

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 41920  
MFMK, INC. d/b/a Phillips 66 Food Mart  
RN100699479  
Docket No. 2011-1029-PST-E

**Order Type:**

Default Order

**Findings Order Justification:**

N/A

**Media:**

PST

**Small Business:**

Yes

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

12306 Beechnut Street, Houston, Harris 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: Service of Process was achieved through the Secretary of State pursuant to  
TEX. BUS. ORG. CODE § 521.251(1)(B).

Interested Third-Parties: None

**Texas Register Publication Date:**

June 22, 2012

**Comments Received:**

None

**Penalty Information**

**Total Penalty Assessed:** \$17,519

**Total Paid to General Revenue:** \$0

**Total Due to General Revenue:** \$17,519

**Compliance History Classifications:**

Person/CN – Poor

Site/RN – Poor

**Major Source:**

No

**Statutory Limit Adjustment:**

None

**Applicable Penalty Policy:**

September 2002

**Investigation Information**

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** December 9, 2010; June 17, 2011  
**Date(s) of NOV(s):** N/A  
**Date(s) of NOE(s):** June 17, 2011

**Violation Information**

1. Failed to submit a properly completed UST registration and self-certification form within 30 days of ownership change [30 TEX. ADMIN. CODE § 334.8(c)(4)(C) and (c)(5)(B)(i)].
2. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)].
3. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs containing a regulated substance [30 TEX. ADMIN. CODE § 37.815(a) and (b)].
4. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and failed to provide proper release detection for the product piping associated with the UST system [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and (b)(2) and TEX. WATER CODE § 26.3475(a) and (c)(1)].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**

Respondent no longer operates the Facility as of June 1, 2011.

**Technical Requirements:**

N/A

**Litigation Information**

**Date Petition(s) Filed:** February 7, 2012 (re-filed for service April 24, 2012)  
**Date Green Card(s) Signed:** April 30, 2012 (via service through SOS)  
**Date Answer(s) Filed:** N/A

**Contact Information**

**TCEQ Attorneys:** Kari L. Gilbreth, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
Garrett Arthur, Public Interest Counsel, (512) 239-6363  
**TCEQ Enforcement Coordinator:** Epifanio Villareal, Enforcement Division, (816) 825- 3100  
**TCEQ Regional Contact:** Nicole Bealle, Houston Regional Office, (713) 767-3500  
**Respondent:** Ersa Ahmed, President, MFMK, INC., 12306 Beechnut Street, Houston, Texas 77072  
**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	20-Jun-2011	<b>Screening</b>	23-Jun-2011	<b>EPA Due</b>	
	<b>PCW</b>	7-Oct-2011				

<b>RESPONDENT/FACILITY INFORMATION</b>			
<b>Respondent</b>	MFMK, INC. d/b/a Phillips 66 Food Mart		
<b>Reg. Ent. Ref. No.</b>	RN100699479		
<b>Facility/Site Region</b>	12-Houston	<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	41920	<b>No. of Violations</b>	4
<b>Docket No.</b>	2011-1029-PST-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Epifanio Villarreal
		<b>EC's Team</b>	Enforcement Team 2
<b>Admin. Penalty \$ 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>	\$11,000
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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.

<b>Compliance History</b>	30.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$3,300
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<b>Notes</b>	Enhancement for one order with denial of liability and poor performer classification.
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<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$3,304	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$4,661	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$14,300
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	22.5%	<b>Adjustment</b>	\$3,219
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	Enhancement recommended for recovery of avoided costs of compliance associated with violation nos. 3 and 4.
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<b>Final Penalty Amount</b>	\$17,519
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$17,519
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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 indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>Notes</b>	Deferral not offered for non-expedited settlement.
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<b>PAYABLE PENALTY</b>	\$17,519
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**Screening Date** 23-Jun-2011

**Docket No.** 2011-1029-PST-E

**PCW**

**Respondent** MFMK, INC. d/b/a Phillips 66 Food Mart

*Policy Revision 2 (September 2002)*

**Case ID No.** 41920

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN100699479

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** Epifanio Villarreal

### 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> )	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)** 20%

**>> Repeat Violator (Subtotal 3)**

No

**Adjustment Percentage (Subtotal 3)** 0%

**>> Compliance History Person Classification (Subtotal 7)**

Poor Performer

**Adjustment Percentage (Subtotal 7)** 10%

**>> Compliance History Summary**

**Compliance History Notes**

Enhancement for one order with denial of liability and poor performer classification.

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

Screening Date 23-Jun-2011

Docket No. 2011-1029-PST-E

PCW

Respondent MFMK, INC. d/b/a Phillips 66 Food Mart

Policy Revision 2 (September 2002)

Case ID No. 41920

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100699479

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Epifanio Villarreal

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(4)(C) and (c)(5)(B)(i)

Violation Description Failed to renew a delivery certificate by submitting a properly completed UST registration and self-certification form within 30 days of ownership change. Specifically, the Respondent did not renew the delivery certificate after the ownership changed on July 23, 2010.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

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

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (10%).

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 115 Number of violation days

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

Violation Base Penalty \$1,000

One annual event is recommended.

Good Faith Efforts to Comply

Table for Good Faith Efforts: Reduction (0.0%), Extraordinary, Ordinary, N/A (marked with x).

\$0

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 \$1,593

This violation Final Assessed Penalty (adjusted for limits) \$1,593

## Economic Benefit Worksheet

**Respondent** MFMK, INC. d/b/a Phillips 66 Food Mart  
**Case ID No.** 41920  
**Reg. Ent. Reference No.** RN100699479  
**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)	\$100	23-Aug-2010	16-Dec-2010	0.32	\$0	\$2	\$2
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain a current TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form. The date required is 30 days after the change of owner 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**

\$2

Screening Date 23-Jun-2011

Docket No. 2011-1029-PST-E

PCW

Respondent MFMK, INC. d/b/a Phillips 66 Food Mart

Policy Revision 2 (September 2002)

Case ID No. 41920

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100699479

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Epifanio Villarreal

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 UST. Specifically, at the time of the record review, the Respondent received deliveries of fuel without a delivery certificate on September 9, 2010, September 27, 2010, September 30, 2010, October 7, 2010, October 13, 2010, October 21, 2010, October 28, 2010, November 13, 2010, and November 30, 2010.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				5%
	Potential			x	

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent

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

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 9 Number of violation days 6

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

Violation Base Penalty \$4,500

Nine single events are 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 \$4,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$7,167

This violation Final Assessed Penalty (adjusted for limits) \$7,167

## Economic Benefit Worksheet

**Respondent** MFMK, INC. d/b/a Phillips 66 Food Mart  
**Case ID No.** 41920  
**Reg. Ent. Reference No.** RN100699479  
**Media** Petroleum Storage Tank  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

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

Notes for DELAYED costs

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

Screening Date 23-Jun-2011

Docket No. 2011-1029-PST-E

PCW

Respondent MFMK, INC. d/b/a Phillips 66 Food Mart

Policy Revision 2 (September 2002)

Case ID No. 41920

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100699479

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Epifanio Villarreal

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 37.815(a) and (b)

Violation Description

Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs containing a regulated substance.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
	x			10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 3 365 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$3,000

Three single events are recommended for the three USTs at the Facility.

Good Faith Efforts to Comply

0.0% Reduction Before NOV NOV to EDPRP/Settlement Offer

\$0

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

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

Violation Subtotal \$3,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3,090

Violation Final Penalty Total \$4,778

This violation Final Assessed Penalty (adjusted for limits) \$4,778

## Economic Benefit Worksheet

**Respondent** MFMK, INC. d/b/a Phillips 66 Food Mart  
**Case ID No.** 41920  
**Reg. Ent. Reference No.** RN100699479  
**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)				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]	\$2,943	23-Jul-2010	10-Dec-2010	1.00	\$147	\$2,943	\$3,090
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to provide financial assurance for three petroleum USTs (\$981 per tank). The date required is the change of ownership date and the final date is the date of compliance.

Approx. Cost of Compliance \$2,943

**TOTAL** \$3,090

Screening Date 23-Jun-2011

Docket No. 2011-1029-PST-E

PCW

Respondent MFMK, INC. d/b/a Phillips 66 Food Mart

Policy Revision 2 (September 2002)

Case ID No. 41920

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100699479

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Epifanio Villarreal

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A) and (b)(2) and Tex. Water Code § 26.3475(a) and (c)(1)

Violation Description

Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and failed to provide proper release detection for the product piping associated with the UST system. Specifically, the Respondent does not have a method of release detection for the USTs or for the pipes associated with the UST system.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				25%
	Potential	x			

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0%
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 \$7,500

\$2,500

Violation Events

Number of Violation Events 1 6 Number of violation days

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

Violation Base Penalty \$2,500

One monthly event is recommended based from the June 17, 2011 record review date to the June 23, 2011 screening date.

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 Respondents do 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 \$212

Violation Final Penalty Total \$3,982

This violation Final Assessed Penalty (adjusted for limits) \$3,982

## Economic Benefit Worksheet

**Respondent** MFMK, INC. d/b/a Phillips 66 Food Mart  
**Case ID No.** 41920  
**Reg. Ent. Reference No.** RN100699479  
**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
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	9-Dec-2010	1-Feb-2012	1.15	\$86	n/a	\$86

Notes for DELAYED costs

Estimated cost to provide release detection for the UST system. The date required is the investigation date and the final date is the estimated 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]	\$118	23-Jul-2010	9-Dec-2010	1.30	\$11	\$118	\$129
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost of conducting the annual piping tightness test. The date required is change of ownership date and the final date is the investigation date.

Approx. Cost of Compliance

\$1,618

**TOTAL**

\$215

# Compliance History

Customer/Respondent/Owner Operator: CN603787391 MFMK, INC. Classification: POOR Rating: 62.50  
Regulated Entity: RN100699479 PHILLIPS 66 FOOD MART Classification: POOR Site Rating: 62.50  
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 50396  
Location: 12306 BEECHNUT ST, HOUSTON, HARRIS COUNTY, TX  
TCEQ Region: REGION 12 HOUSTON  
Date Compliance History Prepared: June 23, 2011  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: June 23, 2006 to June 23, 2011  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Epi Villarreal Phone: (361) 825 3425

## 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? MFMK, INC.  
Jasmine of Seaside LLC
4. If Yes, who was/were the prior owner(s)/operator(s)? KBEC Corporation  
ConocoPhillips Company  
Addison Enterprises Inc.
5. When did the change(s) in owner or operator occur? 10/26/2007 ConocoPhillips Company  
Addison Enterprises Inc.  
11/15/2007 KBEC Corporation
6. Rating Date: 9/1/2010 Repeat Violator: NO

## Components (Multimedia) for the Site:

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

**Effective Date: 09/22/2008**

**ADMINORDER 2008 0138 PST E**

Classification: Major

Citation: 30 TAC Chapter 334, SubChapter A 334.8(c)(4)(A)(vii)  
30 TAC Chapter 334, SubChapter A 334.8(c)(5)(B)(ii)

Description: Failed to 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.

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3467(a)  
30 TAC Chapter 334, SubChapter A 334.8(c)(5)(A)(i)

Description: Failed to make available to a common carrier a valid, TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs, in violation of 30 Tex. Admin. Code § 334.8(c)(5)(A)(i) and Tex. Water Code § 26.3467(a).

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 12/18/2007 (611237)

2 06/17/2011 (899186)

- 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

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# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
MFMK, INC. D/B/A PHILLIPS  
66 FOOD MART;  
RN100699479**

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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2011-1029-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. The respondent made the subject of this Order is MFMK, INC. d/b/a Phillips 66 Food Mart ("Respondent").

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

### **FINDINGS OF FACT**

1. Respondent operated, 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 12306 Beechnut Street in Houston, Harris 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 December 9, 2010, and a record review conducted on June 17, 2011, by a University of Texas at Arlington Petroleum Storage Tank investigator, it was documented that Respondent violated the following requirements:
  - a. Failed to submit a properly completed UST registration and self-certification form within 30 days of ownership change. Specifically, Respondent did not submit a UST registration form after the ownership changed on July 23, 2010;
  - b. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST. Specifically, Respondent received deliveries of fuel without a delivery certificate on September 9, 2010, September 27, 2010, September 30, 2010, October 7, 2010, October 13, 2010, October 21, 2010, October 28, 2010, November 13, 2010 and November 30, 2010;
  - c. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs containing a regulated substance; and

- d. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and failed to provide proper release detection for the product piping associated with the UST system.
3. Respondent received notice of the violations on or about June 22, 2011.
4. The Executive Director recognizes that Respondent no longer operates the Facility as of June 1, 2011.
5. 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 and Requiring Certain Actions of KBEC Corporation and MFMK, INC. d/b/a Phillips 66 Food Mart" (the "EDPRP") in the TCEQ Chief Clerk's office on February 7, 2012.<sup>1</sup>
6. By letter dated February 7, 2012, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director attempted to serve MFMK, INC. d/b/a Phillips 66 Food Mart with notice of the EDPRP. The United States Postal Service returned the EDPRP sent by certified mail and first class mail as "Return to sender—addressee unknown."
7. The ED requested via a letter dated April 24, 2012, that the Secretary of State – Citations Unit ("SOS"), serve MFMK, INC. d/b/a Phillips 66 Food Mart with a copy of the EDPRP. The ED received a letter from the SOS dated May 1, 2012, indicating that SOS received a "return receipt" of the EDPRP for MFMK, INC. d/b/a Phillips 66 Food Mart on April 30, 2012, bearing signature.
8. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

#### 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 failed to submit a properly completed UST registration and self-certification form within 30 days of ownership change, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(4)(C) and (c)(5)(B)(i).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs containing a regulated substance, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b).

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<sup>1</sup> The Executive Director is no longer pursuing enforcement against KBEC Corporation.

5. As evidenced by Finding of Fact No. 2.d., Respondent failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and failed to provide proper release detection for the product piping associated with the UST system, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and (b)(2) and TEX. WATER CODE § 26.3475(a) and (c)(1).
6. As evidenced by Finding of Fact No. 7, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and TEX. BUS. CORP. CODE §§ 5.251(1)(B), 5.252, and 5.253.
7. As evidenced by Finding of Fact No. 8, Respondent 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 Respondent and assess the penalty recommended by the Executive Director.
8. 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.
9. An administrative penalty in the amount of seventeen thousand five hundred nineteen dollars (\$17,519.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
10. 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.

### ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of seventeen thousand five hundred nineteen dollars (\$17,519.00) 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 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: MFMK, INC. d/b/a Phillips 66 Food Mart; Docket No. 2011-1029-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. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Respondent.
5. If Respondent fails 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, Respondent's failure to comply is not a violation of this 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.
6. 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 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.
7. 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 Respondent has not complied with one or more of the terms or conditions in this Order.
8. 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.
9. 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

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For the Commission

**AFFIDAVIT OF KARI L. GILBRETH**

**STATE OF TEXAS**

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**COUNTY OF TRAVIS**

"My name is Kari L. Gilbreth. 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 KBEC Corporation and MFMK, INC. d/b/a Phillips 66 Food Mart" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on February 7, 2012.

By letter dated May 7, 2012, sent to MFMK, INC.'s ("Respondent") last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director attempted to serve MFMK, INC. d/b/a Phillips 66 Food Mart with notice of the EDPRP. The United States Postal Service returned the EDPRP sent by certified mail and first class mail as "Return to sender—addressee unknown." The ED requested via a letter dated April 24, 2012 that the Secretary of State - Citations Unit ("SOS"), serve MFMK, INC. with a copy of the EDPRP. The ED received a letter from the SOS dated May 1, 2012, indicating that SOS received a "return receipt" of the EDPRP for MFMK, INC. d/b/a Phillips 66 Food Mart on April 30, 2012, bearing signature.

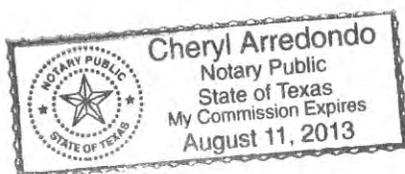
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."



Kari L. Gilbreth, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Kari L. Gilbreth, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 7<sup>th</sup> day of June, A.D. 2012.



Notary Signature