

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO. 2010-1307-PST-E

RN102015997

CASE NO. 40185

RESPONDENT NAME: DHAN GURU INC D/B/A FOOD & FUEL 3

ORDER TYPE:		
<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	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATIONS OCCURRED: 10755 Veterans Memorial Drive, Houston, Harris County</p> <p>TYPE OF OPERATION: convenience store with retail sales of gasoline</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints related to this enforcement action. There is no record of additional pending enforcement action regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and Respondent expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired March 7, 2011. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675 Lena Roberts, Litigation Division, MC 175, (512) 239-0019 TCEQ Enforcement Coordinator: Philip Aldridge, Waste Enforcement Section, MC 128, (512) 239-0855 TCEQ Regional Contact: Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623 Respondent: Gurbax Singh, Director, DHAN GURU INC, 16310 Pebble Court, Houston, Texas 77083 Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO. 2010-1307-PST-E

RN102015997

CASE NO. 40185

RESPONDENT NAME: DHAN GURU INC D/B/A FOOD & FUEL 3

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaint(s): N/A</p> <p>Dates of Investigation: May 14, 2010 and June 3, 2010</p> <p>Dates of NOEs: July 25, 2010 and August 4, 2010</p> <p>Background Facts: The EDPRP was filed on December 3, 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 December 8, 2010. The first class mail has not been returned. Respondent failed to file an answer and failed to request a hearing.</p> <p>Current Compliance Status: Respondent has submitted documentation demonstrating compliance with Violation Nos. 1, 3, 6, 7, 8, and 9. Respondent's delivery certificate expires March 30, 2011 but will be revoked upon entry of this Default Order.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel [30 TEX. ADMIN. CODE § 115.246(4) and (6) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. Failed to conduct effective manual or automatic inventory control procedures for the UST involved in the retail sale of petroleum substances used as a motor fuel [30 TEX. ADMIN. CODE § 334.48(c)]. Failed to test the line leak detector at least once per year for performance and operational reliability [30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a)]. Failed to provide a release detection method for the UST by failing 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 [30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1)]. 	<p>Total Assessed: \$12,838</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Due to General Revenue: \$12,838</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 under the terms of this Order.</p> <p>Compliance History Classifications: <i>Person/CN</i> – Average <i>Site/RN</i> – Average</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken: The Executive Director recognizes that Respondent performed the following corrective actions:</p> <ol style="list-style-type: none"> Repaired the super unleaded dry break on May 24, 2010 (Violation 8); Submitted documentation reflecting the removal of liquid and debris, and that bimonthly inspections of the spill and overfill containers are being conducted, on May 24, 2010 (Violation 7); Began maintaining all UST records at the Station on May 26, 2010 (Violation 6); Began maintaining Stage II records at the Station, including the employee training records and daily inspection log, on June 3, 2010 (Violation 1); Successfully conducted Stage II annual system compliance testing on June 3, 2010 (Violation 9); and Successfully conducted the required line leak detector testing on June 3, 2010 (Violation 3). <p>Ordering Provisions:</p> <ol style="list-style-type: none"> Respondent shall take the following steps to shut down operations of the non-compliant UST system at the Station: <ol style="list-style-type: none"> Immediately: <ol style="list-style-type: none"> Cease dispensing fuel from the USTs; Cease receiving deliveries of regulated substances into the USTs; Padlock the dispensers; Empty the USTs of all regulated substances; and Temporarily remove the USTs from service. Respondent's UST shall remain out of service until such time as Respondent demonstrates to the satisfaction of the Executive Director that Violations 4 and 5 have been corrected.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>5. 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(d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>6. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b)].</p> <p>7. Failed to inspect all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the UST system at least once every 60 days to assure that the sides, bottoms, and any penetration points are maintained liquid-tight and free of liquid and debris [30 TEX. ADMIN. CODE § 334.42(i)].</p> <p>8. Failed to maintain the Stage II equipment in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system [30 TEX. ADMIN. CODE § 115.242(3)(J) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>9. Failed to verify proper operation of the Stage II equipment at least once every twelve months [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>		<p>3. 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.</p> <p>4. 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 this Order.</p> <p>5. Within 10 days, send its UST fuel delivery certificate to the TCEQ.</p> <p>6. Within 15 days, submit documentation certifying compliance with Ordering Provision Nos. 1 and 5.</p> <p>7. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline:</p> <ul style="list-style-type: none"> a. Begin conducting effective manual or automatic inventory control procedures for all USTs at the Station (Violation 2); b. Implement a release detection method for all USTs at the Station, including volume measurement and reconciliation of inventory control records (Violations 4 and 5); and c. Obtain a new fuel delivery certificate. <p>8. Upon obtaining a new fuel delivery certificate, 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 of resuming retail sales of gasoline, 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

DATES	Assigned	26-Jul-2010	Screening	3-Aug-2010	EPA Due	
	PCW	16-Nov-2010				

RESPONDENT/FACILITY INFORMATION						
Respondent	DHAN GURU INC d/b/a Food & Fuel 3					
Reg. Ent. Ref. No.	RN102015997					
Facility/Site Region	12-Houston	Major/Minor Source	Minor			

CASE INFORMATION						
Enf./Case ID No.	40185	No. of Violations	7			
Docket No.	2010-1307-PST-E	Order Type	1660			
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No			
Multi-Media		Enf. Coordinator	Philip Aldridge			
		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	\$11,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	5.0% Enhancement	Subtotals 2, 3, & 7	\$575
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Notes	Enhancement for one previous notice of violation with same/similar violations.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$854	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$3,753	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$12,075
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OTHER FACTORS AS JUSTICE MAY REQUIRE	6.3%	Adjustment	\$763
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Recommended enhancement to capture avoided costs associated with violation nos. 2, 4, and 6.
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Final Penalty Amount	\$12,838
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$12,838
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$12,838
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Screening Date 3-Aug-2010

Docket No. 2010-1307-PST-E

PCW

Respondent DHAN GURU INC d/b/a Food & Fuel 3

Policy Revision 2 (September 2002)

Case ID No. 40185

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102015997

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Philip Aldridge

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	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>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> 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 notice of violation with same/similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 3-Aug-2010

Docket No. 2010-1307-PST-E

PCW

Respondent DHAN GURU INC d/b/a Food & Fuel 3

Policy Revision 2 (September 2002)

Case ID No. 40185

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102015997

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Philip Aldridge

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 115.246(4) and (6) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel. Specifically, employee training records and the daily Stage II inspection log were not available for review.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual					0%
Potential					

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			10%
100% of the rule requirement was not met.					

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 81 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

	0.0% Reduction	
	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A		(mark with x)

Notes Good Faith Efforts to Comply reduction not offered for Default Orders.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$1,116

This violation Final Assessed Penalty (adjusted for limits) \$1,116

Economic Benefit Worksheet

Respondent DHAN GURU INC d/b/a Food & Fuel 3
Case ID No. 40185
Req. Ent. Reference No. RN102015997
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	14-May-2010	3-Jun-2010	0.05	\$1	n/a	\$1
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to maintain Stage II records at the Station. 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 3-Aug-2010

Docket No. 2010-1307-PST-E

PCW

Respondent DHAN GURU INC d/b/a Food & Fuel 3

Policy Revision 2 (September 2002)

Case ID No. 40185

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102015997

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Phillip Aldridge

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 115.245(2) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to verify proper operation of the Stage II equipment at least once every twelve months.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (25%).

>> Programmatic Matrix

Table with columns: 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 94 Number of violation days

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

Violation Base Penalty \$2,500

One annual event is recommended for the period preceding the June 3, 2010 investigation.

Good Faith Efforts to Comply

0.0% Reduction \$0

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

Notes Good Faith Efforts to Comply reduction not offered for Default Orders.

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$529

Violation Final Penalty Total \$2,791

This violation Final Assessed Penalty (adjusted for limits) \$2,791

Economic Benefit Worksheet

Respondent DHAN GURU INC d/b/a Food & Fuel 3
Case ID No. 40185
Req. Ent. Reference No. RN102015997
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

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]	\$500	1-Mar-2010	3-Jun-2010	1.18	\$29	\$500	\$529
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost for annual testing to verify proper operation of the Stage II equipment. The Date Required is the date the test was due and the Final Date is the date of compliance.

Approx. Cost of Compliance

\$500

TOTAL

\$529

Screening Date 3-Aug-2010

Docket No. 2010-1307-PST-E

PCW

Respondent DHAN GURU INC d/b/a Food & Fuel 3

Policy Revision 2 (September 2002)

Case ID No. 40185

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102015997

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Phillip Aldridge

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.48(c)

Violation Description Failed to conduct effective manual or automatic inventory control procedures for the underground storage tank ("UST") involved in the retail sale of petroleum substances used as a motor fuel.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (25%).

>> Programmatic Matrix

Table with columns: 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 81 Number of violation days

Table for event frequency: daily, weekly, monthly, quarterly (marked with x), semiannual, annual, single event. Violation Base Penalty \$2,500.

One quarterly event is recommended based on documentation of the violation during the May 14, 2010 investigation to the August 3, 2010 screening date.

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 good faith criteria for this violation.

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$22 Violation Final Penalty Total \$2,791

This violation Final Assessed Penalty (adjusted for limits) \$2,791

Economic Benefit Worksheet

Respondent DHAN GURU INC d/b/a Food & Fuel 3
Case ID No. 40185
Req. Ent. Reference No. RN102015997
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
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	14-May-2010	1-Apr-2011	0.88	\$22	n/a	\$22
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to conduct proper inventory control procedures. The Date Required is the investigation date and the Final Date is the 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

\$22

Screening Date 3-Aug-2010

Docket No. 2010-1307-PST-E

PCW

Respondent DHAN GURU INC d/b/a Food & Fuel 3

Policy Revision 2 (September 2002)

Case ID No. 40185

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102015997

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Phillip Aldridge

Violation Number 4

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

Violation Description

Failed to test the line leak detector at least once per year for performance and operational reliability. Failed to provide a release detection method for the UST by failing 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.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Harm		
	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

81 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 of the violation during the May 14, 2010 investigation to the August 3, 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 \$195

Violation Final Penalty Total \$2,791

This violation Final Assessed Penalty (adjusted for limits) \$2,791

Economic Benefit Worksheet

Respondent DHAN GURU INC d/b/a Food & Fuel 3
Case ID No. 40185
Req. Ent. Reference No. RN102015997
Media Petroleum Storage Tank
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	14-May-2010	1-Apr-2011	0.88	\$66	n/a	\$66

Notes for DELAYED costs

Estimated cost to monitor the UST for releases including volume measurement and monthly reconciliation of inventory control records. The Date Required is the investigation date and 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]	\$118	27-Jul-2009	3-Jun-2010	1.77	\$10	\$118	\$128
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct the required line leak detector testing. The Date Required is the date of ownership change and the Final Date is the compliance date.

Approx. Cost of Compliance

\$1,618

TOTAL

\$195

Screening Date 3-Aug-2010

Docket No. 2010-1307-PST-E

PCW

Respondent DHAN GURU INC d/b/a Food & Fuel 3

Policy Revision 2 (September 2002)

Case ID No. 40185

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102015997

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Philip Aldridge

Violation Number 5

Rule Cite(s) 30 Tex. Admin. Code § 334.10(b)

Violation Description Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	x			10%

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 81 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$1,000

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction \$0

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

Notes Good Faith Efforts to Comply reduction not offered for Default Orders.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$1,116

This violation Final Assessed Penalty (adjusted for limits) \$1,116

Economic Benefit Worksheet

Respondent DHAN GURU INC d/b/a Food & Fuel 3
Case ID No. 40185
Req. Ent. Reference No. RN102015997
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
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	14-May-2010	26-May-2010	0.03	\$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 UST 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 3-Aug-2010

Docket No. 2010-1307-PST-E

PCW

Respondent DHAN GURU INC d/b/a Food & Fuel 3

Policy Revision 2 (September 2002)

Case ID No. 40185

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102015997

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Phillip Aldridge

Violation Number 6

Rule Cite(s) 30 Tex. Admin. Code § 334.42(i)

Violation Description

Failed to inspect all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the UST system at least once every 60 days to assure that the sides, bottoms, and any penetration points are maintained liquid-tight and free of liquid and debris. Specifically, the spill buckets contained liquid and debris.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				10%
Potential		x		

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

Human health or the environment will or could be exposed to 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 1 10 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$1,000

One quarterly event is recommended based on documentation of the violation during the May 14, 2010 investigation date to the May 24, 2010 compliance date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary	
Ordinary	
N/A	(mark with x)

Notes

Good Faith Efforts to Comply reduction not offered for Default Orders.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$106

Violation Final Penalty Total \$1,116

This violation Final Assessed Penalty (adjusted for limits) \$1,116

Economic Benefit Worksheet

Respondent DHAN GURU INC d/b/a Food & Fuel 3
Case ID No. 40185
Req. Ent. Reference No. RN102015997
Media Petroleum Storage Tank
Violation No. 6

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

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

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$100	15-Mar-2010	24-May-2010	1.11	\$6	\$100	\$106
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost of conducting bimonthly inspections of the sumps, manways, overspill containers or catchment basins. The Date Required is 60 days before the investigation and the Final Date is the date of compliance.

Approx. Cost of Compliance

\$100

TOTAL

\$106

Screening Date 3-Aug-2010

Docket No. 2010-1307-PST-E

PCW

Respondent DHAN GURU INC d/b/a Food & Fuel 3

Policy Revision 2 (September 2002)

Case ID No. 40185

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102015997

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Phillip Aldridge

Violation Number 7

Rule Cite(s) 30 Tex. Admin. Code § 115.242(3)(J) and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to maintain the Stage II equipment in proper operating condition, as specified by the manufacture and/or any applicable California Air Resources Board Executive Order and free of defects that would impair the effectiveness of the system. Specifically, the super unleaded dry break was leaking.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do 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 1 10 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$1,000

One quarterly event is recommended based on documentation of the violation during the May 14, 2010 investigation date to the May 24, 2010 compliance date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary	
Ordinary	
N/A	(mark with x)

Notes

Good Faith Efforts to Comply reduction not offered for Default Orders.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$1,116

This violation Final Assessed Penalty (adjusted for limits) \$1,116

Economic Benefit Worksheet

Respondent DHAN GURU INC d/b/a Food & Fuel 3
Case ID No. 40185
Req. Ent. Reference No. RN102015997
Media Petroleum Storage Tank
Violation No. 7

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$35	14-May-2010	24-May-2010	0.03	\$0	n/a	\$0

Notes for DELAYED costs

Actual cost to repair super unleaded dry break, per receipt submitted by the Respondent. 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

\$35

TOTAL

\$0

Compliance History Report

Customer/Respondent/Owner-Operator: CN603546177 DHAN GURU INC Classification: AVERAGE Rating: 2.00
 Regulated Entity: RN102015997 FOOD & FUEL 3 Classification: AVERAGE Site Rating: 2.00
 ID Number(s): PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 66154
 Location: 10755 VETERANS MEMORIAL DR, HOUSTON, TX, 77038
 TCEQ Region: REGION 12 - HOUSTON
 Date Compliance History Prepared: August 02, 2010
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: August 02, 2005 to August 02, 2010
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
 Name: Phillip Aldridge Phone: (512) 239 - 0855

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? Yes
3. If Yes, who is the current owner/operator? OWNOPR DHAN GURU INC
4. If Yes, who was/were the prior owner(s)/operator(s)? OWNOPR TTP Petroleum Wholesale, L.L.C.
OWNOPR Petroleum Wholesale, L.P.
5. When did the change(s) in owner or operator occur? 07/27/2009 OWNOPR TTP Petroleum Wholesale, L.L.C.
OWNOPR Petroleum Wholesale, L.P.
6. Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	08/29/2006	(453628)
2	07/20/2010	(824553)
3	07/30/2010	(830580)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	08/29/2006	(453628)	CN603546177
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 115, SubChapter C 115.246(6) 5C THSC Chapter 382 382.085(b)		
Description:	Failure to maintain a daily inspection log according to 115.244 (Inspection Requirements).		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 115, SubChapter C 115.246(4) 5C THSC Chapter 382 382.085(b)		
Description:	Failure to maintain proof of attendance and completion of training as specified in 115.248 (state approved Stage II training course). At the time of the investigation Mr Judeh and Mr, Hariri indicated they had been trained but did not have their certificates at the facility.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 115, SubChapter C 115.245(6) 5C THSC Chapter 382 382.085(b)		
Description:	Failure to submit the results of all tests required by 115.245 (Testing Requirements) within 10 working days to the appropriate TCEQ regional office and any local air pollution control program with jurisdiction.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 115, SubChapter C 115.242(9) 5C THSC Chapter 382 382.085(b)		
Description:	TEX 115.242(9) Failure to post operating instructions conspicuously on the front of each dispenser equipped with a Stage II system. At the time of the investigation operating instructions were not posted on the front of any of the dispensers.		
 - 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



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
DHAN GURU INC D/B/A
FOOD & FUEL 3;
RN102015997**

**§
§
§
§
§
§**

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT AND SHUTDOWN ORDER

DOCKET NO. 2010-1307-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 tank ("UST") located at 10755 Veterans Memorial Drive in Houston, Harris County, Texas. The respondent made the subject of this Order is DHAN GURU INC d/b/a Food & Fuel 3 ("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), one underground storage tank ("UST") and a convenience store with retail sales of gasoline located at 10755 Veterans Memorial Drive in Houston, Harris County, Texas (the "Station"). The UST at the Station is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contains 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 May 14, 2010, a TCEQ Houston Regional Office investigator documented that Respondent:
 - a. Failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel. Specifically, employee training records and the daily Stage II inspection log were not available for review;
 - b. Failed to conduct effective manual or automatic inventory control procedures for a UST involved in the retail sale of petroleum substances used as a motor fuel;

- c. Failed to test the line leak detector at least once per year for performance and operational reliability;
 - d. Failed to provide a release detection method for the UST by failing 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;
 - e. Failed to record inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day;
 - f. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel;
 - g. Failed to inspect all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the UST system at least once every 60 days to assure that the sides, bottoms, and any penetration points are maintained liquid-tight and free of liquid and debris. Specifically, the spill buckets contained liquid and debris; and
 - h. Failed to maintain the Stage II equipment in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order and free of defects that would impair the effectiveness of the system. Specifically, the super unleaded dry break was leaking.
3. During an investigation conducted on June 3, 2010, a TCEQ Houston Regional investigator documented that Respondent failed to verify proper operation of the Stage II equipment at least once every twelve months.
 4. By letters dated July 25, 2010, and August 4, 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/or overfill prevention, corrosion protection, and/or financial assurance requirements if the violations are not corrected.
 5. The Executive Director recognizes that Respondent implemented the following corrective measures at the Station:
 - a. Repaired the super unleaded dry break on May 24, 2010 (Conclusion of Law No. 9);
 - b. Submitted documentation reflecting the removal of liquid and debris, and that bimonthly inspections of the spill and overfill containers are being conducted, on May 24, 2010 (Conclusion of Law No. 8);
 - c. Began maintaining all UST records at the Station on May 26, 2010 (Conclusion of Law No. 7);
 - d. Began maintaining Stage II records at the Station, including the employee training records and daily inspection log, on June 3, 2010 (Conclusion of Law No. 2);

- e. Successfully conducted Stage II annual system compliance testing on June 3, 2010 (Conclusion of Law No. 10); and
 - f. Successfully conducted the required line leak detector testing on June 3, 2010 (Conclusion of Law No. 4).
6. 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 DHAN GURU INC d/b/a Food & Fuel 3" (the "EDPRP") in the TCEQ Chief Clerk's office on December 3, 2010.
 7. By letter dated December 3, 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 December 8, 2010, as evidenced by the signature on the card.
 8. 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.
 9. By letter dated January 10, 2011, the Executive Director provided Respondent with notice of TCEQ's intent to order the UST at the Station to be shut down and removed from service if Respondent failed to correct the release detection violation within 30 days after Respondent's receipt of the notice.
 10. The UST at the Station does not have release detection as required by 30 TEX. ADMIN. CODE § 334.50 (d)(1)(B)(ii) and (d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1) and may be releasing petroleum products to the environment. Therefore, conditions at the Station constitute an imminent peril to public health, safety, and welfare.
 11. As of the date of entry of this Order, Respondent has not provided the Executive Director with documentation demonstrating that the release detection violations alleged in Findings of Fact Nos. 2.d. and 2.e. 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 maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 115.246(4) and (6) and TEX. HEALTH & SAFETY Code § 382.085(b).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to conduct effective manual or automatic inventory control procedures for a UST involved in the retail sale of petroleum substances used as a motor fuel, in violation of 30 TEX. ADMIN. CODE § 334.48(c).

4. As evidenced by Finding of Fact No. 2.c., Respondent failed to test the line leak detector at least once per year for performance and operational reliability, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a).
5. As evidenced by Finding of Fact No. 2.d., Respondent failed to provide a release detection method for the UST by failing 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, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1).
6. As evidenced by Finding of Fact No. 2.e., Respondent 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(d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1).
7. As evidenced by Finding of Fact No. 2.f., Respondent failed to maintain UST records and make them immediately available for inspection upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 334.10(b).
8. As evidenced by Finding of Fact No. 2.g., Respondent failed to inspect all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the UST system at least once every 60 days to assure that the sides, bottoms, and any penetration points are maintained liquid-tight and free of liquid and debris, in violation of 30 TEX. ADMIN. CODE § 334.42(i).
9. As evidenced by Finding of Fact No. 2.h., Respondent failed to maintain the Stage II equipment in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order and free of defects that would impair the effectiveness of the system, in violation of 30 TEX. ADMIN. CODE § 115.242(3)(J) and TEX. HEALTH & SAFETY CODE § 382.085(b).
10. As evidenced by Finding of Fact No. 3, Respondent failed to verify proper operation of the Stage II equipment at least once every twelve months, in violation of 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b).
11. As evidenced by Findings of Fact Nos. 6 and 7, 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).
12. As evidenced by Finding of Fact No. 8, 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.
13. 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.

14. An administrative penalty in the amount of twelve thousand eight hundred thirty-eight dollars (\$12,838.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
15. As evidenced by Findings of Fact Nos. 4 and 9 through 11, Respondent failed to correct documented violations of Commission release detection requirements within 30 days after Respondent received notice of the violations and notice of the Executive Director's intent to shut down the Station.
16. 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.
17. 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.
18. 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.
19. Good cause for revocation of Respondent's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2, 3, and 6 through 8, and Conclusions of Law Nos. 2 through 12.
20. As evidenced by Findings of Fact Nos. 10 and 11, 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 the UST at the Station:
 - a. Cease dispensing fuel from the UST;
 - b. Cease receiving deliveries of regulated substances into the UST;
 - c. Padlock the dispensers;
 - d. Empty the UST of all regulated substances in accordance with 30 TEX. ADMIN. CODE § 334.54(d); and
 - e. Temporarily remove the UST from service in accordance with 30 TEX. ADMIN. CODE § 334.54.

2. Respondent's UST 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 violations noted in Findings of Fact Nos. 2.d. and 2.e. and Conclusions of Law Nos. 5 and 6 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 its 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
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

7. Respondent is assessed an administrative penalty in the amount of twelve thousand eight hundred thirty-eight dollars (\$12,838.00) 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: DHAN GURU INC d/b/a Food & Fuel 3; Docket No. 2010-1307-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. Begin conducting effective manual or automatic inventory control procedures for the UST at the Station, in accordance with 30 TEX. ADMIN. CODE § 334.48 (Conclusion of Law No. 3);
 - b. Implement a release detection method for the UST at the Station, including volume measurement and reconciliation of inventory control records, in accordance with 30 TEX. ADMIN. CODE § 334.50 (Conclusions of Law Nos. 5 and 6); and
 - c. Obtain a new fuel delivery certificate from the TCEQ.
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

For the Commission

AFFIDAVIT OF PHILLIP M. GOODWIN

STATE OF TEXAS

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COUNTY OF TRAVIS

"My name is Phillip M. Goodwin. 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 DHAN GURU INC d/b/a Food & Fuel 3," (the "EDPRP") was filed in the TCEQ Chief Clerk's office on December 3, 2010.

The EDPRP was mailed to Respondent's last known address on December 3, 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 December 8, 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 January 10, 2011, sent via first class mail and certified mail, return receipt requested Article No. 7003 0500 0002 9937 2582, I provided Respondent with notice of the TCEQ's intent to order the UST at the Station shut down and removed from service if the violations pertaining to release detection were not corrected within 30 days of Respondent's receipt of the letter.

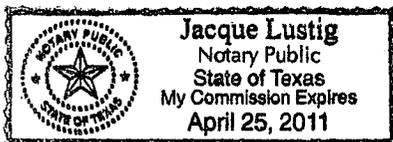
As of the date of this affidavit, I am not aware of any evidence that indicates that Respondent has corrected the violations related to release detection noted during the May 14, 2010 investigation."



Phillip M. Goodwin, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Phillip M. Goodwin, 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 10th day of January, A.D. 2011.




Notary Signature