EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 44448
RAHIYA HILLCREST, INC. d/b/a Single Tree 3
RN102434651
Docket No. 2012-1307-PST-E

Order Type:
Default Shutdown Order

Media:
PST

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
2154 US Highway 59 South, Cleveland, Liberty 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: April 26, 2013

Comments Received: None

Penalty Information

Total Penalty Assessed: $9,751

Total Paid to General Revenue: $0

Total Due to General Revenue: $9,751

Compliance History Classifications:
Person/CN – Average
Site/RN – Average by Default

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2011

Investigation Information

Complaint Date(s): N/A

Date(s) of Investigation: February 29, 2012; June 19, 2012

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

Date(s) of NOE(s): June 19, 2012

Violation Information

1. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and failed to provide proper release detection for the piping associated with the UST system [TEX. WATER CODE § 26.3475(a) and (c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and (b)(2)].
2. Failed to maintain all UST records and make them immediately available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b)(1)(B)].
3. Failed to provide proper corrosion protection for the UST system [TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(a)(1)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Immediately shut down operations of all USTs at the Facility:
   a. Cease dispensing fuel from the USTs;
   b. Cease receiving deliveries of regulated substances into the USTs;
   c. Padlock the dispensers;
   d. Empty the USTs of all regulated substances; and
   e. Temporarily remove the USTs from service.
2. The USTs shall remain out of service until such time as Respondent demonstrates to the satisfaction of the Executive Director that the release detection and corrosion protection violations have been corrected.
3. The Facility's UST fuel delivery certificate is revoked immediately. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements.
4. Immediately upon the effective date of this Order, Respondent shall cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ.
5. Within 10 days, Respondent shall surrender the Facility's UST fuel delivery certificate to the TCEQ.
6. Within 15 days, submit a detailed written report documenting the steps taken to comply with Technical Requirements Nos. 1, 4 and 5.
7. Prior to receiving deliveries of gasoline and resuming sales of gasoline:
   a. Implement a release detection method for all USTs at the Facility;
   b. Implement a release detection method for the piping associated with the UST system;
   c. Begin maintaining all UST records;
   d. Install and implement a corrosion protection system for the UST system at the Facility; and
   e. Obtain a new fuel delivery certificate.
8. Upon obtaining a new fuel delivery certificate, post the fuel delivery certificate in a location at the Facility where the delivery certificate is clearly visible at all times.
9. Within 10 days of resuming sales of gasoline, submit written certification to demonstrate compliance with Technical Requirements Nos. 7 and 8.

Litigation Information

Date Petition(s) Filed: January 9, 2013;

Date Green Card(s) Signed: January 11, 2013

Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Jacquelyn Boutwell, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
James Murphy, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Epifanio Villareal, Enforcement Division, (361) 825-3425

TCEQ Regional Contact: Jason Ybarra, Houston Regional Office, (713) 767-3623

Respondent: Sohail Afridi, President and Director, RAHIYA HILLCREST, INC., 1503 D East Houston, Cleveland, Texas 77327

Respondent's Attorney: N/A

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Penalty Calculation Worksheet (PCW)

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

TCEQ

DATES					
Assigned	25-Jun-2012				
PCW	22-Oct-2012	Screening	29-Jun-2012	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	RAHIYA HILLCREST, INC. dba Single Tree 3		
Reg. Ent. Ref. No.	RN102434651		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	44448	No. of Violations	3
Docket No.	2012-1307-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Epifanio Villarreal
		EC's Team	Enforcement Team 2
Admin. Penalty $ Limit Minimum	$0	Maximum	$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* **$8,750**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 10.0% Enhancement *Subtotals 2, 3, & 7* **$875**

Notes: Enhancement for five NOVs with dissimilar violations.

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 $604
Approx. Cost of Compliance $8,118

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 *Final Subtotal* **$9,625**

OTHER FACTORS AS JUSTICE MAY REQUIRE 1.3% *Adjustment* **$126**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement recommended for recovery of avoided costs of compliance associated with violation no. 1.

Final Penalty Amount **$9,751**

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* **$9,751**

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 **$9,751**

Screening Date	29-Jun-2012	**Docket No.**	2012-1307-PST-E	**PCW**
Respondent	RAHIYA HILLCREST, INC. dba Single Tree 3			*Policy Revision 3 (September 2011)*
Case ID No.	44448			*PCW Revision August 3, 2011*
Reg. Ent. Reference No.	RN102434651			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Epifanio Villarreal			

Compliance History Worksheet

>> Compliance History *Site* Enhancement (Subtotal 2)

Component	Number of...	*Enter Number Here*	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*)	0	0%
	Other written NOVs	5	10%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	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 (*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) 10%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for five NOVs with dissimilar violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 10%

>> Final Compliance History Adjustment

Final Adjustment Percentage ****capped at 100%*** 10%

Screening Date	29-Jun-2012	**Docket No.**	2012-1307-PST-E	**PCW**
Respondent	RAHIYA HILLCREST, INC. dba Single Tree 3			*Policy Revision 3 (September 2011)*
Case ID No.	44448			*PCW Revision August 3, 2011*
Reg. Ent. Reference No.	RN102434651			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Epifanio Villarreal			

Violation Number 1

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

Violation Description Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and failed to provide proper release detection for the piping associated with the UST system. Specifically, the annual piping tightness and line leak detector tests were not conducted.

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 | 10 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $3,750

One monthly event is recommended from the record review date, June 19, 2012, to the screening date, June 29, 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 $3,750

Economic Benefit (EB) for this violation

Estimated EB Amount $200

Statutory Limit Test

Violation Final Penalty Total $4,179

This violation Final Assessed Penalty (adjusted for limits) $4,179

Economic Benefit Worksheet

Respondent RAHIYA HILLCREST, INC. dba Single Tree 3
Case ID No. 44448
Reg. Ent. Reference No. RN102434651
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)	$1,500	7-Feb-2012	1-Feb-2013	0.99	$74	n/a	$74

Notes for DELAYED costs: The delayed costs include the estimated cost to provide release detection for the UST system. The date required is the date of ownership change and the final date is the estimated date of compliance.

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]	$118	7-Feb-2012	19-Jun-2012	1.28	$8	$118	$126
Other (as needed)				0.00	$0	$0	$0

Notes for AVOIDED costs: The avoided costs include the estimated cost of conducting the annual line leak detector and line tightness tests. The date required is date of ownership change and the final date is the record review date.

Approx. Cost of Compliance $1,618

TOTAL $200

Screening Date	29-Jun-2012	**Docket No.**	2012-1307-PST-E	**PCW**
Respondent	RAHIYA HILLCREST, INC. dba Single Tree 3			*Policy Revision 3 (September 2011)*
Case ID No.	44448			*PCW Revision August 3, 2011*
Reg. Ent. Reference No.	RN102434651			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Epifanio Villarreal			

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.10(b)(1)(B)

Violation Description Failed to maintain all UST records and make them immediately available for inspection upon request by agency personnel.

Base Penalty $25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

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

Adjustment $23,750

$1,250

Violation Events

Number of Violation Events: 1 | 10 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $1,250

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 $1,250

Economic Benefit (EB) for this violation

Estimated EB Amount $16

Statutory Limit Test

Violation Final Penalty Total $1,393

This violation Final Assessed Penalty (adjusted for limits) $1,393

Economic Benefit Worksheet

Respondent RAHIYA HILLCREST, INC. dba Single Tree 3
Case ID No. 44448
Reg. Ent. Reference No. RN102434651
Media Petroleum Storage Tank
Violation No. 2

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	$500	19-Jun-2012	1-Feb-2013	0.62	$16	n/a	$16
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	The delayed costs include the estimated cost to maintain all UST records. The date required is the date of the record review 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 $16

Screening Date	29-Jun-2012	**Docket No.**	2012-1307-PST-E	**PCW**
Respondent	RAHIYA HILLCREST, INC. dba Single Tree 3			*Policy Revision 3 (September 2011)*
Case ID No.	44448			*PCW Revision August 3, 2011*
Reg. Ent. Reference No.	RN102434651			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Epifanio Villarreal			

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.49(a)(1) and Tex. Water Code § 26.3475(d)

Violation Description Failed to provide proper corrosion protection for the UST system.

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 — 10 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $3,750

One monthly event is recommended from the record review date, June 19, 2012, to the screening date, June 29, 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 $3,750

Economic Benefit (EB) for this violation

Estimated EB Amount $389

Statutory Limit Test

Violation Final Penalty Total $4,179

This violation Final Assessed Penalty (adjusted for limits) $4,179

Economic Benefit Worksheet

Respondent RAHIYA HILLCREST, INC. dba Single Tree 3
Case ID No. 44448
Reg. Ent. Reference No. RN102434651
Media Petroleum Storage Tank
Violation No. 3

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	$6,000	29-Feb-2012	1-Feb-2013	0.93	$19	$370	$389
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 install corrosion protection for the UST system. The date required is the investigation date and the final date is the estimated date of compliance.						
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Notes for AVOIDED costs							

Approx. Cost of Compliance $6,000

TOTAL $389

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603262742	RAHIYA HILLCREST, INC.	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN102434651	SINGLE TREE 3	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	16320	
Location:	2154 US HIGHWAY 59 S, CLEVELAND, LIBERTY COUNTY, TEXAS			
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	June 29, 2012			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	June 29, 2007 to June 29, 2012			

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

Name: Epi Villarreal Phone: 361-825-3425

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? YES

2. Has there been a (known) change in ownership/operator of the site during the compliance period? YES

3. If **YES**, who is the current owner/operator? RAHIYA HILLCREST, INC., OWNER OPERATOR since 02/07/2012

4. If **YES**, who was/were the prior owner(s)/operator(s)? Whitener Enterprises, Inc., OWNER OPERATOR since 05/08/1986
   Azeez Mohammed, OWNER OPERATOR since 05/08/1986

5. If **YES**, when did the change(s) in owner or operator occur? 2/7/2012

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 06/19/2012 (1009905)
2 11/21/2007 (599893)
3 01/08/2008 (613047)
4 02/22/2008 (618783)
5 04/22/2008 (641199)
6 04/15/2009 (687771)
7 10/09/2009 (776025)

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

Date: 11/21/2007 (599893) CN603262742

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(7)(A)

Description: Failure to maintain records on-site at facilities ordinarily manned during business hours, and made immediately available for review upon request by authorized representatives of the Texas Commission on Environmental Quality (TCEQ), the U.S. Environmental Protection Agency (EPA), or any local air pollution control program with jurisdiction.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(1)(C)

Description: At the time of the investigation the Stage II system was not ORVR compatible.
Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(9)
Description: 30 TAC '115.242(9) - Failure to post operating instructions conspicuously on the front of each dispenser equipped with a Stage II system. These instructions shall, at a minimum, include: (A) a clear description of how to correctly dispense gasoline using the system; and (B) a warning against attempting to continue to refuel after initial automatic shutoff of the system (an indication that the vehicle fuel tank is full).

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)
Description: 30 TAC '115.242 (3)(G) - Failure to maintain all components of the Stage II Vapor Recovery system to an approved condition free of defects that would impair the effectiveness of the system -- vapor return lines, including such components as swivels, anti-recirculation valves, and underground piping, that malfunction, are blocked, or are restricted such that the pressure decay and/or dynamic back-pressure through the line exceeds the value as certified in the approved systems CARB Executive Order

Date: 01/08/2008 (613047) CN603262742

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(7)(A)
Description: Failure to maintain records on-site at facilities ordinarily manned during business hours, and made immediately available for review upon request by authorized representatives of the Texas Commission on Environmental Quality (TCEQ), the U.S. Environmental Protection Agency (EPA), or any local air pollution control program with jurisdiction.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(1)(C)
Description: At the time of the investigation the Stage II system was not ORVR compatible.
Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(9)
Description: 30 TAC '115.242(9) - Failure to post operating instructions conspicuously on the front of each dispenser equipped with a Stage II system. These instructions shall, at a minimum, include: (A) a clear description of how to correctly dispense gasoline using the system; and (B) a warning against attempting to continue to refuel after initial automatic shutoff of the system (an indication that the vehicle fuel tank is full).

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)
Description: 30 TAC '115.242 (3)(G) - Failure to maintain all components of the Stage II Vapor Recovery system to an approved condition free of defects that would impair the effectiveness of the system -- vapor return lines, including such components as swivels, anti-recirculation valves, and underground piping, that malfunction, are blocked, or are restricted such that the pressure decay and/or dynamic back-pressure through the line exceeds the value as certified in the approved systems CARB Executive Order

Date: 02/22/2008 (618783) CN603262742

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(1)(C)
Description: At the time of the investigation the Stage II system was not ORVR compatible.

Date: 04/22/2008 (641199) CN603262742

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(1)(C)
Description: At the time of the investigation the Stage II system was not ORVR compatible.
Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 334, SubChapter A 334.7(a)(1)(D)
Description: 30 Tex. Admin. Code Section 334.7(d)(1)(B) - Failure of an owner of an UST to provide written notice to the Executive Director of change in operational status of each tank system (e.g. in service, temporarily out of service, removed from the ground, or permanently abandoned in-place). As per §334.7(d)(2), this notice shall be submitted on a properly completed, authorized Commission registration form.

Date: 04/15/2009 (687771) CN603262742

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 334, SubChapter A 334.7(a)(1)(D)
Description: 30 Tex. Admin. Code Section 334.7(d)(1)(B) - Failure of an owner of an UST to provide written notice to the Executive Director of change in operational status of each tank system (e.g. in service, temporarily out of service, removed from the ground, or permanently abandoned in-place). As per §334.7(d)(2), this notice shall be submitted on a properly completed, authorized Commission registration form.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)

Description: 30 TAC '115.245 (2) - Failure to verify proper operation of the Stage II equipment at least once every twelve months or upon major system replacement or modification. The verification shall include all functional tests that were required for the initial system test, which must be performed at least once every 36 months.

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 RAHIYA HILLCREST, INC. D/B/A SINGLE TREE 3; RN102434651	**§ § § § § §**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

DEFAULT AND SHUTDOWN ORDER

DOCKET NO. 2012-1307-PST-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition, filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty, corrective action of the respondent, and revocation of the facility's fuel delivery certificate. The Commission also considered the Executive Director's Motion requesting the entry of an Order requiring the respondent to shutdown and remove from service the underground storage tanks ("USTs") located at 2154 US Highway 59 South in Cleveland, Liberty County, Texas. The respondent made the subject of this Order is RAHIYA HILLCREST, INC. d/b/a Single Tree 3 ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns and operates, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), a UST system and a covenience store with retail sales of gasoline located at 2154 US Highway 59 South in Cleveland, Liberty County, Texas (Facility ID No. 16320) (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 February 29, 2012, and a record review conducted on June 19, 2012, a UT Arlington PST Program investigator documented that Respondent:

   a. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and failed to provide proper release detection for the piping associated with the UST system by failing to conduct the annual piping tightness and line leak detector tests;

   b. Failed to maintain all UST records and make them immediately available for inspection upon request by agency personnel; and

   c. Failed to provide proper corrosion protection for the UST system.

3. By letter dated June 19, 2012, UT Arlington provided Respondent with notice of the violations and of TCEQ's authority to shut down and remove from service USTs not in compliance with release detection, spill and/or overfill prevention, corrosion protection, and/or financial assurance requirements if the violations were not corrected.

4. 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 RAHIYA HILLCREST, INC. d/b/a Single Tree 3" (the "EDPRP") in the TCEQ Chief Clerk's office on January 9, 2013.

5. By letter dated January 9, 2013, sent to Respondent's last known address via certified mail, return receipt requested, 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 January 11, 2013, as evidenced by the signature on the card.

6. 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.

7. By letter dated March 28, 2013, the Executive Director provided Respondent with notice of TCEQ's intent to order the USTs at the Facility to be shut down and removed from service if Respondent failed to correct the release detection and corrosion protection violations within 30 days after Respondent's receipt of the notice.

8. As of the date of entry of this Order, Respondent has not provided the Executive Director with documentation demonstrating that the release detection and corrosion protection violations alleged in Findings of Fact Nos. 2.a. and 2.c. have been corrected.

9. The USTs at the Facility do not have release detection and corrosion protection as required by TEX. WATER CODE § 26.3475(a), (c)(1), and (d) and 30 TEX. ADMIN. CODE §§ 334.49(a)(1) and 334.50(b)(1)(A) and (b)(2), and may be releasing petroleum products to the environment. Therefore, conditions at the Facility constitute an imminent peril to public health, safety, and welfare.

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 monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and failed to provide proper release detection for the piping associated with the UST system, in violation of TEX. WATER CODE § 26.3475(a) and (c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and (b)(2).

3. As evidenced by Finding of Fact No. 2.b., Respondent failed to maintain all UST records and make them immediately available for inspection upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 334.10(b)(1)(B).

4. As evidenced by Finding of Fact No. 2.c., 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)(1).

5. As evidenced by Findings of Fact Nos. 4 and 5, 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(b)(1).

6. As evidenced by Finding of Fact No. 6, 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.

7. 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.

8. An administrative penalty in the amount of nine thousand seven hundred fifty-one dollars ($9,751.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

9. As evidenced by Findings of Fact Nos. 2.a., 2.c., 3, 7, and 8, Respondent failed to correct documented violations of Commission release detection and corrosion protection_requirements within 30 days after Respondent received notice of the violations and notice of the Executive Director's intent to shut down the USTs at the Facility.

10. TEX. WATER CODE §§ 26.3475(e) and 26.352(i) authorize the Commission to order a UST owner or operator to shut down a UST system if, within 30 days after receiving notice of the violations, the owner or operator fails to correct violations of Commission regulatory requirements relating to release detection for tanks and/or piping, spill and/or overfill protection for tanks, corrosion protection for tanks and/or piping, and/or acceptable financial assurance.

11. 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.

12. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke the Facility's UST fuel delivery certificate if the Commission finds that good cause exists.

13. Good cause for revocation of the Facility's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2 and 4 through 6, and Conclusions of Law Nos. 2 through 6.

14. As evidenced by Findings of Fact Nos. 8 and 9, current conditions at the Facility constitute an imminent peril to public health, safety, and welfare. Therefore, pursuant to the Administrative Procedure Act, TEX. GOV'T CODE § 2001.144(a)(3), this Order is final and effective on the date rendered.

ORDERING PROVISIONS

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

1. Immediately upon the effective date of this Order, Respondent shall take the following steps to shut down operations of all USTs at the Facility:

   a. Cease dispensing fuel from the USTs;

   b. Cease receiving deliveries of regulated substances into the USTs;

   c. Padlock the dispensers;

   d. Empty the USTs of all regulated substances in accordance with 30 TEX. ADMIN. CODE § 334.54(d); and

   e. Temporarily remove the USTs from service in accordance with 30 TEX. ADMIN. CODE § 334.54.

2. The USTs at the Facility shall remain out of service, pursuant to TEX. WATER CODE § 26.3475(e) and as directed by Ordering Provisions Nos. 1.a. through 1.e., until such time as Respondent demonstrates to the satisfaction of the Executive Director that the_release detection and corrosion protection violations noted in Conclusions of Law Nos. 2 and 4 have been corrected.

3. If Respondent elects to permanently remove from service any portion of the UST system at the Facility, Respondent shall, immediately upon the effective date of this Order, permanently remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.55, and within 15 days after the effective date of this Order, shall submit a written report documenting compliance with 30 TEX. ADMIN. CODE § 334.55 to:

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

4. The Facility's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements set forth in this Order.

5. Immediately upon the effective date of this Order, Respondent shall cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ in accordance with 30 TEX. ADMIN. CODE §§ 334.7 and 334.8.

6. Within 10 days after the effective date of this Order, Respondent shall send the Facility's UST fuel delivery certificate to:

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

7. Within 15 days after the effective date of this Order, Respondent shall submit a detailed written report, in accordance with Ordering Provision No. 13, below, documenting the steps taken to comply with Ordering Provisions Nos. 1.a. through 1.e., 5 and 6.

8. Respondent is assessed an administrative penalty in the amount of nine thousand seven hundred fifty-one dollars ($9,751.00) 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.

9. 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: RAHIYA HILLCREST, INC. d/b/a Single Tree 3; Docket No. 2012-1307-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

10. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline, Respondent shall undertake the following technical requirements:

    a. Implement a release detection method for all USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.50;

    b. Implement a release detection method for the piping associated with the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.50;

    c. Begin maintaining all UST records, in accordance with 30 TEX. ADMIN. CODE § 334.10;

    d. Install and implement a corrosion protection system for the UST system at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.49; and

    e. Obtain a new fuel delivery certificate from the TCEQ.

11. Upon obtaining a new fuel delivery certificate, Respondent shall post the fuel delivery certificate in a location at the Facility where the delivery certificate is clearly visible at all times, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii).

12. Within 10 days of resuming retail sales of gasoline, Respondent shall submit written certification, in accordance with Ordering Provision No. 13, below, to demonstrate compliance with Ordering Provisions Nos. 10 and 11.

13. The certifications required by these Ordering Provisions 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 certifications 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:

Jason Ybarra, Waste Section Manager
Texas Commission on Environmental Quality
Houston Regional Office
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

14. All relief not expressly granted in this Order is denied.

15. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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 this Order was rendered, pursuant to TEX. GOV'T CODE § 2001.144(a)(3).

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

AFFIDAVIT OF JACQUELYN BOUTWELL

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

"My name is Jacquelyn Boutwell. 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 RAHIYA HILLCREST, INC. d/b/a Single Tree 3" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on January 9, 2013.

The EDPRP was mailed to Respondent's last known address on January 9, 2013, via certified mail, return receipt requested, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on January 11, 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.

By letter dated March 28, 2013, sent via first class mail and certified mail, return receipt requested article no. 7009 1680 0002 2323 7310, I provided Respondent with notice of the TCEQ's intent to order the USTs at the Facility be shut down and removed from service if the violations pertaining to release detection and corrosion protection were not corrected within 30 days of Respondent's receipt of the letter. The United States Postal Service returned the Notice sent by certified mail as "unclaimed."

As of the date of this affidavit, I am not aware of any evidence that indicates that Respondent has corrected the release detection and corrosion protection violations noted during the February 29, 2012, investigation."

Jacquelyn Boutwell, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 2nd day of May, A.D. 2013.

NOTARY PUBLIC STATE OF TEXAS
MONICA WADLEIGH
My Commission Expires
October 7, 2013

Notary Signature