

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 34664
Amin Makhani d/b/a Asian Groceries
RN102783867
Docket No. 2011-1950-PST-E

Order Type:

Findings Agreed Order

Findings Order Justification:

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

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

2300 Northeast Loop 410, San Antonio, Bexar County

Type of Operation:

convenience store with retail sales of gasoline

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: October 12, 2012

Comments Received: None

Penalty Information

Total Penalty Assessed: \$11,582

Total Paid to General Revenue: \$347

Total Due to General Revenue: \$11,235

Payment Plan: 35 payments of \$321 each

SEP Conditional Offset: N/A

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: July 1 - 22, 2011

Date(s) of NOV(s): April 5, 2012

Date(s) of NOE(s): September 29, 2011

Amin Makhani d/b/a Asian Groceries

RN102783867

Docket No. 2011-1950-PST-E

Violation Information

1. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b) and TCEQ Agreed Order Docket No. 2007-1603-PST-E, Ordering Provision No. 2.a.].
2. Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form [30 TEX. ADMIN. CODE § 334.8(c)(5)(C) and TCEQ Agreed Order Docket No. 2007-1603-PST-E, Ordering Provision No. 2.b.].
3. 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 [30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)].
4. 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)].
5. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between monitoring) and failed to provide release detection for the piping associated with the USTs [TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and (b)(2)].
6. Failed to provide proper corrosion protection for the UST system [TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(a)].

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

Respondent submitted a UST registration and self-certification form on July 1, 2011 (Violation Nos. 4 and 5).

Technical Requirements:

1. Within 30 days:
 - a. Begin maintaining all UST records;
 - b. Permanently apply or affix tags, labels, or markings to the fill ports with an identification number that matches the number listed on the UST registration and self-certification form;
 - c. Install and implement a release detection method for the UST system and conduct the annual piping tightness test; and
 - d. Install and implement a corrosion protection system for the UST system at the Facility.
2. Within 45 days, submit written documentation to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: February 23, 2012

Date Answer(s) Filed: N/A

Settlement Date: September 10, 2012

Contact Information

TCEQ Attorneys: Anna M. Treadwell, Litigation Division, (512) 239-3400

Lena Roberts, Litigation Division, (512) 239-3400

Amy Swanholm, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Margarita Dennis, Enforcement Division, (512) 239-2578

TCEQ Regional Contact: Cameron Lopez, San Antonio Regional Office, (210) 403-4044

Respondent: Amin Makhani, 2300 Northeast Loop 410, San Antonio, Texas 78217

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	3-Oct-2011	Screening	4-Oct-2011	EPA Due	
	PCW	29-Aug-2012				

RESPONDENT/FACILITY INFORMATION						
Respondent	Amin Makhani dba Asian Groceries					
Reg. Ent. Ref. No.	RN102783867					
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor			

CASE INFORMATION						
Enf./Case ID No.	34664	No. of Violations	6			
Docket No.	2011-1950-PST-E	Order Type	Findings			
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No			
Multi-Media		Enf. Coordinator	Margarita Dennis			
		EC's Team	Enforcement Team 7			
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000			

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$8,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	35.0% Enhancement	Subtotals 2, 3, & 7	\$2,975
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Notes	Enhancement for one NOV with same/similar violations, one order with denial of liability, and poor performer classification.		
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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	\$680	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$8,300	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$11,475
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.9%	Adjustment	\$107
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Enhancement to capture the avoided cost of compliance associated with violation no. 3.		
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Final Penalty Amount	\$11,582
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$11,582
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DEFERRAL	0.0% 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	No deferral is recommended for Findings Orders.		
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PAYABLE PENALTY	\$11,582
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Screening Date 4-Oct-2011

Docket No. 2011-1950-PST-E

PCW

Respondent Amin Makhani dba Asian Groceries

Policy Revision 2 (September 2002)

Case ID No. 34664

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102783867

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Margarita Dennis

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>)	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) 25%

>> 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 NOV with same/similar violations, one order with denial of liability, and poor performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 35%

Screening Date 4-Oct-2011

Docket No. 2011-1950-PST-E

PCW

Respondent Amin Makhani dba Asian Groceries

Policy Revision 2 (September 2002)

Case ID No. 34664

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102783867

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Margarita Dennis

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.10(b) and TCEQ Agreed Order Docket No. 2007-1603-PST-E, Ordering Provision No. 2.a.

Violation Description Failed to maintain underground storage tank ("UST") records and make them immediately available for inspection upon request by agency personnel.

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	Harm			Percent
		Major	Moderate	Minor	
		x			10%
100% of the rule requirement was not met.					

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 897 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	
	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 \$80 Violation Final Penalty Total \$1,363

This violation Final Assessed Penalty (adjusted for limits) \$1,363

Economic Benefit Worksheet

Respondent Amin Makhani dba Asian Groceries
Case ID No. 34664
Reg. Ent. Reference No. RN102783867
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	20-Apr-2009	4-Jul-2012	3.21	\$80	n/a	\$80
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to maintain UST records. The date required is the effective date of TCEQ Agreed Order Docket No. 2007-1603-PST-E 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]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$80

Screening Date 4-Oct-2011

Docket No. 2011-1950-PST-E

PCW

Respondent Amin Makhani dba Asian Groceries

Policy Revision 2 (September 2002)

Case ID No. 34664

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102783867

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Margarita Dennis

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(C) and TCEQ Agreed Order Docket No. 2007-1603-PST-E, Ordering Provision No. 2.b.

Violation Description

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

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 1 897 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 \$16

Violation Final Penalty Total \$1,363

This violation Final Assessed Penalty (adjusted for limits) \$1,363

Economic Benefit Worksheet

Respondent Amin Makhani dba Asian Groceries
Case ID No. 34664
Reg. Ent. Reference No. RN102783867
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)	\$100	20-Apr-2009	4-Jul-2012	3.21	\$16	n/a	\$16

Notes for DELAYED costs

Estimated cost to label the tank fill ports. The date required is the effective date of TCEQ Agreed Order Docket No. 2007-1603-PST-E 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]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$16

Screening Date 4-Oct-2011

Docket No. 2011-1950-PST-E

PCW

Respondent Amin Makhani dba Asian Groceries

Policy Revision 2 (September 2002)

Case ID No. 34664

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102783867

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Margarita Dennis

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)

Violation 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. Specifically, the delivery certificate expired on February 28, 2011.

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	Harm			Percent
		Major	Moderate	Minor	
		x			10%
100% of the rule requirement was not met.					

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 217 Number of violation days

mark only one with an x	daily		Violation Base Penalty \$1,000
	weekly		
	monthly		
	quarterly		
	semiannual		
	annual		
	single event	x	

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 \$111 Violation Final Penalty Total \$1,363

This violation Final Assessed Penalty (adjusted for limits) \$1,363

Economic Benefit Worksheet

Respondent Amin Makhani dba Asian Groceries
Case ID No. 34664
Reg. Ent. Reference No. RN102783867
Media Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	22-Jul-2011	4-Jun-2012	0.87	\$4	n/a	\$4

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 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]	\$100	29-Jan-2011	22-Jul-2011	1.39	\$7	\$100	\$107
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED 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 prior to the expiration date of the delivery certificate and the final date is the investigation date.

Approx. Cost of Compliance

\$200

TOTAL

\$111

Screening Date 4-Oct-2011

Docket No. 2011-1950-PST-E

PCW

Respondent Amin Makhani dba Asian Groceries

Policy Revision 2 (September 2002)

Case ID No. 34664

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102783867

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Margarita Dennis

Violation Number 4

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, one fuel delivery was accepted without a valid delivery certificate.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes 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 1 Number of violation days 1

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

Violation Base Penalty \$500

One single event is recommended for accepting one delivery of fuel without a valid delivery certificate.

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 \$500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$681

This violation Final Assessed Penalty (adjusted for limits) \$681

Economic Benefit Worksheet

Respondent Amin Makhani dba Asian Groceries
Case ID No. 34664
Reg. Ent. Reference No. RN102783867
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Economic benefit included in violation no. 3.

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 4-Oct-2011

Docket No. 2011-1950-PST-E

PCW

Respondent Amin Makhani dba Asian Groceries

Policy Revision 2 (September 2002)

Case ID No. 34664

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102783867

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Margarita Dennis

Violation Number 5

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

Violation Description 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 release detection for the piping associated with the USTs.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (25%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (0%).

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 74 Number of violation days

Table with columns: Frequency (daily, weekly, monthly, quarterly, semiannual, annual, single event), mark only one with an x.

Violation Base Penalty \$2,500

One quarterly event is recommended based on documentation of the violation during the July 22, 2011 investigation to the October 4, 2011 screening date.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table with columns: Extraordinary, Ordinary, N/A, Before NOV, NOV to EDPRP/Settlement Offer.

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

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$72

Violation Final Penalty Total \$3,406

This violation Final Assessed Penalty (adjusted for limits) \$3,406

Economic Benefit Worksheet

Respondent Amin Makhani dba Asian Groceries
Case ID No. 34664
Reg. Ent. Reference No. RN102783867
Media Petroleum Storage Tank
Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				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	22-Jul-2011	4-Jul-2012	0.95	\$72	n/a	\$72

Notes for DELAYED costs

Estimated cost to provide release detection for the UST system. The date required is the date of the investigation 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]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$72

Screening Date 4-Oct-2011

Docket No. 2011-1950-PST-E

PCW

Respondent Amin Makhani dba Asian Groceries

Policy Revision 2 (September 2002)

Case ID No. 34664

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102783867

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Margarita Dennis

Violation Number 6

Rule Cite(s) 30 Tex. Admin. Code § 334.49(a) and Tex. Water Code § 26.3475(d)

Violation Description Failed to provide proper corrosion protection for 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

Falsification	Major	Moderate	Minor	Percent
				0%

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 74 Number of violation days

mark only one with an x	daily		Violation Base Penalty \$2,500
	weekly		
	monthly		
	quarterly	x	
	semiannual		
	annual		
	single event		

One quarterly event is recommended based on documentation of the violation during the July 22, 2011 investigation to the October 4, 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 Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$400 Violation Final Penalty Total \$3,406

This violation Final Assessed Penalty (adjusted for limits) \$3,406

Economic Benefit Worksheet

Respondent Amin Makhani dba Asian Groceries
Case ID No. 34664
Reg. Ent. Reference No. RN102783867
Media Petroleum Storage Tank
Violation No. 6

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment	\$6,000	22-Jul-2011	4-Jul-2012	0.95	\$19	\$381	\$400
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

Estimated cost to provide corrosion protection for all components of the UST system. The date required is the date of the investigation 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]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$6,000

TOTAL

\$400

Compliance History

Customer/Respondent/Owner-Operator:	CN603255001 Makhani, Amin	Classification: POOR	Rating: 48.00
Regulated Entity:	RN102783867 Asian Groceries	Classification: POOR	Site Rating: 48.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	18794
Location:	2300 NE LOOP 410, SAN ANTONIO, TX, 78217		
TCEQ Region:	REGION 13 - SAN ANTONIO		
Date Compliance History Prepared:	November 04, 2011		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	October 04, 2006 to October 04, 2011		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	<u>Wallace Myers</u>	Phone:	<u>512-239-6580</u>

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?

OWN	Jones, Charles A
OPR	Makhani, Amin
4. If Yes, who was/were the prior owner(s)/operator(s)?

OPR	M&V & COMPANY
OPR	M & V & Company
OPR	Corner Food Mart
5. When did the change(s) in owner or operator occur?

	01/01/2010	OPR	M & V & Company
		OPR	Corner Food Mart
	01/01/2011	OPR	M&V & COMPANY
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.

Effective Date: 04/20/2009	ADMINORDER 2007-1603-PST-E
Classification: Moderate	
Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)	
Description: Failure to make underground storage tank records available for review.	
Classification: Moderate	
Citation: 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(C)	
Description: Failure to label or mark an underground storage tank fill tube.	
 - 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	04/06/2010	(787659)
2	09/29/2011	(944809)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	04/05/2010	(787659)	CN603255001	
Self Report?	NO			Classification: Moderate
Citation:	30 TAC Chapter 334, SubChapter A 334.10(b)			
Description:	Failure to make underground storage tank records available for review.			
Self Report?	NO			Classification: Moderate
Citation:	30 TAC Chapter 334, SubChapter A 334.8(c)(5)(C)			
Description:	Failure to label or mark an underground storage tank fill tube.			
 - 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
AMIN MAKHANI D/B/A
ASIAN GROCERIES;
RN102783867**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2011-1950-PST-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Amin Makhani d/b/a Asian Groceries ("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 presented this Agreed Order to the Commission.

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

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon Respondent.

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

FINDINGS OF FACT

1. Respondent operates, as defined in 30 TEX. ADMIN. CODE § 334.2(70), an underground storage tank ("UST") system and a convenience store with retail sales of gasoline located at 2300 Northeast Loop 410 in San Antonio, Bexar County, Texas (the "Facility"). The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contain a regulated petroleum substance as defined in the rules of the TCEQ.
2. During an investigation conducted on July 1, 2011 through July 22, 2011, a TCEQ San Antonio Regional Office investigator documented that Respondent:
 - a. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel;
 - b. Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form;

- c. 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. Specifically, the delivery certificate expired on February 28, 2011;
 - d. 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, one fuel delivery was accepted without a valid delivery certificate;
 - e. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between monitoring) and failed to provide release detection for the piping associated with the USTs; and
 - f. Failed to provide proper corrosion protection for the UST system.
3. Respondent received notice of the violations on or about October 4, 2011.
 4. The Executive Director recognizes that Respondent submitted a UST registration and self-certification form on July 1, 2011 (Conclusions of Law Nos. 4 and 5).

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 maintain UST records and make them immediately available for inspection upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 334.10(b) and TCEQ Agreed Order Docket No. 2007-1603-PST-E, Ordering Provision No. 2.a.
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(C) and TCEQ Agreed Order Docket No. 2007-1603-PST-E, Ordering Provision No. 2.b.
4. As evidenced by Finding of Fact No. 2.c., Respondent 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, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii).
5. As evidenced by Finding of Fact No. 2.d., Respondent 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).
6. As evidenced by Finding of Fact No. 2.e., Respondent failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between monitoring) and failed to provide release detection for the piping associated with the USTs, in violation of TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and (b)(2).

7. As evidenced by Finding of Fact No. 2.f., Respondent failed to provide proper corrosion protection for the UST system, in violation of TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(a).
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 eleven thousand five hundred eighty-two dollars (\$11,582.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Respondent paid three hundred forty-seven dollars (\$347.00) of the administrative penalty. The remaining amount of eleven thousand two hundred thirty-five dollars (\$11,235.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of three hundred twenty-one dollars (\$321.00) 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.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty as set forth in Conclusion of Law No. 9, above, for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the matters set forth by this Agreed Order in this action. The Commission shall not be constrained in any manner from considering or requiring corrective actions or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Amin Makhani d/b/a Asian Groceries, Docket No. 2011-1950-PST-E" to:

Financial Administration Division, Revenues Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088
2. Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, Respondent shall:
 - i. Begin maintaining all UST records, in accordance with 30 TEX. ADMIN. CODE § 334.10 (Conclusions of Law No. 2);
 - ii. Permanently apply or affix tags, labels, or markings to the USTs with an identification number that matches the number listed on the UST registration

and self-certification form, in accordance with 30 TEX. ADMIN. CODE § 334.8 (Conclusions of Law No. 3);

- iii. Install and implement a release detection method for the UST system and conduct the annual piping tightness test at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.50 (Conclusions of Law No. 6); and
 - iv. Install and implement a corrosion protection system for all UST system at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.49 (Conclusions of Law No. 7).
- b. Within 45 days after the effective date of this Agreed Order, Respondent shall submit written certification to demonstrate compliance with Ordering Provisions Nos. 2.a.i. through 2.a.iv. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, 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 supporting 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:

Waste Section Manager
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Road
San Antonio, Texas 78233-4480

3. All relief not expressly granted in this Agreed Order is denied.
4. The provisions of 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.
7. The determination of what constitutes good cause rests solely with the Executive Director.
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 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. 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.
11. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

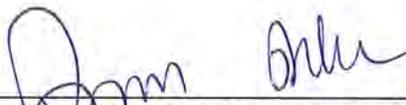
October 26, 2012
Date

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 Amin Makhani d/b/a Asian Groceries, 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 Agreed Order and/or failure to timely pay the penalty amount may result in:

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

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



Signature - Amin Makhani, Operator
Asian Groceries

09/10/12
Date