

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO. 2009-2052-PST-E

RN102232055

CASE NO. 38879

RESPONDENT NAME: TIKI FOOD MART, L.L.C.

ORDER TYPE:		
<input checked="" type="checkbox"/> AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	

CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL 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

SITE WHERE VIOLATIONS OCCURRED: 200 Tiki Drive, Galveston, Galveston County

TYPE OF OPERATION: convenience store with retail sales of gasoline

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: One complaint was received, alleging that water was present in the gasoline at the Facility. There is no record of additional pending enforcement action regarding this facility location.

INTERESTED PARTIES: The complainant has not indicated a desire to protest this action or speak at Agenda. No one other than the ED and Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired March 7, 2011. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3400
Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Thomas Greimel, Waste Enforcement Section, MC 128, (512) 239-5690

TCEQ Regional Contact: Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623

Respondent: Naeem Sadruddin, President, Tiki Food Mart, L.L.C., 200 Tiki Drive, Galveston, Texas 77554

Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint: August 31, 2009</p> <p>Dates of Investigation: September 4 through November 16, 2009</p> <p>Date of NOE: December 4, 2009</p> <p>Background Facts: The EDRP was filed on May 28, 2010. The Agreed Order was signed on December 29, 2010.</p> <p>Current Compliance Status: Respondent has not yet submitted documentation demonstrating compliance with the technical requirements. Respondent's delivery certificate expires May 31, 2011.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b)]. Failed to perform an automatic test for substance loss that can detect a release which equals or exceeds a rate of 0.2 gallon per hour from any portion of the tank which contains regulated substances [30 TEX. ADMIN. CODE § 334.50(d)(4)(A)(ii)(II) and TEX. WATER CODE § 26.3475(c)(1)]. Failed to conduct effective manual or automatic inventory control procedures for the UST system [30 TEX. ADMIN. CODE § 334.48(c)]. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)]. Failed to submit a properly completed UST registration and self-certification form to the agency within 30 days of ownership change [30 TEX. ADMIN. CODE § 334.8(c)(4)(C)]. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into a UST [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)]. 	<p>Total Assessed: \$13,935</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 Paid/Due to General Revenue: \$390/\$13,545</p> <p>Respondent paid \$390 of the administrative penalty. The remaining amount of \$13,545 shall be payable in 35 monthly payments of \$387 each.</p> <p>Compliance History Classifications: <i>Person/CN – Average</i> <i>Site/RN – Average</i></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:</p> <p>The Executive Director recognizes that Respondent performed the following corrective actions:</p> <ol style="list-style-type: none"> On November 13, 2009, obtained acceptable financial assurance (violation no. 4); and On December 29, 2009, submitted a properly completed UST registration and self-certification (violation nos. 5 and 6). <p>Ordering Provisions:</p> <p>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Immediately begin conducting proper inventory control procedures for all USTs at the facility (violation no. 3). Within 30 days: <ol style="list-style-type: none"> Begin maintaining all UST records (violation no. 1); and Implement a release detection system for the USTs (violation no. 2) Within 45 days, submit written certification demonstrating compliance.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	7-Dec-2009			
	PCW	20-May-2010	Screening	14-Dec-2009	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	TIKI FOOD MART, L.L.C.				
Reg. Ent. Ref. No.	RN102232055				
Facility/Site Region	12-Houston	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	38879	No. of Violations	6		
Docket No.	2009-2052-PST-E	Order Type	1660		
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Thomas Greimel		
		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	7.0% Enhancement	Subtotals 2, 3, & 7	\$805
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Notes
Enhancement for one previous NOV with same or similar violations and one NOV without same or similar violations.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes
The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$1,100
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts \$2,830
Approx. Cost of Compliance \$5,200
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$11,205
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OTHER FACTORS AS JUSTICE MAY REQUIRE	24.4%	Adjustment	\$2,730
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes
Recommended enhancement to capture the avoided cost of compliance associated with Violation No. 4.

Final Penalty Amount	\$13,935
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$13,935
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes
Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$13,935
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Screening Date 14-Dec-2009

Docket No. 2009-2052-PST-E

PCW

Respondent TIKI FOOD MART, L.L.C.

Policy Revision 2 (September 2002)

Case ID No. 38879

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102232055

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	1	2%
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) 7%

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

No

Adjustment Percentage (Subtotal 3) 0%

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

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for one previous NOV with same or similar violations and one NOV without same or similar violations.

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

Screening Date 14-Dec-2009 **Docket No.** 2009-2052-PST-E **PCW**
Respondent TIKI FOOD MART, L.L.C. *Policy Revision 2 (September 2002)*
Case ID No. 38879 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102232055
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Thomas Greimel

Violation Number 1
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	Harm			Percent 0%	
	Release	Major	Moderate		Minor
	Actual				
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent 10%
		x			

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 28

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 the documentation of the violation during the September 4, 2009 through November 16, 2009 investigation.

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 \$1,000

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

Estimated EB Amount \$20

Violation Final Penalty Total \$1,331

This violation Final Assessed Penalty (adjusted for limits) \$1,331

Economic Benefit Worksheet

Respondent TIKI FOOD MART, L.L.C.
Case ID No. 38879
Reg. Ent. Reference No. RN102232055
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	16-Nov-2009	30-Aug-2010	0.79	\$20	n/a	\$20
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to maintain UST records. Date Required is the final date of the investigation. Final Date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$20

Screening Date 14-Dec-2009 **Docket No.** 2009-2052-PST-E **PCW**
Respondent TIKI FOOD MART, L.L.C. *Policy Revision 2 (September 2002)*
Case ID No. 38879 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102232055
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Thomas Greimel

Violation Number
Rule Cite(s)
Violation Description
Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="25%"/>
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

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

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days
 mark only one with an x
 daily
 weekly
 monthly
 quarterly
 semiannual
 annual
 single event
Violation Base Penalty

Good Faith Efforts to Comply Reduction

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

Notes
Violation Subtotal

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

Estimated EB Amount **Violation Final Penalty Total**
This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent TIKI FOOD MART, L.L.C.
Case ID No. 38879
Reg. Ent. Reference No. RN102232055
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)	\$1,500	16-Nov-2009	30-Aug-2010	0.79	\$59	n/a	\$59

Notes for DELAYED costs

Estimated cost to provide proper release detection for the USTs. The Date Required is the final date of the investigation. The Final Date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$59

Screening Date 14-Dec-2009

Docket No. 2009-2052-PST-E

PCW

Respondent TIKI FOOD MART, L.L.C.

Policy Revision 2 (September 2002)

Case ID No. 38879

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102232055

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

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 UST system at the Facility.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 28 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One monthly event is recommended from the September 4, 2009 through November 16, 2009 investigation to the December 14, 2009 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$20

Violation Final Penalty Total \$3,328

This violation Final Assessed Penalty (adjusted for limits) \$3,328

Economic Benefit Worksheet

Respondent TIKI FOOD MART, L.L.C.
Case ID No. 38879
Reg. Ent. Reference No. RN102232055
Media Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	16-Nov-2009	30-Aug-2010	0.79	\$20	n/a	\$20
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to conduct proper inventory control procedures. The Date Required is the final date of the investigation. The Final Date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$20

Screening Date 14-Dec-2009 **Docket No.** 2009-2052-PST-E **PCW**
Respondent TIKI FOOD MART, L.L.C. *Policy Revision 2 (September 2002)*
Case ID No. 38879 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102232055
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Thomas Greimel

Violation Number 4
Rule Cite(s) 30 Tex. Admin. Code § 37.815(a) and (b)
Violation Description Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs.
Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual			
Potential					

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			x		

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

Adjustment \$9,000
 \$1,000

Violation Events

Number of Violation Events: 4
 Number of violation days: 28

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$4,000

Four single events (one per tank) are recommended based on documentation of the violation during the September 4, 2009 through November 16, 2009 investigation.

Good Faith Efforts to Comply 25.0% Reduction \$1,000

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

Notes: The Respondent came into compliance with this violation on November 13, 2009.

Violation Subtotal \$3,000

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

Estimated EB Amount \$2,730 **Violation Final Penalty Total** \$4,080

This violation Final Assessed Penalty (adjusted for limits) \$4,080

Economic Benefit Worksheet

Respondent TIKI FOOD MART, L.L.C.
Case ID No. 38879
Reg. Ent. Reference No. RN102232055
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)				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]	\$2,600	14-Aug-2009	13-Nov-2009	1.00	\$130	\$2,600	\$2,730
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to provide financial assurance for the four petroleum USTs (\$650 per tank). The Date Required is the date of ownership change. The Final date is the date of compliance.

Approx. Cost of Compliance

\$2,600

TOTAL

\$2,730

Screening Date 14-Dec-2009 **Docket No.** 2009-2052-PST-E **PCW**
Respondent TIKI FOOD MART, L.L.C. *Policy Revision 2 (September 2002)*
Case ID No. 38879 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102232055
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Thomas Greimel

Violation Number 5

Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(4)(C)

Violation Description Failed to submit a properly completed UST registration and self-certification form to the agency within 30 days of ownership change. Specifically, ownership changed on August 14, 2009 and the Respondent did not submit an updated UST registration form.

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%

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 1

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 4, 2009 through November 16, 2009 investigation.

Good Faith Efforts to Comply 10.0% Reduction \$100

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

Notes The Respondent came into compliance with this violation on December 29, 2009.

Violation Subtotal \$900

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

Estimated EB Amount \$1 **Violation Final Penalty Total** \$1,207

This violation Final Assessed Penalty (adjusted for limits) \$1,207

Economic Benefit Worksheet

Respondent TIKI FOOD MART, L.L.C.
Case ID No. 38879
Reg. Ent. Reference No. RN102232055
Media Petroleum Storage Tank
Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

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

No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	13-Sep-2009	29-Dec-2009	0.29	\$1	n/a	\$1

Notes for DELAYED costs

Estimated cost to obtain a delivery certificate by submitting a properly completed UST registration and self-certification form. The Date Required is the date when the self-certification was due. 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

\$100

TOTAL

\$1

Screening Date 14-Dec-2009 **Docket No.** 2009-2052-PST-E **PCW**
Respondent TIKI FOOD MART, L.L.C. *Policy Revision 2 (September 2002)*
Case ID No. 38879 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102232055
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Thomas Greimel

Violation Number 6
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 UST. Specifically, the Respondent received one delivery of fuel without a delivery certificate.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				5%
	Potential			x	

>> 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 and hazards which would not exceed levels that are protective of human health or 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 accepting one delivery of fuel.

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 \$500

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

Estimated EB Amount \$0 Violation Final Penalty Total \$666

This violation Final Assessed Penalty (adjusted for limits) \$666

Economic Benefit Worksheet

Respondent TIKI FOOD MART, L.L.C.
Case ID No. 38879
Reg. Ent. Reference No. RN102232055
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

Economic benefit included in Violation No. 5.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

TOTAL

Compliance History Report

Customer/Respondent/Owner-Operator: CN603609660 TIKI FOOD MART, L.L.C. Classification: AVERAGE Rating: 1.50
Regulated Entity: RN102232055 Tiki Food Store Classification: AVERAGE Site Rating: 1.50
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 56664
Location: 200 TIKI DR, GALVESTON, TX, 77554
TCEQ Region: REGION 12 - HOUSTON
Date Compliance History Prepared: December 17, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: December 17, 2004 to December 17, 2009
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Thomas Greimel Phone: 512-239-5690

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? Yes
3. If Yes, who is the current owner/operator? GORKHALI INVESTMENTS, L.L.C.
4. If Yes, who was/were the prior owner(s)/operator(s) ?
Tien & Thi Nguyen
Tiki Store Corporation
8/14/2009
8/9/2005
5. When did the change(s) in owner or operator occur?
6. Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, 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 09/15/2005 (401149)
 - 2 10/19/2009 (766341)
 - 3 12/04/2009 (777383)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 08/29/2005 (401149)

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 115, SubChapter C 115.246(6)
Description: Failure to maintain a record of the results of daily inspections.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 115, SubChapter C 115.246(3)
Description: Failure to maintain a record of any maintenance conducted on any part of the Stage II equipment.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 115, SubChapter C 115.246(5)
Description: Failure to maintain a record of the results of testing conducted.

Date: 10/19/2009 (766341)

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.50(d)(4)(A)(ii)(II)
Description: Failure to provide the ATG automatic test for substance loss that can detect a release of 0.2 gallons per hour.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.50(d)(1)(B)(ii)
Description: Failure to conduct reconciliation of detailed inventory control records at least once each month.
 - 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
TIKI FOOD MART, L.L.C.;
RN102232055**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2009-2052-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Tiki Food Mart, L.L.C. ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent appear before the Commission and together stipulate that:

1. Respondent owns and operates, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), four underground storage tanks ("USTs") and a convenience store with retail sales of gasoline located at 200 Tiki Drive in Galveston, Galveston County, Texas (the "Facility"). The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contain a regulated petroleum substance as defined in the rules of the TCEQ.
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Executive Director and Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondent is subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of thirteen thousand nine hundred thirty-five dollars (\$13,935.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid three hundred ninety dollars (\$390.00) of the administrative penalty. The remaining amount of thirteen thousand five hundred forty-five dollars (\$13,545.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of three hundred eighty-seven dollars (\$387.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order,

including the payment schedule, the Executive Director may, at his 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, Respondent's failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Agreed Order.

6. 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.
7. The Executive Director of the TCEQ and Respondent agree on a settlement of the matters addressed in this Agreed Order, subject to the approval of the Commission.
8. The Executive Director recognizes that Respondent implemented the following corrective measures at the Facility:
 - a. On November 13, 2009, Respondent obtained acceptable financial assurance (Allegation 1.d.); and
 - b. On December 29, 2009, Respondent submitted a properly completed UST registration and self-certification form to TCEQ (Allegations 1.e. and 1.f.).
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

1. During an investigation conducted from September 4, 2009, through November 16, 2009, a TCEQ Houston Regional Office investigator documented that Respondent violated:
 - a. 30 TEX. ADMIN. CODE § 334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel;
 - b. 30 TEX. ADMIN. CODE § 334.50(d)(4)(A)(ii)(II) and TEX. WATER CODE § 26.3475(c)(1), by failing to perform an automatic test for substance loss that can detect a release which equals or exceeds a rate of 0.2 gallon per hour from any portion of the tank which contains regulated substances. Specifically, Respondent failed to conduct automatic tank gauging tests in conjunction with inventory control;

- c. 30 TEX. ADMIN. CODE § 334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system at the Facility;
 - d. 30 TEX. ADMIN. CODE § 37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs;
 - e. 30 TEX. ADMIN. CODE § 334.8(c)(4)(C), by failing to submit a properly completed UST registration and self-certification form to the agency within 30 days of ownership change. Specifically, ownership changed on August 14, 2009, and Respondent did not submit an updated UST registration form; and
 - f. 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into a UST. Specifically, Respondent received one delivery of fuel without a delivery certificate.
2. Respondent received notice of the violations on or about December 9, 2009.

III. DENIALS

Respondent generally denies each Allegation in Section II.

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Respondent pay an administrative penalty as set forth in Section I, Paragraph 5, above. The payment of this administrative penalty and 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 considering or requiring corrective actions or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Tiki Food Mart, L.L.C., Docket No. 2009-2052-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

2. Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, Respondent shall begin conducting proper inventory control procedures for all USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.48 (Allegation 1.c.)
 - b. Within 30 days after the effective date of this Agreed Order, Respondent shall:

- i. Begin maintaining all UST records, in accordance with 30 TEX. ADMIN. CODE § 334.10 (Allegation 1.a.); and
- ii. Implement a release detection system for the USTs, in accordance with 30 TEX. ADMIN. CODE § 334.50 (Allegation 1.b.).
- c. Within 45 days after the effective date of this Agreed Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.b. 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

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

3. All relief not expressly granted in this Agreed Order is denied.
4. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. If 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, Respondent's failure to comply is not a violation of this Agreed 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

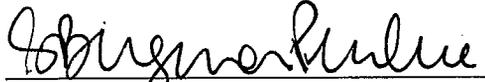
aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

6. 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 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.
7. This Agreed Order, issued by the Commission, shall not be admissible against 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.
8. 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.
9. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to 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


For the Executive Director

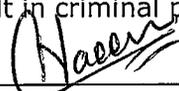
2/18/2011
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of Tiki Food Mart, L.L.C., 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 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;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.


Signature

12 - 29 - 2010
Date

NAEEM SADRUDDIN
Name (Printed or typed)
Authorized representative of
Tiki Food Mart, L.L.C.

PRESIDENT
Title