EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2010-1716-PST-E **TCEQ ID:** RN103062188 **CASE NO.:** 40572
RESPONDENT NAME: AMERICAN GROCERIES MANAGEMENT NO. 8, INC. dba Shop N Run

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	X PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Shop N Run, 14581 Farm-to-Market Road 1485, Conroe, Montgomery County

TYPE OF OPERATION: Convenience store with retail sales of gasoline

SMALL BUSINESS: X **Yes** ___ **No**

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

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on March 21, 2011. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Ms. Brianna Carlson, Enforcement Division, Enforcement Team 7, MC R-15, (956) 430-6021; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495
Respondent: Mr. Nooruddin Momin, President, AMERICAN GROCERIES MANAGEMENT NO. 8, INC., P.O. Box 2130, New Caney, Texas 77357
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint X Routine __ Enforcement Follow-up __ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** September 2, 2010 **Date of NOV/NOE Relating to this Case:** October 8, 2010 (NOE) **Background Facts:** This was a routine investigation. **WASTE** 1) Failed to maintain Stage II records at the Station. Specifically, employee Stage II training records were not available [30 TEX. ADMIN. CODE § 115.246(4) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. 2) Failed to renew a delivery certificate by submitting a properly completed underground storage tank ("UST") registration and self-certification form at least 30 days before the expiration date. Specifically, the delivery certificate expired on February 28, 2009 [30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)]. 3) Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, one fuel delivery was accepted without a delivery certificate [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)].	**Total Assessed:** $2,213 **Total Deferred:** $442 X Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid (Due) to General Revenue:** $231 (remaining $1,540 due in 11 monthly payments of $140 each) **Compliance History Classifications:** Person/CN - Average Site/RN - Average **Major Source:** __ Yes X No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Station: a. Began maintaining all Stage II records including employee training records at the Station on September 16, 2010; and b. Submitted an updated UST registration and self-certification form and obtained a valid, current TCEQ delivery certificate on September 7, 2010.

Additional ID No(s).: PST 38846

Penalty Calculation Worksheet (PCW)

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

TCEQ

DATES

Assigned	11-Oct-2010				
PCW	21-Oct-2010	**Screening**	15-Oct-2010	**EPA Due**	

RESPONDENT/FACILITY INFORMATION

Respondent	AMERICAN GROCERIES MANAGEMENT NO. 8, INC. dba Shop N Run		
Reg. Ent. Ref. No.	RN103062188		
Facility/Site Region	12-Houston	**Major/Minor Source**	Minor

CASE INFORMATION

Enf./Case ID No.	40572	**No. of Violations**	3
Docket No.	2010-1716-PST-E	**Order Type**	1660
Media Program(s)	Petroleum Storage Tank	**Government/Non-Profit**	No
Multi-Media		**Enf. Coordinator**	Brianna Carlson
		EC's Team	Enforcement Team 7

Admin. Penalty $ Limit Minimum $0 Maximum $10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1*: $2,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 9.0% Enhancement — *Subtotals 2, 3, & 7*: $225

Notes: Enhancement for one NOV with same/similar violations and two NOVs with dissimilar violations.

Culpability — No — 0.0% Enhancement — *Subtotal 4*: $0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments — *Subtotal 5*: $625

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

Total EB Amounts: $114
Approx. Cost of Compliance: $700
**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal*: $2,100

OTHER FACTORS AS JUSTICE MAY REQUIRE — 5.4% — *Adjustment*: $113

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with violation no. 2.

Final Penalty Amount: $2,213

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty*: $2,213

DEFERRAL — 20.0% Reduction — *Adjustment*: -$442

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY: $1,771

Screening Date 15-Oct-2010 **Docket No.** 2010-1716-PST-E **PCW**

Respondent AMERICAN GROCERIES MANAGEMENT NO. 8, INC. dba Shop N Run

Policy Revision 2 (September 2002)

Case ID No. 40572

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103062188

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Brianna Carlson

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 (*number of NOVs meeting criteria*)	1	5%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which notices were submitted)*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%

		Please Enter Yes or No	
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 9%

>> 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 NOV with same/similar violations and two NOVs with dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 9%

Screening Date 15-Oct-2010 **Docket No.** 2010-1716-PST-E **PCW**

Respondent AMERICAN GROCERIES MANAGEMENT NO. 8, INC. dba Shop N Run *Policy Revision 2 (September 2002)*

Case ID No. 40572 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN103062188

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Brianna Carlson

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 115.246(4) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to maintain Stage II records at the Station. Specifically, employee Stage II training records were not available.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

	Harm		
Release	Major	Moderate	Minor
Actual			
Potential			

OR

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

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

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 1 — 11 Number of violation days

mark only one with an x

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 September 2, 2010 investigation.

Good Faith Efforts to Comply

25.0% Reduction — $250

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

Notes: The Respondent came into compliance on September 16, 2010, prior to the Notice of Enforcement dated October 8, 2010.

Violation Subtotal $750

Economic Benefit (EB) for this violation

Estimated EB Amount $1

Statutory Limit Test

Violation Final Penalty Total $885

This violation Final Assessed Penalty (adjusted for limits) $885

Economic Benefit Worksheet

Respondent AMERICAN GROCERIES MANAGEMENT NO. 8, INC. dba Shop N Run
Case ID No. 40572
Reg. Ent. Reference No. RN103062188
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	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	2-Sep-2010	16-Sep-2010	0.04	$1	n/a	$1
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)				0.00	$0	n/a	$0
Notes for DELAYED costs	Estimated cost to maintain Stage II records. The date required is the investigation date and the final date is the date of compliance.						
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Notes for AVOIDED costs							

Approx. Cost of Compliance $500

TOTAL $1

Screening Date 15-Oct-2010 **Docket No.** 2010-1716-PST-E **PCW**

Respondent AMERICAN GROCERIES MANAGEMENT NO. 8, INC. dba Shop N Run *Policy Revision 2 (September 2002)*

Case ID No. 40572 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN103062188

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Brianna Carlson

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)

Violation Description Failed to renew a delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date. Specifically, the delivery certificate expired on February 28, 2009.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

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

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events: 1 — 587 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $1,000

One single event is recommended.

Good Faith Efforts to Comply

25.0% Reduction — $250

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

Notes: The Respondent came into compliance on September 7, 2010, prior to the Notice of Enforcement dated October 8, 2010.

Violation Subtotal $750

Economic Benefit (EB) for this violation

Estimated EB Amount $113

Statutory Limit Test

Violation Final Penalty Total $885

This violation Final Assessed Penalty (adjusted for limits) $885

Economic Benefit Worksheet

Respondent AMERICAN GROCERIES MANAGEMENT NO. 8, INC. dba Shop N Run
Case ID No. 40572
Reg. Ent. Reference No. RN103062188
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	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	2-Sep-2010	7-Sep-2010	0.01	$0	n/a	$0
Notes for DELAYED costs	Estimated cost to obtain a current TCEQ delivery certificate. The date required is the investigation date and the final date is the 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]	$100	28-Jan-2009	2-Sep-2010	2.51	$13	$100	$113
Other (as needed)				0.00	$0	$0	$0
Notes for AVOIDED costs	Estimated cost to obtain a current TCEQ delivery certificate. The date required is 30 days prior to the expiration date of the delivery certificate and the final date is the investigation date.						

Approx. Cost of Compliance $200

TOTAL $113

Screening Date 15-Oct-2010 **Docket No.** 2010-1716-PST-E **PCW**

Respondent AMERICAN GROCERIES MANAGEMENT NO. 8, INC. dba Shop N I *Policy Revision 2 (September 2002)*

Case ID No. 40572 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN103062188

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Brianna Carlson

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(A)(i) and Tex. Water Code § 26.3467(a)

Violation Description Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, one fuel delivery was accepted without a delivery certificate.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			x

Percent 5%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

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

Adjustment $9,500

$500

Violation Events

Number of Violation Events 1 — 1 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $500

One single event is recommended for the fuel delivery.

Good Faith Efforts to Comply

25.0% Reduction — $125

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

Notes: The Respondent came into compliance on September 7, 2010, prior to the Notice of Enforcement dated October 8, 2010.

Violation Subtotal $375

Economic Benefit (EB) for this violation

Estimated EB Amount $0

Statutory Limit Test

Violation Final Penalty Total $443

This violation Final Assessed Penalty (adjusted for limits) $443

Economic Benefit Worksheet

Respondent AMERICAN GROCERIES MANAGEMENT NO. 8, INC. dba Shop N Run
Case ID No. 40572
Reg. Ent. Reference No. RN103062188
Media Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	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. 2.						
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

Compliance History Report

Customer/Respondent/Owner-Operator: CN603266495 AMERICAN GROCERIES MANAGEMENT NO. 8, INC. Classification: AVERAGE Rating: 6.50

Regulated Entity: RN103062188 SHOP N RUN Classification: AVERAGE Site Rating: 6.50

ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 38846

Location: 14581 Farm-to-Market Road 1485, CONROE, TX, 77306

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: October 15, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: October 15, 2005 to October 15, 2010

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

Name: Brianna Carlson Phone: 956-430-6021

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 09/10/2007 (570715)

2 11/20/2007 (608736)

3 11/02/2009 (780103)

4 10/08/2010 (864009)

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

Date: 09/10/2007 (570715)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.242(1)(C)
Description: Failure to install an ORVR compatible system.
Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)
Description: Failure to repair or replace the loose vapor cap on the dry break.

Date: 11/20/2007 (608736)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.242(1)(C)
Description: Failure to install an ORVR compatible system.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)
Description: Failure to repair or replace the loose vapor cap on the dry break.

Date: 11/02/2009 (780103)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.246(7)(A)
Description: Failure to maintain records on-site and immediately available for review.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 115, SubChapter C 115.246(6)
Description: Failure to record daily inspections.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 115, SubChapter C 115.246(4)
Description: Failure to maintain a Stage II employee training documentation log.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 115, SubChapter C 115.246(3)
Description: Failure to maintain a record of maintenance.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 115, SubChapter C 115.246(5)
Description: Failure to maintain copies of previous Stage II tests on-site indefinitely.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 115, SubChapter C 115.245(6)
Description: Failure to submit a copy of the Stage II test results to the TCEQ Houston region office within 10 working days of the Stage II test.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.222(3)
30 TAC Chapter 115, SubChapter C 115.242(4)
Description: Failure to prevent vapor leaks in the balance system.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)
Description: Failure to remove the system from service after failing the TXP-102 (Pressure Decay) test.

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 AMERICAN GROCERIES MANAGEMENT NO. 8, INC. DBA SHOP N RUN RN103062188	**§ § § § § § § §**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2010-1716-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding AMERICAN GROCERIES MANAGEMENT NO. 8, INC. dba Shop N Run ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a convenience store with retail sales of gasoline at 14581 Farm-to-Market Road 1485 in Conroe, Montgomery County, Texas (the "Station").

2. The Respondent's two underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).

3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.

4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about October 13, 2010.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Two Thousand Two Hundred Thirteen Dollars ($2,213) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Hundred Thirty-One Dollars ($231) of the administrative penalty and Four Hundred Forty-Two Dollars ($442) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

   The remaining amount of One Thousand Five Hundred Forty Dollars ($1,540) of the administrative penalty shall be payable in 11 monthly payments of One Hundred Forty Dollars ($140) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Station:

   a. Began maintaining all Stage II records including employee training records at the Station on September 16, 2010.

   b. Submitted an updated UST registration and self-certification form and obtained a valid, current TCEQ delivery certificate on September 7, 2010.

10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.

11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

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

1. Failed to maintain Stage II records at the Station, in violation of 30 TEX. ADMIN. CODE § 115.246(4) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on September 2, 2010. Specifically, employee Stage II training records were not available.

2. Failed to renew a delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii), as documented during an investigation conducted on September 2, 2010. Specifically, the delivery certificate expired on February 28, 2009.

3. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a), as documented during an investigation conducted on September 2, 2010. Specifically, one fuel delivery was accepted without a delivery certificate.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: AMERICAN GROCERIES MANAGEMENT NO. 8, INC. dba Shop N Run, Docket No. 2010-1716-PST-E" to:

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

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

3. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

6. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

_____ 2/25/2011
For the Executive Director Date

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

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

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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

Noorud _____ 12/30/10
Signature Date

NOORUDDIN MOMIN _____ PRESIDENT
Name (Printed or typed) Title
Authorized Representative of
AMERICAN GROCERIES MANAGEMENT
NO. 8, INC. dba Shop N Run

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