

Executive Summary – Enforcement Matter – Case No. 41782
Masood Ahmad dba Fannett Drive In
RN101750834
Docket No. 2011-0895-PST-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Fannett Drive In, 16685 Highway 124, Beaumont, Jefferson 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: October 7, 2011

Comments Received: No

Penalty Information

Total Penalty Assessed: \$9,677

Amount Deferred for Expedited Settlement: \$1,935

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$217

Total Due to General Revenue: \$7,525

Payment Plan: 35 monthly payments of \$215 each

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Average

Site/RN - Average by Default

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Executive Summary – Enforcement Matter – Case No. 41782
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RN101750834
Docket No. 2011-0895-PST-E

Investigation Information

Complaint Date(s): April 25, 2011

Complaint Information: Alleged the Facility had an expired delivery certificate and no tank registrations were observed at the Station.

Date(s) of Investigation: May 2, 2011

Date(s) of NOE(s): June 2, 2011

Violation Information

1. Failed to ensure that a valid current TCEQ delivery certificate is posted at the Station and visible at all times. Specifically, the delivery certificate was not posted [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii)].
2. Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated underground storage tank (“UST”) according to the UST registration and self-certification form [30 TEX. ADMIN. CODE § 334.8(c)(5)(C)].
3. Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel [30 TEX. ADMIN. CODE § 334.48(c)].
4. Failed to provide release detection for the piping associated with the USTs. Specifically, the annual piping tightness test was not conducted by the due date of March 17, 2010 [30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a)].
5. Failed to test the line leak detectors at least once per year for performance and operational reliability. Specifically, the line leak detectors were not performance tested by the due date of March 17, 2010 [30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a)].
6. Failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel. Specifically, the Stage II maintenance records were not available for review [30 TEX. ADMIN. CODE § 115.246(3) and TEX. HEALTH & SAFETY CODE § 382.085(b)].
7. Failed to verify proper operation of the Stage II equipment at least once every 12 months. Specifically, the annual Stage II test was not conducted by the due date of March 17, 2010 [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].

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Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent has implemented the following corrective measures at the Station:

- a. Posted a current, valid delivery certificate at the Station on May 2, 2011;
- b. Successfully conducted the annual piping tightness and line leak detector tests on March 17, 2011; and
- c. Successfully conducted the annual testing of the Stage II equipment on March 17, 2011.

Technical Requirements:

The Order will require the Respondent to:

- a. Immediately:
 - i. Begin conducting effective manual or automatic inventory control procedures for all USTs; and
 - ii. Begin maintaining all Stage II records at the Station.
- b. Within 30 days, ensure that the UST fill ports are properly tagged, labeled, or marked; and
- c. Within 45 days, submit written certification demonstrating compliance.

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: Judy Kluge, Enforcement Division, Enforcement Team 6, MC R-04, (817) 588-5825; Debra Barber, Enforcement Division, MC 219, (512) 239-0412.

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TCEQ SEP Coordinator: N/A

Respondent: Masood Ahmad, Manager, Fannett Drive In, 16685 Highway 124,
Beaumont, Texas 77705

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	6-Jun-2011	Screening	8-Jun-2011	EPA Due	
	PCW	8-Jun-2011				

RESPONDENT/FACILITY INFORMATION	
Respondent	Masood Ahmad dba Fannett Drive In
Reg. Ent. Ref. No.	RN101750834
Facility/Site Region	10-Beaumont
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	41782	No. of Violations	6
Docket No.	2011-0895-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** **\$10,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **0.0%** Enhancement **Subtotals 2, 3, & 7** **\$0**

Notes: No adjustment for compliance history.

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** **\$1,500**

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

Total EB Amounts: \$721
Approx. Cost of Compliance: \$1,818
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$9,000**

OTHER FACTORS AS JUSTICE MAY REQUIRE **7.5%** **Adjustment** **\$677**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement for the avoided cost of compliance associated with violation nos. 4 and 6.

Final Penalty Amount **\$9,677**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$9,677**

DEFERRAL **20.0%** Reduction **Adjustment** **-\$1,935**

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 **\$7,742**

Screening Date 8-Jun-2011

Docket No. 2011-0895-PST-E

PCW

Respondent Masood Ahmad dba Fannett Drive In

Policy Revision 2 (September 2002)

Case ID No. 41782

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101750834

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>)	0	0%
	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) 0%

>> 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

No adjustment for compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 8-Jun-2011

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PCW

Respondent Masood Ahmad dba Fannett Drive In

Policy Revision 2 (September 2002)

Case ID No. 41782

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101750834

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(A)(iii)

Violation Description Failed to ensure that a valid, current TCEQ delivery certificate is posted at the Station in a location where it is visible at all times. Specifically, the delivery certificate was not posted.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (10%). Matrix Notes: 100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 1

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

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violaton during the May 2, 2011 investigation.

Good Faith Efforts to Comply

25.0% Reduction \$250

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

Notes: The Respondent came into compliance on May 2, 2011, prior to the Notice of Enforcement ("NOE") dated June 2, 2011.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0 Violation Final Penalty Total \$806

This violation Final Assessed Penalty (adjusted for limits) \$806

Economic Benefit Worksheet

Respondent Masood Ahmad dba Fannett Drive In
Case ID No. 41782
Reg. Ent. Reference No. RN101750834
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)	\$100	2-May-2011	2-May-2011	0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to post the delivery certificate. 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 \$100

TOTAL \$0

Screening Date 8-Jun-2011

Docket No. 2011-0895-PST-E

PCW

Respondent Masood Ahmad dba Fannett Drive In

Policy Revision 2 (September 2002)

Case ID No. 41782

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101750834

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(C)

Violation Description

Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated underground storage tank ("UST") according to the UST registration and self-certification form.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

37 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the May 2, 2011 investigation.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4

Violation Final Penalty Total \$1,075

This violation Final Assessed Penalty (adjusted for limits) \$1,075

Economic Benefit Worksheet

Respondent Masood Ahmad dba Fannett Drive In
Case ID No. 41782
Reg. Ent. Reference No. RN101750834
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
<small>No commas or \$</small>							

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	2-May-2011	2-Mar-2012	0.84	\$4	n/a	\$4

Notes for DELAYED costs

The estimated cost includes the amount required to permanently affix a label to each UST fill tube. The date required is the investigation date 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

\$4

Screening Date 8-Jun-2011

Docket No. 2011-0895-PST-E

PCW

Respondent Masood Ahmad dba Fannett Drive In

Policy Revision 2 (September 2002)

Case ID No. 41782

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101750834

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 3

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

Violation Description Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 Number of violation days 37

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

Violation Base Penalty \$2,500

One quarterly event is recommended based on documentation of the violation during the May 2, 2011 investigation to the June 8, 2011 screening date.

Good Faith Efforts to Comply

0.0% Reduction \$0

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

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

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$21

Violation Final Penalty Total \$2,688

This violation Final Assessed Penalty (adjusted for limits) \$2,688

Economic Benefit Worksheet

Respondent Masood Ahmad dba Fannett Drive In
Case ID No. 41782
Reg. Ent. Reference No. RN101750834
Media Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	2-May-2011	2-Mar-2012	0.84	\$21	n/a	\$21
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to conduct inventory control for all USTs involved in the retail sale of petroleum substances used as motor fuel. The date required is the date of the investigation 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

\$500

TOTAL

\$21

Screening Date 8-Jun-2011

Docket No. 2011-0895-PST-E

PCW

Respondent Masood Ahmad dba Fannett Drive In

Policy Revision 2 (September 2002)

Case ID No. 41782

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101750834

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(2) and (b)(2)(A)(i)(III) and Tex. Water Code § 26.3475(a)

Violation Description

Failed to provide release detection for the piping associated with the USTs. Specifically, the annual piping tightness test was not conducted by the due date of March 17, 2010. Also, failed to test the line leak detectors at least once per year for performance and operational reliability. Specifically, the line leak detectors were not performance tested by the due date of March 17, 2010.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would 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

365 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	x
single event	

mark only one with an x

Violation Base Penalty \$2,500

One annual 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 March 17, 2011, prior to the NOE dated June 2, 2011.

Violation Subtotal \$1,875

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$129

Violation Final Penalty Total \$2,016

This violation Final Assessed Penalty (adjusted for limits) \$2,016

Economic Benefit Worksheet

Respondent Masood Ahmad dba Fannett Drive In
Case ID No. 41782
Reg. Ent. Reference No. RN101750834
Media Petroleum Storage Tank
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				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]	\$118	17-Mar-2010	17-Mar-2011	1.92	\$11	\$118	\$129
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost for conducting the line leak detector and piping tightness tests. The date required is the date the tests were due and the final date is the compliance date.

Approx. Cost of Compliance \$118

TOTAL \$129

Screening Date 8-Jun-2011

Docket No. 2011-0895-PST-E

PCW

Respondent Masood Ahmad dba Fannett Drive In

Policy Revision 2 (September 2002)

Case ID No. 41782

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101750834

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 5

Rule Cite(s) 30 Tex. Admin. Code § 115.246(3) and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel. Specifically, the Stage II maintenance records were not available for review.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
	X		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

37 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

mark only one with an x

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the May 2, 2011 investigation.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$19

Violation Final Penalty Total \$1,075

This violation Final Assessed Penalty (adjusted for limits) \$1,075

Economic Benefit Worksheet

Respondent Masood Ahmad dba Fannett Drive In
Case ID No. 41782
Reg. Ent. Reference No. RN101750834
Media Petroleum Storage Tank
Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	2-May-2011	2-Feb-2012	0.76	\$19	n/a	\$19
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to maintain Stage II records at the Station. The date required is the investigation date and the final date is the 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

\$500

TOTAL

\$19

Screening Date 8-Jun-2011

Docket No. 2011-0895-PST-E

PCW

Respondent Masood Ahmad dba Fannett Drive In

Policy Revision 2 (September 2002)

Case ID No. 41782

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101750834

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 6

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 annual Stage II test was not conducted by the due date of March 17, 2010.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

	Major	Moderate	Minor
Falsification			

Percent 0%

Matrix Notes

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

365 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	x
single event	

mark only one with an x

Violation Base Penalty \$2,500

One annual event is recommended.

Good Faith Efforts to Comply

25.0% Reduction

\$625

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

Notes

The Respondent came into compliance on March 17, 2011, prior to the NOE dated June 2, 2011.

Violation Subtotal \$1,875

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$548

Violation Final Penalty Total \$2,016

This violation Final Assessed Penalty (adjusted for limits) \$2,016

Economic Benefit Worksheet

Respondent Masood Ahmad dba Fannett Drive In
Case ID No. 41782
Reg. Ent. Reference No. RN101750834
Media Petroleum Storage Tank
Violation No. 6

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

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

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$500	17-Mar-2010	17-Mar-2011	1.92	\$48	\$500	\$548
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to complete the annual 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

\$548

Compliance History

Customer/Respondent/Owner-Operator: CN600943583 Ahmad Masood Classification: AVERAGE Rating: 3.01
Regulated Entity: RN101750834 FANNETT DRIVE IN Classification: AVERAGE Site Rating: 3.01
BY DEFAULT

ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 57050
Location: 16685 HIGHWAY 124, BEAUMONT, TX, 77705

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: June 06, 2011
Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 06, 2006 to June 06, 2011

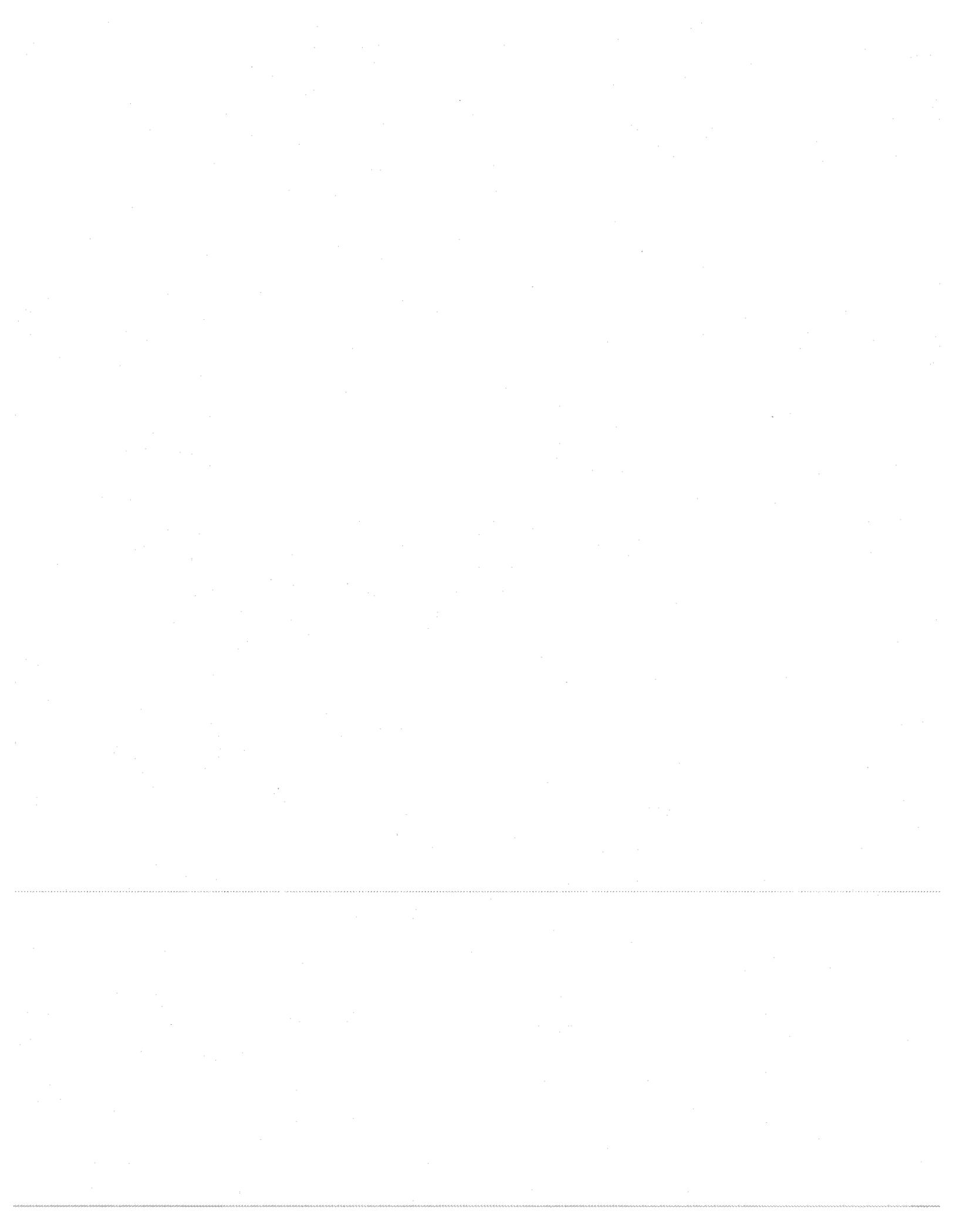
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Judy Kluge Phone: (817) 588-5825

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.)
N/A
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
 - 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
MASOOD AHMAD DBA FANNETT
DRIVE IN
RN101750834**

**§
§
§
§
§
§**

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2011-0895-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 Masood Ahmad dba Fannett Drive In ("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 16685 Highway 124 in Beaumont, Jefferson County, Texas (the "Station").
2. The Respondent's two 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 notice of the violations alleged in Section II ("Allegations") on or about June 7, 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 Nine Thousand Six Hundred Seventy-Seven Dollars (\$9,677) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Hundred Seventeen Dollars (\$217) of the administrative penalty and One Thousand Nine Hundred Thirty-Five Dollars (\$1,935) 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 Five Hundred Twenty-Five Dollars (\$7,525) of the administrative penalty shall be payable in 35 monthly payments of Two Hundred Fifteen Dollars (\$215) 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. Posted a current, valid delivery certificate at the Station on May 2, 2011;
 - b. Successfully conducted the annual piping tightness and line leak detector tests on March 17, 2011; and
 - c. Successfully conducted the annual testing of the Stage II equipment on March 17, 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 a valid current TCEQ delivery certificate is posted at the Station and visible at all times, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii), as documented during an investigation conducted on May 2, 2011. Specifically, the delivery certificate was not posted.
2. Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(C), as documented during an investigation conducted on May 2, 2011.
3. Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel, in violation of 30 TEX. ADMIN. CODE § 334.48(c), as documented during an investigation conducted on May 2, 2011.
4. Failed to provide release detection for the piping associated with the USTs, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a), as documented during an investigation conducted on May 2, 2011. Specifically, the annual piping tightness test was not conducted by the due date of March 17, 2010.
5. Failed to test the line leak detectors at least once per year for performance and operational reliability, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a), as documented during an investigation conducted on May 2, 2011. Specifically, the line leak detectors were not performance tested by the due date of March 17, 2010.
6. Failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 115.246(3) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on May 2, 2011. Specifically, the Stage II maintenance records were not available for review.
7. 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 May 2, 2011. Specifically, the annual Stage II test was not conducted by the due date of March 17, 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: Masood Ahmad dba Fannett Drive In, Docket No. 2011-0895-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. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order:
 - i. Begin conducting effective manual or automatic inventory control procedures for all USTs, in accordance with 30 TEX. ADMIN. CODE § 334.48; and
 - ii. Begin maintaining all Stage II records at the Station, in accordance with 30 TEX. ADMIN. CODE § 115.246.
 - b. Within 30 days after the effective date of this Agreed Order, ensure that the UST fill ports are properly tagged, labeled, or marked according to the UST registration and self-certification form, in accordance with 30 TEX. ADMIN. CODE § 334.8; and
 - c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a.i. through 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and

complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1892

3. 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.
4. 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.
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 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.
6. 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.
7. 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.

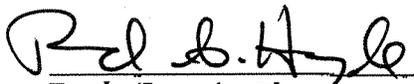
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Masood Ahmad dba Fannett Drive In
DOCKET NO. 2011-0895-PSI-E
Page 7

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

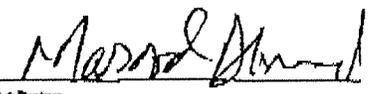
11/3/11
Date

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

10-25-11
Date

MASOOD AHMAD
Name (Printed or typed)

MG
Title

Authorized Representative of
Masood Ahmad dba Fannett Drive In

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.