

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 43514
Magnolia Shell Truck Stop, Inc.
RN101520344
Docket No. 2012-0330-IWD-E

Order Type:

Agreed Order

Findings Order Justification:

N/A

Media:

IWD

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

northwest corner of the intersection of Interstate Highway 10 and Magnolia Avenue, approximately 1.8 miles west of the intersection of Interstate Highway 10 and San Jacinto River, Houston, Harris County

Type of Operation:

convenience store/truck stop with an associated wastewater treatment facility

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: September 28, 2012

Comments Received: None

Penalty Information

Total Penalty Assessed: \$54,600

Total Paid to General Revenue: \$1,575

Total Due to General Revenue: \$53,025

Payment Plan: 35 payments of \$1,515 each

SEP Conditional Offset: N/A

Compliance History Classifications:

Person/CN – Average
Site/RN – Average

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2002

Magnolia Shell Truck Stop, Inc.

RN101520344

Docket No. 2012-0330-IWD-E

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: November 17 - December 5, 2011
Date(s) of NOV(s): May 19, 2011
Date(s) of NOE(s): January 13, 2012

Violation Information

Failed to obtain authorization prior to operating a wastewater treatment plant [TEX. WATER CODE § 26.121(a)(1) and 30 TEX. ADMIN. CODE § 305.64(b)].

Corrective Actions/Technical Requirements**Corrective Action(s) Completed:**

None

Technical Requirements:

1. Within 15 days, submit an administratively complete permit application to transfer TPDES Permit No. WQ0003517000 into Respondent's name as owner and operator of the Facility.
2. Within 45 days, submit written certification that authorization to discharge has been obtained or that operations have ceased until proper authorization is obtained.

Litigation Information

Date Petition(s) Filed: July 3, 2012
Date Answer(s) Filed: N/A
Settlement Date: August 20, 2012

Contact Information

TCEQ Attorneys: Peipey Tang, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Eli Martinez, Public Interest Counsel, (512) 239-6363

TCEQ SEP Coordinator: N/A

TCEQ Enforcement Coordinator: JR Cao, Enforcement Division,

TCEQ Regional Contact: Stephen Smith, Houston Regional Office,

Respondent: Shakeel Uddin, Director, Magnolia Shell Truck Stop, Inc., 17141 1-10 East, Channelview, Texas 77530

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	17-Jan-2012	Screening	31-Jan-2012	EPA Due	
	PCW	29-May-2012				

RESPONDENT/FACILITY INFORMATION						
Respondent	Magnolia Shell Truck Stop, Inc.					
Reg. Ent. Ref. No.	RN101520344					
Facility/Site Region	12-Houston	Major/Minor Source	Minor			

CASE INFORMATION						
Enf./Case ID No.	43514	No. of Violations	1			
Docket No.	2012-0330-IWD-E	Order Type	1660			
Media Program(s)	Water Quality	Government/Non-Profit	No			
Multi-Media		Enf. Coordinator	JR Cao			
		EC's Team	Enforcement Team 1			
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000			

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$52,000
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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	5.0% Enhancement	Subtotals 2, 3, & 7	\$2,600
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Notes	Enhancement recommended for one NOV with a same/similar violation.
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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	\$24	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$100	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$54,600
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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	\$54,600
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$54,600
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DEFERRAL		Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$54,600
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Screening Date 31-Jan-2012

Docket No. 2012-0330-IWD-E

PCW

Respondent Magnolia Shell Truck Stop, Inc.

Policy Revision 2 (September 2002)

Case ID No. 43514

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101520344

Media [Statute] Water Quality

Enf. Coordinator JR Cao

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>)	1	5%
	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) 5%

>> 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 recommended for one NOV with a same/similar violation.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 31-Jan-2012

Docket No. 2012-0330-IWD-E

PCW

Respondent Magnolia Shell Truck Stop, Inc.

Policy Revision 2 (September 2002)

Case ID No. 43514

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101520344

Media [Statute] Water Quality

Enf. Coordinator JR Cao

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121(a)(1) and 30 Tex. Admin. Code § 305.64(b)

Violation Description Failed obtain authorization prior to operating a wastewater treatment plant, as documented during an investigation conducted on November 17, 2011. Specifically, the Respondent began operating the Facility without transferring Texas Pollutant Discharge Elimination System Permit No. WQ0003517000 on or about October 3, 2007, and continued to operate the Facility without authorization.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			x		
100% of the rule requirement was not met.					

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 52 1581 Number of violation days

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

Violation Base Penalty \$52,000

Fifty-two monthly events are recommended from the date of ownership change (October 3, 2007) to the screening date (January 31, 2012).

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 \$52,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$24

Violation Final Penalty Total \$54,600

This violation Final Assessed Penalty (adjusted for limits) \$54,600

Economic Benefit Worksheet

Respondent Magnolia Shell Truck Stop, Inc.
Case ID No. 43514
Reg. Ent. Reference No. RN101520344
Media Water Quality
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	3-Oct-2007	14-Aug-2012	4.87	\$24	n/a	\$24

Notes for DELAYED costs

Estimated cost to prepare and submit a transfer permit application. The date required is the date of ownership change. 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]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$24

Compliance History Report

Customer/Respondent/Owner-Operator: CN603844325 Magnolia Shell Truck Stop, Inc. Classification: AVERAGE Rating: 3.01
Regulated Entity: RN101520344 MIRAGE STOP Classification: AVERAGE Site Rating: 3.01

ID Number(s):

Location: Located on the northwest corner of the intersection of Interstate Highway 10 and Magnolia Avenue, approximately 1.8 miles west of the intersection of Interstate Highway 10 and San Jacinto River in Houston, Harris County, Texas

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: February 28, 2012

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: February 02, 2007 to February 02, 2012

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

Name: JR Cao Phone: (512) 239-2543

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? N/A
4. If **YES**, who was/were the prior owner(s)/operator(s)? Mirage Stop, Inc.
5. If **YES**, when did the change(s) in owner or operator occur? October 3, 2007
6. Rating Date: 9/1/2011 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	12/16/2010	(881322)
2	05/19/2011	(912595)
3	09/01/2011	(951296)
4	01/13/2012	(968842)

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

Date: 05/19/2011 (912595)

CN600795256

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter D 305.64(b)
30 TAC Chapter 305, SubChapter F 305.125(13)
Permit Conditions No. 5 PERMIT

Description: Failed to transfer the permit to the current owner.

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 MAGNOLIA SHELL TRUCK STOP, INC.; RN101520344	§ § § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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AGREED ORDER

DOCKET NO. 2012-0330-IWD-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Magnolia Shell Truck Stop, Inc. ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent together stipulate that:

1. Respondent owns and operates a convenience store/truck stop with an associated wastewater treatment facility located at the northwest corner of the intersection of Interstate Highway 10 and Magnolia Avenue, approximately 1.8 miles west of the intersection of Interstate Highway 10 and San Jacinto River in Houston, Harris County, Texas (the "Facility"). The Facility adjoins, is contiguous with, surrounds, or is near or adjacent to state water as defined in TEX. WATER CODE § 26.001(5).
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Executive Director and Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondent is subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of fifty-four thousand six hundred dollars (\$54,600.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid one thousand five hundred seventy-five dollars (\$1,575.00) of the administrative penalty. The remaining amount of fifty-three thousand twenty-five dollars (\$53,025.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of one thousand five hundred fifteen dollars (\$1,515.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the

unpaid balance shall become immediately due and payable without demand or notice. In addition, Respondent's failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Agreed Order.

6. 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.
7. The Executive Director and Respondent agree on a settlement of the matters addressed in this Agreed Order, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
8. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions contained in this Agreed Order.
9. 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.
10. 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

1. During an investigation conducted on November 17, 2011, through December 5, 2011, a TCEQ Houston Regional Office investigator documented that Respondent failed to obtain authorization prior to operating a wastewater treatment plant, in violation of TEX. WATER CODE § 26.121(a)(1) and 30 TEX. ADMIN. CODE § 305.64(b). Specifically, Respondent began operating the Facility on or about October 3, 2007, and continued to operate the Facility without transferring Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0003517000.
2. Respondent received notice of the violation on or about January 18, 2012.

III. DENIALS

Respondent generally denies each Allegation in Section II.

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Respondent pay an administrative penalty as set forth in Section I, Paragraph 5, above. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the Allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective actions or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Magnolia Shell Truck Stop, Inc., Docket No. 2012-0330-IWD-E" to:

Financial Administration Division, Revenues Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

2. Respondent shall undertake the following technical requirements:

- a. Within 15 days after the effective date of this Agreed Order, Respondent shall submit an administratively complete permit application to transfer TPDES Permit No. WQ0003517000 into Respondent's name as owner and operator of the Facility, in accordance with 30 TEX. ADMIN. CODE ch. 305 (relating to Consolidated Permits) to:

Applications Review and Processing Team
Water Quality Division, MC 148
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- b. Within 45 days after the effective date of this Agreed Order, Respondent shall submit written certification that authorization to discharge has been obtained or that operations have ceased until proper authorization has been obtained. The certification shall be accompanied by detailed supporting documentation including receipts, and/or other records to demonstrate compliance, shall be notarized by a State of Texas Notary Public and shall 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 fine and imprisonment for knowing violations."

Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and:

Stephen Smith, Water Section Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

3. All relief not expressly granted in this Agreed Order is denied.
4. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. If Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Agreed Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against 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.
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission" "owner" "person" "writing" and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
9. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails a copy of the fully executed Agreed Order to Respondent, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AT Swency
For the Executive Director

October 12, 2012
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of Magnolia Shell Truck Stop, Inc., and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

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

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

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

SHAKEEL UDDIN FOR [Signature]
Signature - Shakeel Uddin, Director
Magnolia Shell Truck Stop, Inc.

8/20/12
Date