

Executive Summary – Enforcement Matter – Case No. 40726
Akram Rihani dba Oakland Shell
RN102780855
Docket No. 2010-1868-PST-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Oakland Shell, 1224 Oakland Boulevard, Fort Worth, Tarrant 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: May 27, 2011

Comments Received: No

Penalty Information

Total Penalty Assessed: \$8,699

Amount Deferred for Expedited Settlement: \$1,739

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$275

Total Due to General Revenue: \$6,685

Payment Plan: 35 payments of \$191 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. 40726
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Docket No. 2010-1868-PST-E

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: October 12, 2010 and January 4, 2011

Date(s) of NOE(s): November 10, 2010 and January 3, 2011

Violation Information

1. Failed to successfully complete the Stage II vapor recovery system testing to ensure that the system meets the performance criteria for the system within 30 days of major system replacement or modification. Specifically, the Respondent replaced the Healy Stage II system with a Balance Stage II system. However, the Balance system was not performance tested by the due date of April 30, 2010 [30 TEX. ADMIN. CODE § 115.245(1) and TEX. HEALTH & SAFETY CODE § 382.085(b)].

2. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the underground storage tank (“USTs”). Specifically, one fuel delivery was accepted without a valid delivery certificate [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)].

3. Failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date. Specifically, the delivery certificate expired June 30, 2010 [30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)].

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. Successfully conducted the required testing of the Stage II equipment on October 12, 2010; and

b. Submitted a properly completed UST registration and self-certification form and obtained a TCEQ fuel delivery certificate on August 23, 2010.

Technical Requirements:

N/A

Litigation Information

Date Petition(s) Filed: N/A

Executive Summary – Enforcement Matter – Case No. 40726
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RN102780855
Docket No. 2010-1868-PST-E

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: Cara Windle, Enforcement Division,
Enforcement Team 6, MC 128, (512) 239-2581; Laurie Eaves, Enforcement Division,
MC 219, (512) 239-4495
TCEQ SEP Coordinator: N/A
Respondent: Akram Rihani, Owner, Oakland Shell, 1224 Oakland Boulevard, Fort
Worth, Texas 76103
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	15-Nov-2010	Screening	17-Nov-2010	EPA Due	
	PCW	20-Jan-2011				

RESPONDENT/FACILITY INFORMATION

Respondent	Akram Rihani dba Oakland Shell		
Reg. Ent. Ref. No.	RN102780855		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	40726	No. of Violations	3
Docket No.	2010-1868-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Cara Windle
		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** **\$8,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **22.0%** Enhancement **Subtotals 2, 3, & 7** **\$1,870**

Notes: Enhancement for one NOV with dissimilar violations and one order containing a denial of liability.

Culpability **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** **\$2,125**

Economic Benefit **0.0%** Enhancement* **Subtotal 6** **\$0**

Total EB Amounts **\$455**
Approx. Cost of Compliance **\$525**

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$8,245**

OTHER FACTORS AS JUSTICE MAY REQUIRE **5.5%** **Adjustment** **\$454**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with the violation.

Final Penalty Amount **\$8,699**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$8,699**

DEFERRAL **20.0%** Reduction **Adjustment** **-\$1,739**

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 **\$6,960**

Screening Date 17-Nov-2010

Docket No. 2010-1868-PST-E

PCW

Respondent Akram Rihani dba Oakland Shell

Policy Revision 2 (September 2002)

Case ID No. 40726

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102780855

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Cara Windle

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>)	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 22%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with dissimilar violations and one order containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 22%

Screening Date 17-Nov-2010
Respondent Akram Rihani dba Oakland Shell
Case ID No. 40726
Reg. Ent. Reference No. RN102780855
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Cara Windle
Violation Number 1

Docket No. 2010-1868-PST-E

PCW

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

Rule Cite(s) 30 Tex. Admin. Code § 115.245(1) and Tex. Health & Safety Code § 382.085(b)

Violation Description
 Failed to successfully complete the Stage II vapor recovery system testing to ensure that the system meets the performance criteria for the system within 30 days of major system replacement or modification. Specifically, the Respondent replaced the Healy Stage II system with a Balance Stage II system. However, the Balance system was not performance tested by the due date of April 30, 2010.

Base Penalty \$10,000

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

OR	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: 1 165 Number of violation days

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

Violation Base Penalty \$5,000

One single event is recommended for the period preceding the October 12, 2010 investigation.

Good Faith Efforts to Comply

25.0% Reduction

\$1,250

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

Notes
 The Respondent came into compliance on October 12, 2010, prior to the Notice of Enforcement ("NOE") dated November 10, 2010.

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$454

Violation Final Penalty Total \$5,117

This violation Final Assessed Penalty (adjusted for limits) \$5,117

Economic Benefit Worksheet

Respondent Akram Rihani dba Oakland Shell
Case ID No. 40726
Reg. Ent. Reference No. RN102780855
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				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)

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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]	\$425	30-Apr-2010	12-Oct-2010	1.37	\$29	\$425	\$454
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Actual avoided cost to conduct the Stage II vapor recovery system testing per receipt. The Date Required is the test due date and the Final Date is the compliance date.

Approx. Cost of Compliance \$425

TOTAL \$454

Screening Date 17-Nov-2010

Docket No. 2010-1868-PST-E

PCW

Respondent Akram Rihani dba Oakland Shell

Policy Revision 2 (September 2002)

Case ID No. 40726

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102780855

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Cara Windle

Violation Number 2

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 underground storage tanks ("USTs"). Specifically, one fuel delivery was accepted without a valid delivery certificate.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			x

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

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

Adjustment \$9,000

\$1,000

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 \$1,000

One single event is recommended.

Good Faith Efforts to Comply

25.0% Reduction

\$250

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary	
Ordinary	x
N/A	(mark with x)

Notes

The Respondent came into compliance on August 23, 2010, prior to the NOE dated January 3, 2011.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$1,023

This violation Final Assessed Penalty (adjusted for limits) \$1,023

Economic Benefit Worksheet

Respondent Akram Rihani dba Oakland Shell
Case ID No. 40726
Reg. Ent. Reference No. RN102780855
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

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

Notes for DELAYED costs

Economic Benefit included in violation no. 3.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance \$0

TOTAL \$0

Screening Date 17-Nov-2010

Docket No. 2010-1868-PST-E

PCW

Respondent Akram Rihani dba Oakland Shell

Policy Revision 2 (September 2002)

Case ID No. 40726

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102780855

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Cara Windle

Violation Number 3

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

Violation Description

Failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date. Specifically, the delivery certificate expired on June 30, 2010.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	X			25%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

54 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$2,500

One single event is recommended.

Good Faith Efforts to Comply

25.0% Reduction

\$625

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

Notes

The Respondent came into compliance on August 23, 2010, prior to the NOE dated January 3, 2011.

Violation Subtotal \$1,875

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$2,559

This violation Final Assessed Penalty (adjusted for limits) \$2,559

Economic Benefit Worksheet

Respondent Akram Rihani dba Oakland Shell
Case ID No. 40726
Reg. Ent. Reference No. RN102780855
Media Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	31-May-2010	23-Aug-2010	0.23	\$1	n/a	\$1

Notes for DELAYED costs

Estimated cost to renew a delivery certificate by submitting a properly completed UST registration and self-certification form. Date required is 30 days prior to the expiration date of the delivery certificate. 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

Compliance History

Customer/Respondent/Owner-Operator:	CN602823056 Rihani, Akram	Classification: AVERAGE	Rating: 12.60
Regulated Entity:	RN102780855 Oakland Shell	Classification: AVERAGE	Site Rating: 12.60
ID Number(s):	PETROLEUM STORAGE TANK NON REGISTERED	ID NUMBER	R04102780855
	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	13598
Location:	1224 OAKLAND BLVD, FORT WORTH, TX, 76103		
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	November 17, 2010		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	November 17, 2005 to November 17, 2010		

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

Name: Cara Windle Phone: (512) 239-2581

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.
 - Effective Date: 04/13/2007 ADMINORDER 2005-1989-PST-E
 - Classification: Moderate
 - Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)
30 TAC Chapter 37, SubChapter I 37.815(b)
 - Description: A mechanism was received, but the mechanism did not cover tank number five.
- 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 12/27/2005 (437650)
 - 2 12/06/2006 (517840)
 - 3 11/10/2010 (870444)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - Date: 06/28/2007 (562214) CN602823056
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 115, SubChapter C 115.242(1)(C)
 - Description: Stage II vapor recovery system was not modified to be onboard refueling vapor recovery (ORVR) compatible by April 1, 2007.
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(L)
 - Description: The system was operating with a mixture of Healy 400 and Healy 600 nozzles.
 - Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)
Description: The Regular Unleaded coaxial hose on dispenser #7 was damaged exposing the metal mesh.

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
AKRAM RIHANI
DBA OAKLAND SHELL
RN102780855

§
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§
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§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2010-1868-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 Akram Rihani dba Oakland Shell ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a convenience store with retail sales of gasoline at 1224 Oakland Boulevard in Fort Worth, Tarrant County, Texas (the "Station").
2. The Respondent's five underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notices of the violations alleged in Section II ("Allegations") on or about November 15, 2010 and January 8, 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 Eight Thousand Six Hundred Ninety-Nine Dollars (\$8,699) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Hundred Seventy-Five Dollars (\$275) of the administrative penalty and One Thousand Seven Hundred Thirty-Nine Dollars (\$1,739) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Six Thousand Six Hundred Eighty-Five Dollars (\$6,685) of the administrative penalty shall be payable in 35 monthly payments of One Hundred Ninety-One Dollars (\$191) 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. Successfully conducted the required testing of the Stage II equipment on October 12, 2010; and
 - b. Submitted a properly completed UST registration and self-certification form and obtained a TCEQ fuel delivery certificate on August 23, 2010.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

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

II. ALLEGATIONS

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

1. Failed to successfully complete the Stage II vapor recovery system testing to ensure that the system meets the performance criteria for the system within 30 days of major system replacement or modification, in violation of 30 TEX. ADMIN. CODE § 115.245(1) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on October 12, 2010. Specifically, the Respondent replaced the Healy Stage II system with a Balance Stage II system. However, the Balance system was not performance tested by the due date of April 30, 2010.
2. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a), as documented during a record review conducted on January 4, 2011. Specifically, one fuel delivery was accepted without a valid delivery certificate.
3. Failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii), as documented during a record review conducted on January 4, 2011. Specifically, the delivery certificate expired June 30, 2010.

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: Akram Rihani dba Oakland Shell, Docket No. 2010-1868-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

6/17/2011
~~4-9-11~~
Date

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

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

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

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


Signature

4/9/11
Date

Akram Rihani
Name (Printed or typed)
Authorized Representative of
Akram Rihani dba Oakland Shell

Owner
Title

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.

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