

Executive Summary – Enforcement Matter – Case No. 41848
Ashok K. Sharma d/b/a A-1 Mart and Pokhrel Enterprises Inc d/b/a A-1 Mart
RN102010097
Docket No. 2011-0968-PST-E

Order Type:

Default Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

6800 Camp Bowie West Boulevard, Fort Worth, Tarrant 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:	None

Texas Register Publication Date: November 18, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed: \$2,120

Amount Deferred for Expedited Settlement: N/A

Amount Deferred for Financial Inability to Pay: N/A

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$2,120

Compliance History Classifications:

Person/CN – Average (Both Respondents)

Site/RN – Average

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): March 23, 2011
Complaint Information: Alleged a leaking nozzle on the diesel pump.
Date(s) of Investigation: April 19, 2011; May 17, 2011
Date(s) of NOV(s): N/A
Date(s) of NOE(s): May 31, 2011

Violation Information

1. 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 [30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)].
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 [TEX. WATER CODE § 26.3467(a) and 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

Respondents submitted a properly completed UST registration and self-certification form and obtained a valid TCEQ delivery certificate on June 20, 2011.

Technical Requirements:

1. Respondents' fuel delivery certificate is revoked immediately.
2. Within 10 days, Respondents shall submit the Facility's UST fuel delivery certificate to TCEQ.
3. Upon obtaining a new fuel delivery certificate, Respondents shall post it where it is clearly visible at all times.

Litigation Information

Date Petition(s) Filed: September 23, 2011
Date(s) Green Card(s) Signed: September 27, 2011 ("Ashok K. Sharma")
Unclaimed ("Pokhrel Enterprises Inc")
Date(s) Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A

Contact Information

TCEQ Attorneys: Phillip M. Goodwin, P.G., Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
TCEQ Enforcement Coordinator: Rajesh Acharya, Waste Enforcement Section, (512) 239-0577
TCEQ Regional Contact: Sam Barrett, Dallas/Fort Worth Regional Office, (817) 588-5903
Respondent: Ashok K. Sharma, 605 Amy Way, Euless, Texas 76039;
Ashok K. Sharma, Director, Pokhrel Enterprises Inc., 1147 Hidden Ridge, Apt 2133, Irving, Texas 75038
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	13-Jun-2011	EPA Due	
	PCW	2-Sep-2011				

RESPONDENT/FACILITY INFORMATION

Respondent	Ashok K. Sharma d/b/a A-1 Mart and Pokhrel Enterprises Inc d/b/a A-1 Mart		
Reg. Ent. Ref. No.	RN102010097		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	41848	No. of Violations	2
Docket No.	2011-0968-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Rajesh Acharya
		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	\$2,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	6.0% Enhancement	Subtotals 2, 3, & 7	\$120
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Notes	Enhancement for three NOV's with dissimilar violations.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$2	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$100	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,120
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$2,120
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,120
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$2,120
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Screening Date 13-Jun-2011

Docket No. 2011-0968-PST-E

PCW

Respondent Ashok K. Sharma d/b/a A-1 Mart and Pokhrel Enterprises Inc d/b/a A-1 Mart

Case ID No. 41848

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102010097

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

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	3	6%
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) 6%

>> 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 three NOVs with dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 6%

Screening Date 13-Jun-2011

Docket No. 2011-0968-PST-E

PCW

Respondent Ashok K. Sharma d/b/a A-1 Mart and Pokhrel Enterprises Inc

Policy Revision 2 (September 2002)

Case ID No. 41848

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102010097

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

Violation Number 1

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 underground storage tank ("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 March 31, 2011.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	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

74 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	x
single event	

Violation Base Penalty \$1,000

One single event is recommended.

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 \$2

Violation Final Penalty Total \$1,060

This violation Final Assessed Penalty (adjusted for limits) \$1,060

Economic Benefit Worksheet

Respondent Ashok K. Sharma d/b/a A-1 Mart and Pokhrel Enterprises Inc d/b/a A-1 Mart
Case ID No. 41848
Req. Ent. Reference No. RN102010097
Media Violation No. 1
Media Violation No. 1

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)	\$100	1-Mar-2011	20-Jun-2011	0.30	\$2	n/a	\$2

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 before the expiration date of 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 \$2

Screening Date 13-Jun-2011

Docket No. 2011-0968-PST-E

PCW

Respondent Ashok K. Sharma d/b/a A-1 Mart and Pokhrel Enterprises Inc

Policy Revision 2 (September 2002)

Case ID No. 41848

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102010097

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

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 USTs. Specifically, the Respondents accepted two deliveries of fuel without a delivery certificate.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	x			10%

Matrix Notes

100% of the rule requirement was not met.

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

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 \$0

Violation Final Penalty Total \$1,060

This violation Final Assessed Penalty (adjusted for limits) \$1,060

Economic Benefit Worksheet

Respondent Ashok K. Sharma d/b/a A-1 Mart and Pokhrel Enterprises Inc d/b/a A-1 Mart
Case ID No. 41848
Req. Ent. Reference No. RN102010097
Media Violation No. Petroleum Storage Tank
 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

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

Notes for DELAYED costs

Economic benefit included in violation no. 1.

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

Compliance History

Customer/Respondent/Owner-Operator:	CN603657263	Ashok K. Sharma	Classification: AVERAGE	Rating: 3.75
Regulated Entity:	RN102010097	A-1 MART	Classification: AVERAGE	Site Rating: 3.75
ID Number(s):	PETROLEUM STORAGE TANK	REGISTRATION	13518	
	PETROLEUM STORAGE TANK STAGE II	REGISTRATION	13518	
	AIR QUALITY NON PERMITTED	ID NUMBER	R04102010097	
Location:	6800 CAMP BOWIE WEST BLVD, FORT WORTH, TX, 76116			
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	June 14, 2011			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	June 14, 2006 to June 14, 2011			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:				
Name:	Rajesh Acharya	Phone:	(512) 239-0577	

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? Yes
3. If Yes, who is the current owner/operator? Ashok K. Sharma
4. If Yes, who was/were the prior owner(s)/operator(s)? Faiz, Abdallahil
Hwy 80 Texaco
5. When did the change(s) in owner or operator occur? 10/16/2009
03/15/2009
6. Rating Date: 9/1/2010 Repeat Violator: NO

Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	07/08/2009	(746451)
2	07/24/2009	(760214)
3	04/27/2011	(878734)
4	05/13/2011	(905781)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 07/08/2009 (746451) CN603657263

Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 115, SubChapter C 115.242(1)(C)		
Description:	Failure to ensure that the Stage II vapor recovery system is Onboard Refueling Vapor Recovery (ORVR) compatible, as defined in 115.240 of this title in accordance with the schedules in 115.249.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 115, SubChapter C 115.242(3)		
Description:	Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s) or third-party certification, free of defects that would impair the effectiveness of the system.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 115, SubChapter C 115.242(3)(A)		
Description:	Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s) or third-party certification, and free of defects that would impair the effectiveness of the system, including the absence or disconnection of any component that is a part of the approved system.		

Date: 07/24/2009 (760214) CN603657263

Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 115, SubChapter C 115.242(3)(A)		
Description:	Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s) or third-party certification, and free of defects that would impair the effectiveness of the system, including the absence or disconnection of any component that is a part of the approved system.		

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)
Description: Failure to verify proper operation of the Stage II equipment at least once every twelve months.

Date: 05/13/2011 (905781) CN603657263

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)
Description: Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s) or third-party certification, free of defects that would impair the effectiveness of the system.

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

Compliance History

Customer/Respondent/Owner-Operator:	CN603961756	Pokhrel Enterprises Inc	Classification: AVERAGE	Rating: 3.75
Regulated Entity:	RN102010097	A-1 MART	Classification: AVERAGE	Site Rating: 3.75
ID Number(s):	PETROLEUM STORAGE TANK	REGISTRATION	13518	
	PETROLEUM STORAGE TANK STAGE II	REGISTRATION	13518	
	AIR QUALITY NON PERMITTED	ID NUMBER	R04102010097	
Location:	6800 CAMP BOWIE WEST BLVD, FORT WORTH, TX, 76116			
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	June 14, 2011			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	June 14, 2006 to June 14, 2011			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:				
Name:	Rajesh Acharya	Phone:	(512) 239-0577	

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? Yes
3. If Yes, who is the current owner/operator? Ashok K. Sharma
4. If Yes, who was/were the prior owner(s)/operator(s)? Faiz, Abdallahil
Hwy 80 Texaco
5. When did the change(s) in owner or operator occur? 10/16/2009
03/15/2009
6. Rating Date: 9/1/2010 Repeat Violator: NO

Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	07/08/2009	(746451)
2	07/24/2009	(760214)
3	04/27/2011	(878734)
4	05/13/2011	(905781)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 07/08/2009 (746451) CN603657263

- | | | |
|--------------|--|--------------------------|
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.242(1)(C) | |
| Description: | Failure to ensure that the Stage II vapor recovery system is Onboard Refueling Vapor Recovery (ORVR) compatible, as defined in 115.240 of this title in accordance with the schedules in 115.249. | |
| | | |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.242(3) | |
| Description: | Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s) or third-party certification, free of defects that would impair the effectiveness of the system. | |
| | | |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.242(3)(A) | |
| Description: | Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s) or third-party certification, and free of defects that would impair the effectiveness of the system, including the absence or disconnection of any component that is a part of the approved system. | |

Date: 07/24/2009 (760214) CN603657263

- | | | |
|--------------|--|--------------------------|
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.242(3)(A) | |
| Description: | Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s) or third-party certification, and free of defects that would impair the effectiveness of the system, including the absence or disconnection of any component that is a part of the approved system. | |

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)
Description: Failure to verify proper operation of the Stage II equipment at least once every twelve months.

Date: 05/13/2011 (905781) CN603657263

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)
Description: Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s) or third-party certification, free of defects that would impair the effectiveness of the system.

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
ASHOK K. SHARMA
D/B/A A-1 MART AND
POKHREL ENTERPRISES INC
D/B/A A-1 MART;
RN102010097**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2011-0968-PST-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and revocation of a fuel delivery certificate. The respondents made the subject of this Order are Ashok K. Sharma d/b/a A-1 Mart and Pokhrel Enterprises Inc d/b/a A-1 Mart ("Respondents").

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

FINDINGS OF FACT

1. Respondents own and operate, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), an underground storage tank ("UST") system and a convenience store with retail sales of gasoline located at 6800 Camp Bowie West Boulevard in Fort Worth, Tarrant 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 April 19, 2011, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Respondents 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 March 31, 2011.
3. During a record review conducted on May 17, 2011, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Respondents failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, Respondents accepted two deliveries of fuel without a delivery certificate.
4. Respondents received notice of the violations on or about June 6, 2011.

5. The Executive Director recognizes that Respondents submitted a properly completed UST registration and self-certification form and obtained a valid TCEQ delivery certificate on June 20, 2011.
6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Ashok K. Sharma d/b/a A-1 Mart and Pokhrel Enterprises Inc d/b/a A-1 Mart" (the "EDPRP") in the TCEQ Chief Clerk's office on September 23, 2011.
7. By letter dated September 23, 2011, sent to each Respondent's last known addresses via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served each of the Respondents with notice of the EDPRP. According to the return receipt "green card," Respondent Ashok K. Sharma d/b/a A-1 Mart received notice of the EDPRP on September 27, 2011, as evidenced by the signature on the card. The United States Postal Service returned the EDPRP sent by certified mail to Respondent Pokhrel Enterprises Inc d/b/a A-1 Mart as "unclaimed." The first class mail has not been returned, indicating that Respondent Pokhrel Enterprises Inc d/b/a A-1 Mart received notice of the EDPRP.
8. More than 20 days have elapsed since each Respondent received notice of the EDPRP. Respondents failed to file an answer and failed to request a hearing.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondents are 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, Respondents 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).
3. As evidenced by Finding of Fact No. 3, Respondents 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 TEX. WATER CODE § 26.3467(a) and 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i).
4. As evidenced by Findings of Fact Nos. 6 and 7, the Executive Director timely served each Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a) and (c)(2).
5. As evidenced by Finding of Fact No. 8, Respondents failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondents and assess the penalty recommended by the Executive Director.
6. Pursuant to TEX. WATER CODE § 7.051 the Commission has the authority to assess an administrative penalty against Respondents 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.

7. An administrative penalty in the amount of two thousand one hundred twenty dollars (\$2,120.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.
9. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke the Facility's UST fuel delivery certificate if the Commission finds that good cause exists.
10. Good cause for revocation of the Facility's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2, 3, and 6 through 8, and Conclusions of Law Nos. 2 through 5.

ORDERING PROVISIONS

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

1. Respondents are assessed an administrative penalty in the amount of two thousand one hundred twenty dollars (\$2,120.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondents' compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here.
2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Ashok K. Sharma d/b/a A-1 Mart and Pokhrel Enterprises Inc d/b/a A-1 Mart; Docket No. 2011-0968-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
3. The Facility's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Respondent shall cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ in accordance with 30 TEX. ADMIN. CODE §§ 334.7 and 334.8. Respondents may submit an application for a new fuel delivery certificate only after Respondents have complied with all of the requirements of this Order.
4. Within 10 days after the effective date of this Order, Respondents shall send the Facility's UST fuel delivery certificate to:

Petroleum Storage Tank Registration Team, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

5. Upon obtaining a new fuel delivery certificate, Respondents shall post the fuel delivery certificate in a location at the Facility where the delivery certificate is clearly visible at all times, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii).
6. All relief not expressly granted in this Order is denied.
7. The provisions of this Order shall apply to and be binding upon Respondents. Respondents are ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
8. If Respondents fail to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondents' failure to comply is not a violation of this Order. Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondents shall notify the Executive Director within seven days after Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
9. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondents shall be made in writing to the Executive Director. Extensions are not effective until Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
10. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondents have not complied with one or more of the terms or conditions in this Order.
11. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
12. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF PHILLIP M. GOODWIN

STATE OF TEXAS

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§

COUNTY OF TRAVIS

"My name is Phillip M. Goodwin. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Ashok K. Sharma d/b/a A-1 Mart and Pokhrel Enterprises Inc d/b/a A-1 Mart" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on September 23, 2011.

The EDPRP was mailed to each Respondent's last known address on September 23, 2011, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent Ashok K. Sharma d/b/a A-1 Mart received notice of the EDPRP on September 27, 2011, as evidenced by the signature on the card. The United States Postal Service returned the EDPRP sent by certified mail to Respondent Pokhrel Enterprises Inc d/b/a A-1 Mart as "unclaimed." The first class mail has not been returned, indicating that Respondent Pokhrel Enterprises Inc d/b/a A-1 Mart received notice of the EDPRP.

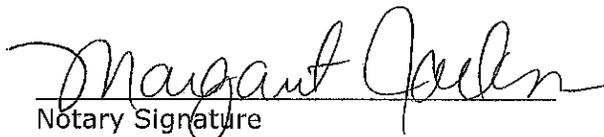
More than 20 days have elapsed since each Respondent received notice of the EDPRP. Respondents failed to file an answer and failed to request a hearing."



Phillip M. Goodwin, P.G., Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Phillip M. Goodwin, P.G., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 27th day of October, A.D. 2011.



Notary Signature

