

**Executive Summary – Enforcement Matter – Case No. 28013**  
**Aliahsan Nadia Enterprises, Inc. d/b/a Diadem Food Mart**  
**RN102014404**  
**Docket No. 2009-0476-PST-E**

**Order Type:**

Findings Agreed Order

**Findings Order Justification:**

Indifference to legal duty based on violation of a previous order.

**Media:**

PST

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

3911 Diadem Lane, Kirby, Bexar County

**Type of Operation:**

convenience store with retail sales of gasoline

**Other Significant Matters:**

Additional Pending Enforcement Actions: None

Past-Due Penalties: None

Past-Due Fees: None

Other: None

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

**Texas Register Publication Date:** April 22, 2011

**Comments Received:** None

***Penalty Information***

**Total Penalty Assessed:** \$30,155

**Amount Deferred for Expedited Settlement:** N/A

**Amount Deferred for Financial Inability to Pay:** \$19,176

**Total Paid to General Revenue:** \$332

**Total Due to General Revenue:** \$10,465

Payment Plan: 35 payments of \$299 each

**SEP Conditional Offset:** N/A

**Compliance History Classifications:**

Person/CN – Average

Site/RN – Average

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

**Docket No. 2009-0476-PST-E**

***Investigation Information***

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** January 23, 2009  
**Date(s) of NOV(s):** August 30, 2004; April 25, 2008  
**Date(s) of NOE(s):** February 19, 2009

***Violation Information***

1. Failed to provide corrosion protection to all underground metal components of a UST system [30 TEX. ADMIN. CODE § 334.49(a)(4) and TEX. WATER CODE § 26.3475(d)].
2. Failed to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TCEQ Agreed Order Docket No. 2006-0061-PST-E, Ordering Provision Nos. 2.b.i. and 2.c.]
3. Failed to monitor the piping associated with the UST system [30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a)].
4. Failed to test the line leak detectors at least once per year for performance and operational reliability [30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(c)(1)].
5. Failed to notify the agency of any change or additional information regarding USTs within 30 days from the date of occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3) and TCEQ Agreed Order Docket No. 2006-0061-PST-E, Ordering Provision Nos. 2.b.ii. and 2.c.].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

1. Submitted documentation to demonstrate that the corrosion protection equipment was repaired and tested with passing results on February 2, 2009;
2. Conducted the annual piping tightness testing with passing results on January 25, 2009;
3. Successfully tested the line leak detectors for performance and operational reliability on January 25, 2009; and
4. On January 11, 2010, submitted documentation to demonstrate that vapor monitoring was being used as the method of release detection for the UST system as of April 20, 2009.

**Technical Requirements:**

N/A

***Litigation Information***

**Date Petition(s) Filed:** August 28, 2009; October 8, 2009; October 13, 2009  
**Date Answer(s) Filed:** January 25, 2010  
**SOAH Referral Date:** March 8, 2010  
**Hearing Date(s):**  
Preliminary Hearing: April 8, 2010  
Evidentiary Hearing: September 14, 2010 (continued to March 22, 2011; abated indefinitely)  
**Settlement Date:** March 28, 2011

**Executive Summary – Enforcement Matter – Case No. 28013**  
**Aliahsan Nadia Enterprises, Inc. d/b/a Diadem Food Mart**  
**RN102014404**  
**Docket No. 2009-0476-PST-E**

***Contact Information***

**TCEQ Attorneys:** Xavier Guerra, Litigation Division, (210) 403-4016  
Lena Roberts, Litigation Division, (512) 239-3400

**TCEQ SEP Coordinator:** N/A

**TCEQ Enforcement Coordinator:** Elvia Maske, Waste Enforcement Section, (512) 239-0789

**Respondent:** Nadia Kurji, President, Aliahsan Nadia Enterprises, Inc., 3911 Diadem Lane, Kirby, Texas 78219

**Respondent's Attorney:** Ronald J. Shaw, The Shaw Corporation, 7300 Blanco Road, Suite 610, San Antonio, Texas 78216

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# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	23-Mar-2009			
	<b>PCW</b>	21-Mar-2011	<b>Screening</b>	2-Apr-2009	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>					
<b>Respondent</b>	ALIAHSAN NADIA ENTERPRISES, INC. dba Diadem Food Mart				
<b>Reg. Ent. Ref. No.</b>	RN102014404				
<b>Facility/Site Region</b>	13-San Antonio	<b>Major/Minor Source</b>	Minor		

<b>CASE INFORMATION</b>					
<b>Enf./Case ID No.</b>	28013	<b>No. of Violations</b>	3		
<b>Docket No.</b>	2009-0476-PST-E	<b>Order Type</b>	Findings		
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Government/Non-Profit</b>	No		
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Elvia Maske		
		<b>EC's Team</b>	Enforcement Team 6		
<b>Admin. Penalty \$</b>	<b>Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000	

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$23,500
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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.

<b>Compliance History</b>	30.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$7,050
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Notes: Enhancement for two NOVs with same or similar violations and one 1660-styled order.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$625
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts \$429  
 Approx. Cost of Compliance \$2,260  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$29,925
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.8%	<b>Adjustment</b>	\$230
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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.

<b>Final Penalty Amount</b>	\$30,155
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$30,155
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended for Findings Orders.

<b>PAYABLE PENALTY</b>	\$30,155
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**Screening Date** 2-Apr-2009

**Docket No.** 2009-0476-PST-E

**PCW**

**Respondent** ALIAHSAN NADIA ENTERPRISES, INC. dba Diadem Fc

*Policy Revision 2 (September 2002)*

**Case ID No.** 28013

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN102014404

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** Elvia Maske

### 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> )	2	10%
	Other written NOVs	0	0%
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)** 30%

>> **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 two NOVs with same or similar violations and one 1660-styled order.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 30%

**Screening Date** 2-Apr-2009 **Docket No.** 2009-0476-PST-E **PCW**  
**Respondent** ALIAHSAN NADIA ENTERPRISES, INC. dba Diadem Food Mart *Policy Revision 2 (September 2002)*  
**Case ID No.** 28013 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN102014404  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Elvia Maske

**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 checked="" 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

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input checked="" type="text" value="x"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

**Violation Base Penalty**

**Good Faith Efforts to Comply**  Reduction

	Before NOV	NOV to EDRP/Settlement
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input checked="" type="text" value="x"/>	<input type="text"/>
N/A	<input type="text"/>	(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** ALIAHSAN NADIA ENTERPRISES, INC. dba Diadem Food Mart  
**Case ID No.** 28013  
**Reg. Ent. Reference No.** RN102014404  
**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)	\$450	23-Jan-2009	2-Feb-2009	0.03	\$0	\$1	\$1
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

Actual cost to install sacrificial anodes to the sub pumps to provide corrosion protection per receipt submitted. 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

\$450

**TOTAL**

\$1

**Screening Date** 2-Apr-2009 **Docket No.** 2009-0476-PST-E **PCW**  
**Respondent** ALIAHSAN NADIA ENTERPRISES, INC. dba Diadem Food Mart *Policy Revision 2 (September 2002)*  
**Case ID No.** 28013 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN102014404  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Elvia Maske

**Violation Number**

**Rule Cite(s)** 30 Tex. Admin. Code § 334.50(b)(1)(A), (b)(2) and (b)(2)(A)(i)(III) and Tex. Water Code § 26.3475(a) and (c)(1) and TCEQ Agreed Order Docket No. 2006-0061-PST-E, Ordering Provision Nos. 2.b.i. and 2.c.

**Violation Description**  
 Failed to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring). Failed to monitor the piping associated with the UST system. Specifically, the Respondent did not conduct the annual piping tightness test. Also, failed to test the line leak detectors at least once per year for performance and operational reliability. Specifically, the line leak detectors had not been performance tested annually.

**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**  
 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**

**Violation Events**

Number of Violation Events   Number of violation days

*mark only one with an x*

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text" value="x"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

**Violation Base Penalty**

Eight quarterly events are recommended from the order effective date of April 13, 2007 to the screening date of April 2, 2009.

**Good Faith Efforts to Comply**  Reduction

	Before NOV	NOV to EDRP/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**  
 The Respondent does not meet the good faith criteria for this violation.

**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** ALIAHSAN NADIA ENTERPRISES, INC. dba Diadem Food Mart  
**Case ID No.** 28013  
**Reg. Ent. Reference No.** RN102014404  
**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	13-Apr-2007	1-Oct-2009	2.47	\$185	n/a	\$185

Notes for DELAYED costs

Estimated cost of monitoring all USTs for releases. The date required is the effective date of the agreed order and the final date is the expected 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]	\$210	23-Jan-2008	25-Jan-2009	1.93	\$20	\$210	\$230
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Actual cost for piping tightness and line leak detector tests based on receipt submitted by the Respondent. The date required is one year prior to the investigation date and the final date is the date of compliance.

Approx. Cost of Compliance

\$1,710

**TOTAL**

\$416

**Screening Date** 2-Apr-2009 **Docket No.** 2009-0476-PST-E **PCW**  
**Respondent** ALIAHSAN NADIA ENTERPRISES, INC. dba Diadem Food Mart *Policy Revision 2 (September 2002)*  
**Case ID No.** 28013 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN102014404  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Elvia Maske

**Violation Number**

**Rule Cite(s)**

30 Tex. Admin. Code § 334.7(d)(3) and TCEQ Agreed Order Docket No. 2006-0061-PST-E, Ordering Provision Nos. 2.b.ii. and 2.c.

**Violation Description**

Failed to notify the agency of any change or additional information regarding USTs within 30 days from the date of occurrence of the change or addition. Specifically, the registration had not been amended to reflect the UST system technical information pertaining to release detection.

**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="0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>

Matrix Notes

100% of the rule requirement was not met.

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="text" value="x"/>

**Violation Base Penalty**

One single event is recommended based on the documentation of the violation during the January 23, 2009 investigation.

**Good Faith Efforts to Comply**

Reduction

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

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

**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** ALIAHSAN NADIA ENTERPRISES, INC. dba Diadem Food Mart  
**Case ID No.** 28013  
**Reg. Ent. Reference No.** RN102014404  
**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	13-Apr-2007	1-Oct-2009	2.47	\$12	n/a	\$12

Notes for DELAYED costs

Estimated cost to submit an updated UST registration. The date required is the effective date of the agreed order and the final date is the expected 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**

\$12

# Compliance History Report

Customer/Respondent/Owner-Operator: CN602923450 ALIAHSAN NADIA ENTERPRISES, INC. Classification: AVERAGE Rating: 38.00  
Regulated Entity: RN102014404 Diadem Food Mart Classification: AVERAGE Site Rating: 38.00  
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 48994  
REGISTRATION  
Location: 3911 DIADEM LN, KIRBY, TX, 78219  
TCEQ Region: REGION 13 - SAN ANTONIO  
Date Compliance History Prepared: April 02, 2009  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: April 02, 2004 to April 02, 2009  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Elvia Maske Phone: (512) 239-0789

## 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 of the site during the compliance period? Yes
3. If Yes, who is the current owner? ALIAHSAN NADIA ENTERPRISES, INC.
4. If Yes, who was/were the prior owner(s)? Texrell Inc dba Diadem Food Mart
5. When did the change(s) in ownership occur? 01/01/2005
6. Rating Date: 9/1/2008 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 2006-0061-PST-E

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(a)

2D TWC Chapter 26, SubChapter A 26.3475(c)(1)

30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)

30 TAC Chapter 334, SubChapter C 334.50(b)(2)

Description: Failure to perform release detection for product piping.

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)

Description: Failure to make UST records available for review.

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)

Description: Failure to amend the registration to show correct information.

- 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 09/01/2004 (292510)
- 2 01/04/2006 (406128)
- 3 06/09/2008 (681916)
- 4 02/20/2009 (725226)

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

Date: 08/30/2004 (292510) CN602923450  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)  
Description: Tank and product piping release detection, inventory control, and corrosion protection records were not available for review.

Date: 04/25/2008 (681916) CN602923450  
Self Report? NO Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(a)  
2D TWC Chapter 26, SubChapter A 26.3475(c)(1)  
30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)  
30 TAC Chapter 334, SubChapter C 334.50(b)(2)

Description: Failure to perform release detection for product piping.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)

Description: Failure to make UST records available for review.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)

Description: Failure to amend the registration to show correct information.  
Self Report? NO Classification: Major  
Citation: 2.a.-2.c. ORDER  
2A TWC Chapter 7, SubChapter A 7.051(a)(1)(B)

Description: Failure to comply with Commission Order Docket No. 2006-0061-PST-E.

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  
ALIAHSAN NADIA ENTERPRISES,  
INC. D/B/A DIADEM FOOD MART;  
RN102014404**

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

**AGREED ORDER**

**DOCKET NO. 2009-0476-PST-E**

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 ALIAHSAN NADIA ENTERPRISES, INC. d/b/a Diadem Food Mart ("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, represented by Ronald J. Shaw, Attorney, of the law firm The Shaw Corporation, presented this Agreed Order to the Commission.

Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. Respondent operates, as defined in 30 TEX. ADMIN. CODE § 334.2(70), an underground storage tank ("UST") system and a convenience store with retail sales of gasoline located at 3911 Diadem Lane in Kirby, Bexar 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. During an investigation conducted on January 23, 2009, a TCEQ San Antonio Regional Office investigator documented that Respondent:

- a. Failed to provide corrosion protection to all underground metal components of a UST system. Specifically, the sub-pump turbine heads were unprotected;
  - b. Failed to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring);
  - c. Failed to monitor the piping associated with the UST system. Specifically, the annual piping tightness test was not conducted;
  - d. Failed to test the line leak detectors at least once per year for performance and operational reliability; and
  - e. Failed to notify the agency of any change or additional information regarding USTs within 30 days from the date of occurrence of the change or addition. Specifically, the registration incorrectly listed that vapor monitoring was being used as the method of release detection.
3. Respondent received notice of the violations on or about February 24, 2009.
  4. The Executive Director recognizes that Respondent implemented the following corrective measures at the Facility:
    - a. Submitted documentation to demonstrate that the corrosion protection equipment was repaired and tested with passing results on February 2, 2009 (Conclusion of Law No. 2);
    - b. Conducted the annual piping tightness test with passing results on January 25, 2009 (Conclusions of Law Nos. 3 and 4);
    - c. Successfully tested the line leak detectors for performance and operational reliability on January 25, 2009 (Conclusion of Law No. 5); and
    - d. On January 11, 2010, submitted documentation to demonstrate that vapor monitoring was being used as the method of release detection for the UST system as of April 20, 2009 (Conclusion of Law No. 6).

#### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondent violated 30 TEX. ADMIN. CODE § 334.49(a)(4) and TEX. WATER CODE § 26.3475(d), by failing to provide corrosion protection to all underground metal components of a UST system.
3. As evidenced by Finding of Fact No. 2.b., Respondent violated 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TCEQ Agreed Order Docket No. 2006-0061-PST-E, Ordering Provision Nos. 2.b.i. and 2.c., by failing to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring).

4. As evidenced by Finding of Fact No. 2.c., Respondent violated 30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a), by failing to monitor the piping associated with the UST system.
5. As evidenced by Finding of Fact No. 2.d., Respondent violated 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(c)(1), by failing to test the line leak detectors at least once per year for performance and operational reliability.
6. As evidenced by Finding of Fact No. 2.e., Respondent violated 30 TEX. ADMIN. CODE § 334.7(d)(3) and TCEQ Agreed Order Docket No. 2006-0061-PST-E, Ordering Provision Nos. 2.b.ii. and 2.c., by failing to notify the agency of any change or additional information regarding USTs within 30 days from the date of occurrence of the change or addition.
7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
8. An administrative penalty in the amount of thirty one thousand two hundred five dollars (\$31,205.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Financial Assurance Section of the Commission's Financial Administration Division reviewed the financial documentation submitted by Respondent and determined that Respondent is unable to pay part of the administrative penalty. Therefore, twenty thousand four hundred eight dollars (\$20,408.00) of the administrative penalty is deferred contingent upon Respondent's timely and satisfactory compliance with all the terms of this Agreed Order and shall be waived only upon full compliance with all the terms and conditions contained in this Agreed Order. If Respondent fails to timely and satisfactorily comply with any requirement contained in this Agreed Order, including the payment schedule, the Executive Director may require Respondent to pay all or part of the deferred administrative penalty.

Respondent paid three hundred thirty-two dollars (\$332.00) of the undeferred administrative penalty. The remaining amount of ten thousand four hundred sixty-five dollars (\$10,465.00) shall be payable in thirty-five (35) monthly payments of two hundred ninety-nine dollars (\$299.00) each. The first 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 Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, 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, the acceleration of any remaining balance constitutes the failure by Respondent to timely and satisfactorily comply with all the terms of this Agreed Order and the Executive Director may demand payment of the deferred penalty amount.

## ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Respondent is assessed an administrative penalty as set forth in Conclusion of Law No. 8, above, for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the matters set forth by this Agreed Order in this action. 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: ALIAHSAN NADIA ENTERPRISES, INC. d/b/a Diadem Food Mart, Docket No. 2009-0476-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

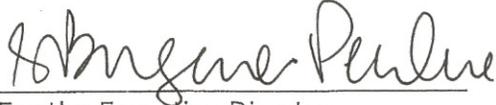
2. All relief not expressly granted in this Agreed Order is denied.
3. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. 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.
5. 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.
6. 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.

7. 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.
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

7/29/2011

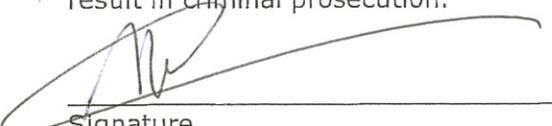
Date

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 ALIAHSAN NADIA ENTERPRISES, INC. d/b/a Diadem Food Mart, 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

3-28-11  
Date

Aslam Kurji  
Name (Printed or typed)  
Authorized representative of  
ALIAHSAN NADIA ENTERPRISES, INC.

Secretary  
Title

