EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 46664
AL-IMRAN ENTERPRISES, INC. d/b/a Vargas Food Mart 2
RN102284767
Docket No. 2013-0764-PST-E

Order Type:
Default Order

Media:
PST

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
6201 Lyons Avenue, 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:	None
Interested Third-Parties:	None

Texas Register Publication Date: October 25, 2013

Comments Received: None

Penalty Information

Total Penalty Assessed: $5,048

Total Paid to General Revenue: $0

Total Due to General Revenue: $5,048

Compliance History Classifications:
Person/CN –Satisfactory
Site/RN – Satisfactory

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2011

Investigation Information

Complaint Date(s): N/A

Date(s) of Investigation: March 15, 2013

Date(s) of NOV(s): N/A

Date(s) of NOE(s): April 12, 2013

Violation Information

Failed to verify proper operation of the Stage II equipment at least once every 12 months [TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.245(2)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:
Respondent no longer owns or operates the Station as of June 10, 2013.

Technical Requirements:
N/A

Litigation Information

Date Petition(s) Filed: July 17, 2013; August 12, 2013

Date Green Card(s) Signed: Undelivered; August 14, 2013

Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Steven M. Fishburn, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Eli Martinez, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Danielle Porras, Enforcement Division, (713) 767-3682

TCEQ Regional Contact: Jason Ybarra, Houston Regional Office, (713) 767-3500

Respondent: Umar Rehman Muhammad, Director, Al-Imran Enterprises, Inc., 6201 Lyons Avenue, Houston, Texas 77020

Respondent's Attorney: N/A

Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011) *PCW Revision August 3, 2011*

TCEQ

DATES					
Assigned	15-Apr-2013				
PCW	27-Jun-2013	Screening	17-Apr-2013	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	AL-IMRAN ENTERPRISES, INC. dba Vargas Food Mart 2		
Reg. Ent. Ref. No.	RN102284767		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	46664	No. of Violations	1
Docket No.	2013-0764-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Danielle Porras
		EC's Team	Enforcement Team 7
Admin. Penalty $ Limit Minimum	$0	Maximum	$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* **$3,750**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **20.0%** Enhancement *Subtotals 2, 3, & 7* **$750**

Notes: Enhancement for one order containing a denial of liability.

Culpability No **0.0%** Enhancement *Subtotal 4* **$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments *Subtotal 5* **$0**

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

Total EB Amounts $548
Approx. Cost of Compliance $500

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 *Final Subtotal* **$4,500**

OTHER FACTORS AS JUSTICE MAY REQUIRE **12.2%** *Adjustment* **$548**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to capture the avoided costs of compliance associated with the violation.

Final Penalty Amount **$5,048**

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* **$5,048**

DEFERRAL **0.0%** Reduction *Adjustment* **$0**

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.

PAYABLE PENALTY **$5,048**

Screening Date	17-Apr-2013	**Docket No.**	2013-0764-PST-E	**PCW**
Respondent	AL-IMRAN ENTERPRISES, INC. dba Vargas Food M			*Policy Revision 3 (September 2011)*
Case ID No.	46664			*PCW Revision August 3, 2011*
Reg. Ent. Reference No.	RN102284767			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Danielle Porras			

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 (*number of NOVs meeting criteria*)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	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 (*number of judgements or consent decrees meeting criteria*)	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 (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	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 *(number of audits for which notices were submitted)*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%
		Please Enter Yes or No	
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)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one order containing a denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 20%

>> Final Compliance History Adjustment

Final Adjustment Percentage ****capped at 100%*** 20%

Screening Date	17-Apr-2013	**Docket No.**	2013-0764-PST-E	**PCW**
Respondent	AL-IMRAN ENTERPRISES, INC. dba Vargas Food Mart 2			*Policy Revision 3 (September 2011)*
Case ID No.	46664			*PCW Revision August 3, 2011*
Reg. Ent. Reference No.	RN102284767			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Danielle Porras			

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 115.245(2) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to verify proper operation of the Stage II equipment at least once every 12 months.

Base Penalty $25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential	x		

Percent 15.0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

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 $21,250

$3,750

Violation Events

Number of Violation Events: 1 — 365 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	x
single event	

Violation Base Penalty $3,750

One annual event is recommended for the 12-month period preceding the March 15, 2013 investigation.

Good Faith Efforts to Comply

0.0% Reduction — $0

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

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

Violation Subtotal $3,750

Economic Benefit (EB) for this violation

Estimated EB Amount $548

Statutory Limit Test

Violation Final Penalty Total $5,048

This violation Final Assessed Penalty (adjusted for limits) $5,048

Economic Benefit Worksheet

Respondent AL-IMRAN ENTERPRISES, INC. dba Vargas Food Mart 2
Case ID No. 46664
Reg. Ent. Reference No. RN102284767
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)				0.00	$0	n/a	$0
Notes for DELAYED costs							
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]	$500	15-Mar-2012	15-Mar-2013	1.92	$48	$500	$548
Other (as needed)				0.00	$0	$0	$0
Notes for AVOIDED costs	Estimated avoided cost for annual testing of the Stage II equipment. The Date Required is one year prior to the investigation date and the Final Date is the investigation date.						

Approx. Cost of Compliance $500

TOTAL $548

The TCEQ is committed to accessibility.
To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.

Compliance History Report

PUBLISHED Compliance History Report for CN602788846, RN102284767, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator: CN602788846, AL-IMRAN ENTERPRISES, INC. **Classification:** SATISFACTORY **Rating:** 7.27
Regulated Entity: RN102284767, Vargas Food Mart 2 **Classification:** SATISFACTORY **Rating:** 7.27
Complexity Points: 0 **Repeat Violator:** NO
CH Group: 14 - Other
Location: 6201 LYONS AVE HOUSTON, TX 77020-4943, HARRIS COUNTY
TCEQ Region: REGION 12 - HOUSTON
ID Number(s): **PETROLEUM STORAGE TANK REGISTRATION** REGISTRATION 8918
Compliance History Period: September 01, 2007 to August 31, 2012 **Rating Year:** 2012 **Rating Date:**
Date Compliance History Report Prepared: April 17, 2013
Agency Decision Requiring Compliance History: Enforcement
Component Period Selected: April 17, 2008 to April 17, 2013
TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.
Name: Danielle Porras **Phone:** (713) 767-3682

Site and Owner/Operator History:

1) Has the site been in existence and/or operation for the full five year compliance period? YES
2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
3) If **YES** for #2, who is the current owner/operator? N/A
4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? N/A
5) If **YES**, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

1 Effective Date: 02/25/2012 ADMINORDER 2011-0788-PST-E (1660 Order-Agreed Order With Denial)
Classification: Major
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)
30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)
Description: Failed to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring)

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

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

Item 1	July 01, 2010	(845842)
Item 2	July 13, 2010	(845846)
Item 3	September 14, 2010	(869826)
Item 4	February 15, 2011	(904950)

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

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

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 AL-IMRAN ENTERPRISES, INC. DBA VARGAS FOOD MART 2; RN102284767	**§ § § § § §**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2013-0764-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 ch. 7, TEX. HEALTH & SAFETY CODE ch. 382, 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 AL-IMRAN ENTERPRISES, INC. d/b/a Vargas Food Mart 2 ("Respondent").

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

FINDINGS OF FACT

1. Respondent owned and operated, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), an underground storage tank ("UST") system and a convenience store with retail sales of gasoline located at 6201 Lyons Avenue in Houston, Harris County, Texas (Facility ID No. 8918) (the "Station"). The USTs at the Station 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. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).

2. During an investigation conducted on March 15, 2013, a UT Arlington PST investigator documented that Respondent failed to verify proper operation of the Stage II equipment at least once every 12 months.

3. Respondent received notice of the violation on or about April 17, 2013.

4. The Executive Director recognizes that Respondent no longer owns or operates the Station as of June 10, 2013.

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 AL-IMRAN ENTERPRISES, INC. d/b/a Vargas Food Mart 2" (the "EDPRP") in the TCEQ Chief Clerk's office on July 17, 2013.

6. The EDPRP was mailed to Respondent's last known address on July 17, 2013, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "undeliverable as addressed."

7. The Executive Director re-filed the EDPRP in the TCEQ Chief Clerk's office on August 12, 2013.

8. By letter dated August 12, 2013, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on August 14, 2013, as evidenced by the signature on the card.

9. 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, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the Commission.

2. As evidenced by Finding of Fact No. 2, Respondent failed to verify proper operation of the Stage II equipment at least once every 12 months, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE 115.245(2).

3. As evidenced by Findings of Fact Nos. 5 through 8, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).

4. As evidenced by Finding of Fact No. 9, 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.

5. 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.

6. An administrative penalty in the amount of five thousand forty-eight dollars ($5,048.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

7. 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 five thousand forty-eight dollars ($5,048.00) 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: AL-IMRAN ENTERPRISES, INC. d/b/a Vargas Food Mart 2; Docket No. 2013-0764-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

_____
For the Commission

AFFIDAVIT OF STEVEN M. FISHBURN

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

"My name is Steven M. Fishburn. 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 and Requiring Certain Actions of AL-IMRAN ENTERPRISES, INC. d/b/a Vargas Food Mart 2" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on July 17, 2013.

The EDPRP was mailed to Respondent's last known address on July 17, 2013, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "undeliverable as addressed."

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the EDPRP was re-filed in the TCEQ Chief Clerk's office on August 12, 2013.

The EDPRP was mailed to Respondent's last known address on August 12, 2013, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on August 14, 2013, as evidenced by the signature on the card.

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."

Steven M. Fishburn, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 27 day of September, A.D. 2013.

Alisa Louise Richey
Notary Signature

ALISA LOUISE RICHEY
NOTARY PUBLIC
State of Texas
Comm. Exp. 05-17-2017
NOTARY WITHOUT BOND