

Executive Summary – Enforcement Matter – Case No. 41047
KHAN, INC. dba Khan's Food Mart
RN101550192
Docket No. 2011-0141-PST-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Khan's Food Mart, 9199 Bruton Road, Dallas, Dallas County

Type of Operation:

Convenience store with retail sales of gasoline

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: April 22, 2011

Comments Received: No

Penalty Information

Total Penalty Assessed: \$10,046

Amount Deferred for Expedited Settlement: \$2,009

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$337

Total Due to General Revenue: \$7,700

Payment Plan: The remaining amount of \$7,700 will be payable in 35 monthly payments of \$220 each

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Average

Site/RN - Average

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

**Executive Summary – Enforcement Matter – Case No. 41047
KHAN, INC. dba Khan's Food Mart
RN101550192
Docket No. 2011-0141-PST-E**

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: January 7, 2011

Date(s) of NOE(s): January 14, 2011

Violation Information

1. Failed to ensure that at least one Station representative received training in the operation and maintenance of the Stage II vapor recovery system, and each current employee receives in-house Stage II vapor recovery training regarding the purpose and operation of the vapor recovery system [30 TEX. ADMIN. CODE § 115.248(1) and TEX. HEALTH & SAFETY CODE § 382.085(b)].
2. Failed to verify proper operation of the Stage II equipment at least once every 12 months. Specifically, the Stage II annual testing was not conducted by the due date of March 3, 2010 [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].
3. Failed to maintain the Stage II vapor recovery system 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 face plates on the nozzle boots were missing [30 TEX. ADMIN. CODE § 115.242(3) and TEX. HEALTH & SAFETY CODE § 382.085(b)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

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

- a. Submitted documentation verifying that the Stage II representative training and employee awareness training was completed on February 11, 2011;
- b. Successfully conducted the annual testing of the Stage II equipment on January 27, 2011; and
- c. Installed face plates on the dispenser nozzle boots on January 27, 2011.

Technical Requirements:

N/A

Executive Summary – Enforcement Matter – Case No. 41047
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Docket No. 2011-0141-PST-E

Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Ms. Judy Kluge, Enforcement Division,
Enforcement Team 6, MC R-04, (817) 588-5825; Ms. Laurie Eaves, Enforcement
Division, MC 219, (512) 239-4495
TCEQ SEP Coordinator: N/A
Respondent: Mr. Rafiqul Islam Khan, President, Khan's Food Mart, Inc., 9199 Bruton
Road, Dallas, Texas 75217
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	18-Jan-2011	Screening	21-Jan-2011	EPA Due	
	PCW	21-Jan-2011				

RESPONDENT/FACILITY INFORMATION			
Respondent	KHAN, INC. dba Khan's Food Mart		
Reg. Ent. Ref. No.	RN101550192		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	41047	No. of Violations	3
Docket No.	2011-0141-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Judy Kluge
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$10,000
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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	\$500
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Notes: Enhancement for one prior NOV with same/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	\$1,000
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$550
Approx. Cost of Compliance	\$1,500

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$9,500
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OTHER FACTORS AS JUSTICE MAY REQUIRE	5.7%	Adjustment	\$546
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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. 2.

Final Penalty Amount	\$10,046
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$10,046
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DEFERRAL	20.0% Reduction	Adjustment	-\$2,009
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY	\$8,037
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Screening Date 21-Jan-2011

Docket No. 2011-0141-PST-E

PCW

Respondent KHAN, INC. dba Khan's Food Mart

Policy Revision 2 (September 2002)

Case ID No. 41047

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101550192

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

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 prior NOV with same/similar violations.

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

Screening Date 21-Jan-2011

Docket No. 2011-0141-PST-E

PCW

Respondent KHAN, INC. dba Khan's Food Mart

Policy Revision 2 (September 2002)

Case ID No. 41047

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101550192

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 115.248(1) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to ensure that at least one Station representative received training in the operation and maintenance of the Stage II vapor recovery system, and each current employee receives in-house Stage II vapor recovery training regarding the purpose and operation of the vapor recovery system.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (25%). Includes an 'OR' label.

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (0%). Includes a Matrix Notes section.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 Number of violation days 14

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

One quarterly event is recommended based on documentation of the violation during the January 7, 2011 investigation to the January 21, 2011 screening date.

Good Faith Efforts to Comply

10.0% Reduction \$250

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

Notes: The Respondent came into compliance on February 11, 2011, after the Notice of Enforcement ("NOE") dated January 14, 2011.

Violation Subtotal \$2,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2 Violation Final Penalty Total \$2,512

This violation Final Assessed Penalty (adjusted for limits) \$2,512

Economic Benefit Worksheet

Respondent KHAN, INC. dba Khan's Food Mart
Case ID No. 41047
Reg. Ent. Reference No. RN101550192
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$500	7-Jan-2011	11-Feb-2011	0.10	\$2	n/a	\$2
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 of training a Stage II Station representative. 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

\$2

Screening Date 21-Jan-2011

Docket No. 2011-0141-PST-E

PCW

Respondent KHAN, INC. dba Khan's Food Mart

Policy Revision 2 (September 2002)

Case ID No. 41047

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101550192

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

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 12 months. Specifically, the Stage II annual testing was not conducted by the due date of March 3, 2010.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				50%
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 \$5,000

\$5,000

Violation Events

Number of Violation Events 1 Number of violation days 324

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

Violation Base Penalty \$5,000

One annual event is recommended for the period preceding the January 7, 2011 investigation.

Good Faith Efforts to Comply

	10.0% Reduction	\$500
	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		x
N/A		(mark with x)

Notes The Respondent came into compliance on January 27, 2011, after the NOE dated January 14, 2011.

Violation Subtotal \$4,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$546

Violation Final Penalty Total \$5,023

This violation Final Assessed Penalty (adjusted for limits) \$5,023

Economic Benefit Worksheet

Respondent KHAN, INC. dba Khan's Food Mart
Case ID No. 41047
Reg. Ent. Reference No. RN101550192
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	3-Mar-2010	27-Jan-2011	1.82	\$46	\$500	\$546
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost for conducting the Stage II testing. The date required is the date the test was due and the final date is the compliance date.

Approx. Cost of Compliance \$500

TOTAL \$546

Screening Date 21-Jan-2011

Docket No. 2011-0141-PST-E

PCW

Respondent KHAN, INC. dba Khan's Food Mart

Policy Revision 2 (September 2002)

Case ID No. 41047

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101550192

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 3

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

Violation Description

Failed to maintain the Stage II vapor recovery system 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 face plates on the nozzle boots were missing.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 25%

>> Programmatic Matrix

Falsification	Harm		
	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 \$7,500

\$2,500

Violation Events

Number of Violation Events 1

14 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 January 7, 2011 investigation to the January 21, 2011 screening date.

Good Faith Efforts to Comply

10.0% Reduction Before NOV NOV to EDPRP/Settlement Offer

\$250

Extraordinary		
Ordinary		X
N/A		(mark with x)

Notes

The Respondent came into compliance on January 27, 2011, after the NOE dated January 14, 2011.

Violation Subtotal \$2,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2

Violation Final Penalty Total \$2,512

This violation Final Assessed Penalty (adjusted for limits) \$2,512

Economic Benefit Worksheet

Respondent KHAN, INC. dba Khan's Food Mart
Case ID No. 41047
Reg. Ent. Reference No. RN101550192
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	\$500	7-Jan-2011	27-Jan-2011	0.05	\$0	\$2	\$2
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to install face plates on the nozzle boots. The date required is the investigation date and the final date is the compliance date.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$2

Compliance History

Customer/Respondent/Owner-Operator: CN600817670 KHAN, INC. Classification: AVERAGE Rating: 3.33
Regulated Entity: RN101550192 Khan's Food Mart Classification: AVERAGE Site Rating: 3.33
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 43309
Location: 9199 BRUTON RD, DALLAS, TX, 75217
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: January 21, 2011
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: January 21, 2006 to January 21, 2011
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Judy Kluge Phone: (817) 588-5825

Site Compliance History Components

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

Components (Multimedia) for the Site:

A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
N/A

B. Any criminal convictions of the state of Texas and the federal government.
N/A

C. Chronic excessive emissions events.
N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 12/21/2006 (534845)
2 04/25/2007 (557359)
3 01/13/2011 (890738)

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

Date: 12/27/2006 (534845)CN600817670

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 115, SubChapter C 115.246(7)(A)
Description: Failure to provide all Stage II paperwork for review. During the initial investigation, no Stage II paperwork of any kind was available at the facility.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(K)
Description: Failure to maintain the system monitor in proper working order. During the initial investigation, the Hasstech VCP-3A system monitor did not have power and was not working properly.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)
Description: Failure to have successful triennial testing within the previous 3 years or annual Stage II testing within the previous 12 months. There were no records at the facility or in the Dallas Local Program files showing any testing performed at this facility.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.242(5)
Description: Failure to remove faulty Stage II equipment from service. During testing on 12/12/06 the system did not pass TXP 104 and TXP 106. After being informed of the test failures the facility elected to continue selling fuel instead of removing the dispensers from service.

F. Environmental audits.
N/A

G. Type of environmental management systems (EMSs).
N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
KHAN, INC. DBA KHAN'S FOOD
MART
RN101550192**

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

AGREED ORDER DOCKET NO. 2011-0141-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding KHAN, INC. dba Khan's Food Mart ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a convenience store with retail sales of gasoline at 9199 Bruton Road in Dallas, Dallas County, Texas (the "Station").
2. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about January 19, 2011.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Ten Thousand Forty-Six Dollars (10,046) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). The Respondent has paid Three Hundred Thirty-Seven Dollars (\$337) of the administrative penalty and Two Thousand Nine Dollars (\$2,009) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Seven Thousand Seven Hundred Dollars (\$7,700) of the administrative penalty shall be payable in 35 monthly payments of Two Hundred Twenty Dollars (\$220) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Station:
 - a. Submitted documentation verifying that the Stage II representative training and employee awareness training was completed on February 11, 2011;
 - b. Successfully conducted the annual testing of the Stage II equipment on January 27, 2011; and
 - c. Installed face plates on the dispenser nozzle boots on January 27, 2011.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

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

1. Failed to ensure that at least one Station representative received training in the operation and maintenance of the Stage II vapor recovery system, and each current employee receives in-house Stage II vapor recovery training regarding the purpose and operation of the vapor recovery system, in violation of 30 TEX. ADMIN. CODE § 115.248(1) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on January 7, 2011.
2. Failed to verify proper operation of the Stage II equipment at least once every 12 months, in violation of 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on January 7, 2011. Specifically, the Stage II annual testing was not conducted by the due date of March 3, 2010.
3. Failed to maintain the Stage II vapor recovery system 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) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on January 7, 2011. Specifically, the face plates on the nozzle boots were missing.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: KHAN, INC. dba Khan's Food Mart, Docket No. 2011-0141-PST-E" to:

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

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Station operations referenced in this Agreed Order.
3. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

Date 5/3/2011

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

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

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

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



Signature

Date 03/21/2011

MD. RAFIQUUL ISLAM KHAN

Name (Printed or typed)
Authorized Representative of
KHAN, INC. dba Khan's Food Mart

Title PRESIDENT

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