station.

**Base Penalty** \$10,000

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

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

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
					0%

**Matrix Notes** Human health or the environment will or could be exposed to 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 38 Number of violation days

*mark only one with an x*

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

**Violation Base Penalty** \$2,500

One quarterly event is recommended based on documentation from April 20, 2010 investigation date to the May 28, 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 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** \$20 **Violation Final Penalty Total** \$3,199

**This violation Final Assessed Penalty (adjusted for limits)** \$3,199

## Economic Benefit Worksheet

**Respondent** Sami H. Awad dba Sammys Memorial Texaco  
**Case ID No.** 39805  
**Reg. Ent. Reference No.** RN101737138  
**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	\$500	20-Apr-2010	30-Jan-2011	0.78	\$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. The 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

\$500

TOTAL

\$20

<b>Screening Date</b>	28-May-2010	<b>Docket No.</b>	2010-0910-PST-E	<b>PCW</b>
<b>Respondent</b>	Sami H. Awad dba Sammys Memorial Texaco			<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b>	39805			<i>PCW Revision October 30, 2008</i>
<b>Reg. Ent. Reference No.</b>	RN101737138			
<b>Media [Statute]</b>	Petroleum Storage Tank			
<b>Enf. Coordinator</b>	Thomas Greimel			
<b>Violation Number</b>	5			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 334.8(c)(5)(C)			
<b>Violation Description</b>	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 according to the UST registration and self-certification form.			
		<b>Base Penalty</b>	\$10,000	

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

<b>OR</b>	<b>Release</b>	<b>Harm</b>			<b>Percent</b>
		Major	Moderate	Minor	
	Actual				0%
	Potential				
<b>&gt;&gt;Programmatic Matrix</b>					
	<b>Falsification</b>	Major	Moderate	Minor	<b>Percent</b>
		x			10%
<b>Matrix Notes</b>	100% of the rule requirement was not met.				
			<b>Adjustment</b>	\$9,000	

\$1,000

**Violation Events**

<b>Number of Violation Events</b>	1	<b>Number of violation days</b>	38	<b>Violation Base Penalty</b>	\$1,000
<i>mark only one with an x</i>	daily				
	weekly				
	monthly				
	quarterly				
	semiannual				
	annual				
	single event	x			
One single event is recommended based on documentation of the violation during the April 20, 2010 investigation.					

**Good Faith Efforts to Comply** 0.0% Reduction \$0

		<b>Before NOV</b>	<b>NOV to EDRP/Settlement Offer</b>
<b>Extraordinary</b>			
<b>Ordinary</b>			
<b>N/A</b>	x		(mark with x)
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.		
		<b>Violation Subtotal</b>	\$1,000

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b>	\$2
<b>Violation Final Penalty Total</b>	\$1,280
<b>This violation Final Assessed Penalty (adjusted for limits)</b>	\$1,280

## Economic Benefit Worksheet

**Respondent** Sami H. Awad dba Sammys Memorial Texaco  
**Case ID No.** 39805  
**Reg. Ent. Reference No.** RN101737138  
**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)	\$50	20-Apr-2010	30-Jan-2011	0.78	\$2	n/a	\$2

Notes for DELAYED costs

Estimated cost to label the tank fill pipes. The Date Required is the investigation date. The 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

\$50

**TOTAL**

\$2

<b>Screening Date</b>	28-May-2010	<b>Docket No.</b>	2010-0910-PST-E	<b>PCW</b>
<b>Respondent</b>	Sami H. Awad dba Sammys Memorial Texaco			<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b>	39805			<i>PCW Revision October 30, 2008</i>
<b>Reg. Ent. Reference No.</b>	RN101737138			
<b>Media [Statute]</b>	Petroleum Storage Tank			
<b>Enf. Coordinator</b>	Thomas Greimel			
<b>Violation Number</b>	6			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 334.51(a)(6) and (b)(2)(C) and Tex. Water Code § 26.3475(c)(2)			
<b>Violation Description</b>	Failed to ensure that all spill and overflow prevention devices are maintained in good operating condition. Specifically, the sump bucket liners for the three in-service USTs were separated from the seal. Failed to provide proper overflow prevention equipment.			
<b>Base Penalty</b>	\$10,000			

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

<b>OR</b>	<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor
	Actual			
Potential		x		<b>Percent</b> 10%

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
					<b>Percent</b> 0%

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

**Adjustment** \$9,000

\$1,000

**Violation Events**

Number of Violation Events   Number of violation days

<i>mark only one with an x</i>	daily	
	weekly	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

**Violation Base Penalty** \$1,000

One quarterly event is recommended from the April 20, 2010 investigation date to the May 28, 2010 screening date.

**Good Faith Efforts to Comply**  Reduction

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

**Notes**  
The Respondent does not meet the good faith criteria for this violation.

**Violation Subtotal** \$1,000

**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** Sami H. Awad dba Sammys Memorial Texaco  
**Case ID No.** 39805  
**Reg. Ent. Reference No.** RN101737138  
**Media** Petroleum Storage Tank  
**Violation No.** 6

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment	\$1,500	20-Apr-2010	30-Jan-2011	0.78	\$4	\$78	\$82
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to install overfill protection equipment and repair the spill bucket seals. The Date Required is the investigation date. The 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**

\$82

**Screening Date** 28-May-2010 **Docket No.** 2010-0910-PST-E **PCW**  
**Respondent** Sami H. Awad dba Sammys Memorial Texaco *Policy Revision 2 (September 2002)*  
**Case ID No.** 39805 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN101737138  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Thomas Greimel

**Violation Number** 7  
**Rule Cite(s)** 30 Tex. Admin. Code § 115.226(1) and Tex. Health & Safety Code § 382.085(b)  
**Violation Description** Failed to maintain a record at the Station of the dates on which gasoline was delivered to the dispensing Station.

**Base Penalty** \$10,000

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual			
Potential					

**>> Programmatic Matrix**

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			x		
100% of the rule requirement was not met.					

**Adjustment** \$9,000

\$1,000

**Violation Events**

Number of violation days

<i>mark only one with an x</i>	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

**Violation Base Penalty** \$1,000

One single event is recommended based on documentation of the violation during the April 20, 2010 investigation.

**Good Faith Efforts to Comply**  Reduction \$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)
Notes	The Respondent does not meet the good faith criteria for this violation.	

**Violation Subtotal** \$1,000

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

**Estimated EB Amount** \$20 **Violation Final Penalty Total** \$1,280

**This violation Final Assessed Penalty (adjusted for limits)** \$1,280

## Economic Benefit Worksheet

**Respondent** Sami H. Awad dba Sammys Memorial Texaco  
**Case ID No.** 39805  
**Reg. Ent. Reference No.** RN101737138  
**Media** Petroleum Storage Tank  
**Violation No.** 7

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	20-Apr-2010	30-Jan-2011	0.78	\$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 all required Stage II records. The Date Required is the investigation date. The 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

\$500

TOTAL

\$20

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603687369 Awad, Sami H. Classification: AVERAGE Rating: 5.00  
Regulated Entity: RN101737138 Sammys Memorial Texaco Classification: AVERAGE Site Rating: 5.00  
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 23177  
REGISTRATION

Location: 14403 MEMORIAL DR, HOUSTON, TX, 77079  
TCEQ Region: REGION 12 - HOUSTON  
Date Compliance History Prepared: May 28, 2010  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: June 24, 2005 to June 24, 2010

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

Name: Thomas Greimel Phone: (512) 239-5690

## 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.

**Effective Date: 05/28/2006**

**ADMINORDER 2003-1114-PST-E**

Classification: Minor

Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)

30 TAC Chapter 37, SubChapter I 37.815(b)

Description: "Failure to demonstrate FA beginning 8/9/2002" from "Facility Status Report"

- 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 11/09/2006 (517243)

2 11/30/2006 (532298)

3 06/22/2009 (749358)

4 12/07/2009 (784029)

5 05/14/2010 (800596)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 11/09/2006 (517243)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(6)

Description: 30 Tex. Admin. Code Section 115.246 (6) - Failure to maintain a record of the results of the daily inspections conducted at the motor vehicle fuel dispensing facility in accordance with the provisions specified in § 115.244 of this title (relating to Inspection Requirements).

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(1)

Description: 30 Tex. Admin Code Section 115.246 (1)- Failure to maintain a copy of the California Air Resources Board (CARB) Executive Order(s) for the Stage II vapor recovery system and any related components installed at the facility.  
The facility did not have the correct copy of the CARB Order on site.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)

Description: 30 Tex. Admin. Code Section 115.245 (2)- Failure to verify proper operation of the Stage II equipment at least once every twelve months or upon major system replacement or modification, whichever occurs first.

- 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

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# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



<b>IN THE MATTER OF AN ENFORCEMENT ACTION CONCERNING SAMI H. AWAD DBA SAMMYS MEMORIAL TEXACO; RN101737138</b>	<b>§ § § § § §</b>	<b>BEFORE THE  TEXAS COMMISSION ON  ENVIRONMENTAL QUALITY</b>
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## **DEFAULT AND SHUTDOWN ORDER**

### **DOCKET NO. 2010-0910-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, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty, corrective action of the respondent, and revocation of the respondent's fuel delivery certificate. The Commission also considered the Executive Director's Motion requesting the entry of an Order requiring the respondent to shutdown and remove from service the underground storage tanks ("USTs") located at 14403 Memorial Drive in Houston, Harris County, Texas. The respondent made the subject of this Order is Sami H. Awad DBA Sammys Memorial Texaco ("Respondent").

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

### **FINDINGS OF FACT**

1. Respondent owns and operates, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), four underground storage tanks ("USTs") and a convenience store with retail sales of gasoline located at 14403 Memorial Drive in Houston, Harris County, Texas (the "Station"). The USTs at the Station are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contain a regulated petroleum substance as defined in the rules of the TCEQ. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
2. During an investigation conducted on April 20, 2010, a TCEQ Houston Regional Office investigator documented that Respondent:
  - a. Failed to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition, and failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days prior to the expiration date. Specifically, the registration was not updated to reflect the out-of-service status of the super grade UST, and the delivery certificate expired on July 1, 2006;

- b. Failed to make available to the common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST. Specifically, one fuel delivery was accepted without a delivery certificate;
  - c. 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 conduct reconciliation of inventory control records at least once a 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 failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day;
  - d. Failed to conduct effective manual or automatic inventory control procedures for the UST system at the Station;
  - e. Failed to ensure that a legible tag, label, or marking with the tank number, according to the UST registration and self-certification form, 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 UST at the Station;
  - f. Failed to ensure that all spill and overfill prevention devices are maintained in good operating condition. Specifically, the sump bucket liners for the three in-service USTs were separated from the seal. Also failed to provide proper overfill prevention equipment; and
  - g. Failed to maintain a record at the Station of the dates on which gasoline was delivered to the dispensing Station.
3. By letter dated May 14, 2010, the TCEQ Houston Regional Office provided Respondent 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 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 Sami H. Awad DBA Sammys Memorial Texaco," (the "EDPRP") in the TCEQ Chief Clerk's office on October 13, 2010.
  5. By letter dated October 13, 2010, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on October 15, 2010, as evidenced by the signature on the card. The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.
  6. More than 20 days have elapsed since Respondent received notice of the EDPRP provided by the Executive Director. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.

7. By letter dated November 19, 2010, the Executive Director provided Respondent with notice of TCEQ's intent to order the USTs at the Station to be shut down and removed from service if Respondent failed to correct the release detection and spill and overfill violations within 30 days after Respondent's receipt of the notice.
8. The USTs at the Station do not have release detection and spill and overfill prevention as required by 30 TEX. ADMIN. CODE §§ 334.50(b)(1)(A), (d)(1)(B)(ii) and (d)(1)(B)(iii)(I), 334.51(a)(6) and (b)(2)(C), and TEX. WATER CODE § 26.3475(c)(1) and (2), and may be releasing petroleum products to the environment. Therefore, conditions at the Station constitute an imminent peril to public health, safety, and welfare.
9. As of the date of entry of this Order, Respondent has not provided the Executive Director with documentation demonstrating that the release detection and spill and overfill prevention violations alleged in Findings of Fact Nos. 2.c. and 2.f. have been corrected.

#### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2. a., Respondent failed to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition, and failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days prior to the expiration date, in violation of 30 TEX. ADMIN. CODE §§ 334.7(d)(3) and 334.8(c)(5)(B)(ii).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to make available to the common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a).
4. As evidenced by Finding of Fact No. 2.c., Respondent 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 conduct reconciliation of inventory control records at least once a 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 failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A), (d)(1)(B)(ii) and (d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1).
5. As evidenced by Finding of Fact No. 2.d., Respondent failed to conduct effective manual or automatic inventory control procedures for the UST system at the Station, in violation of 30 TEX. ADMIN. CODE § 334.48(c).

6. As evidenced by Finding of Fact No. 2.e., Respondent failed to ensure that a legible tag, label, or marking with the tank number, according to the UST registration and self-certification form, 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 UST at the Station, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(C).
7. As evidenced by Finding of Fact No. 2.f., Respondent failed to ensure that all spill and overfill prevention devices are maintained in good operating condition, and failed to provide proper overfill prevention equipment, in violation of 30 TEX. ADMIN. CODE § 334.51(a)(6) and (b)(2)(C) and TEX. WATER CODE § 26.3475(c)(2).
8. As evidenced by Finding of Fact No. 2.g., Respondent failed to maintain a record at the Station of the dates on which gasoline was delivered to the dispensing Station, in violation of 30 TEX. ADMIN. CODE § 115.226(1) and TEX. HEALTH & SAFETY CODE § 382.085(b).
9. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
10. As evidenced by Finding of Fact No. 6, Respondent 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 Respondent and assess the penalty recommended by the Executive Director.
11. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent 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.
12. An administrative penalty in the amount of fifteen thousand nine hundred ninety-seven dollars (\$15,997.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
13. As evidenced by Findings of Fact Nos. 3, 7, and 9, Respondent failed to correct documented violations of Commission release detection and spill and overfill prevention requirements within 30 days after Respondent received notice of the violations and notice of the Executive Director's intent to shut down the Station.
14. 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.
15. 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.

16. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Respondent's UST fuel delivery certificate if the Commission finds that good cause exists.
17. Good cause for revocation of Respondent's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2 and 4 through 6, and Conclusions of Law Nos. 2 through 10.
18. As evidenced by Findings of Fact Nos. 8 and 9, current conditions at the Station 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, Respondent shall take the following steps to shut down operations of all USTs at the Station:
  - 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. Respondent's 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 Respondent demonstrates to the satisfaction of the Executive Director that the release detection and spill and overfill prevention violations noted in Findings of Fact Nos. 2.c and 2.f. and Conclusions of Law Nos. 4 and 7 have been corrected.
3. If Respondent elects to permanently remove from service any portion of the UST system at the Station, Respondent 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. Respondent's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Respondent 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. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements set forth in this Order.
5. Within 10 days after the effective date of this Order, Respondent shall send his 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, Respondent 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:

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

7. Respondent is assessed an administrative penalty in the amount of fifteen thousand nine hundred ninety-seven dollars (\$15,997.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's 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: Sami H. Awad DBA Sammys Memorial Texaco; Docket No. 2010-0910-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, Respondent shall undertake the following technical requirements:
- a. Submit a properly completed UST registration and self-certification form, in accordance with 30 TEX. ADMIN. CODE § 334.8 (Conclusion of Law No. 2);
  - b. Install and implement a release detection method for the USTs at the Station, including volume measurement and reconciliation of inventory control records, in accordance with 30 TEX. ADMIN. CODE § 334.50 (Conclusion of Law No. 4);
  - c. Begin conducting effective manual or automatic inventory control procedures for the USTs at the Station, in accordance with 30 TEX. ADMIN. CODE § 334.48 (Conclusion of Law No. 5);
  - d. 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. 6);
  - e. Install and maintain all spill and overfill prevention equipment, including but not limited to repair of the sump bucket liners and seals, for all USTs at the Station, in accordance with 30 TEX. ADMIN. CODE § 334.51 (Conclusion of Law No. 7);
  - f. Begin maintaining fuel delivery records at the Station, in accordance with 30 TEX. ADMIN. CODE § 115.226 (Conclusion of Law No. 8); and
  - g. Obtain a new fuel delivery certificate from the TCEQ (Conclusion of Law No. 3).
10. Upon obtaining a new fuel delivery certificate, Respondent shall post the fuel delivery certificate in a location at the Station 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, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision 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."

Respondent 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:

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

12. All relief not expressly granted in this Order is denied.
13. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Station operations referenced in this Order.
14. If Respondent fails 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, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

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 Respondent if the Executive Director determines that Respondent has 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 TAMMY L. MITCHELL**

STATE OF TEXAS

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§

COUNTY OF TRAVIS

"My name is Tammy L. Mitchell. 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.

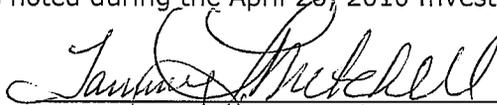
On behalf of the Executive Director of the Texas Commission on Environmental Quality, the 'Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Sami H. Awad DBA Sammys Memorial Texaco,' (the 'EDPRP') was filed in the TCEQ Chief Clerk's office on October 13, 2010.

The EDPRP was mailed to Respondent's last known address on October 13, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt 'green card,' Respondent received notice of the EDPRP on October 15, 2010, as evidenced by the signature on the card.

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

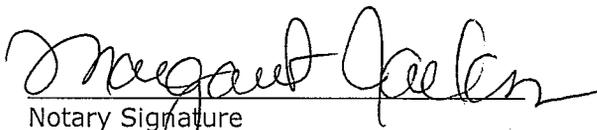
By letter dated November 19, 2010, sent via first class mail and certified mail, return receipt requested article no. 7010 0290 0002 7775 0810, I provided Respondent with notice of the TCEQ's intent to order the USTs at the Station shut down and removed from service if the violations pertaining to release detection, spill and overfill were not corrected within 30 days of Respondent's receipt of the letter. According to the return receipt "green card," Respondent received the notice on November 22, 2010.

As of the date of this affidavit, I am not aware of any evidence that indicates that Respondent has corrected the violations noted during the April 20, 2010 investigation."

  
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Tammy Mitchell, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 21st day of March, A.D. 2011.

  
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Notary Signature

