

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE No. 42990  
TIMALSINA BROTHERS ENTERPRISE, INC. d/b/a Eastex Truck Stop  
RN101738870  
Docket No. 2011-2157-PST-E

**Order Type:**

Agreed Order

**Media:**

PST

**Small Business:**

Yes

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

6047 Dwyer Drive, Humble, Harris County

**Type of Operation:**

underground storage tank ("UST") system and 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:** June 5, 2013

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$10,691

**Total Paid to General Revenue:** \$461

**Total Due to General Revenue:** \$10,500

Payment Plan: 35 payments of \$300 each

**SEP Conditional Offset:** N/A

**Compliance History Classifications:**

Person/CN – Average  
Site/RN – Average

**Major Source:** No

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** September 2002

**Investigation Information**

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** August 16, 2011  
**Date(s) of NOV(s):** N/A  
**Date(s) of NOE(s):** October 21, 2011

**Violation Information**

1. Failed to conduct reconciliation of inventory control at least once a month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons [TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii)].
2. Failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day [TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(iii)(I)].
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)].
4. Failed to perform confirmation steps for a release of regulated substances within 30 days of discovery [30 TEX. ADMIN. CODE § 334.74].
5. Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)].
6. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**

Began providing proper corrosion protection for the UST system on August 23, 2011.

**Technical Requirements:**

1. Within 30 days:
  - a. Begin conducting reconciliation of inventory control at least once a month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons;
  - b. Begin recording inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; and
  - c. Submit documentation that demonstrates acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of all petroleum USTs at the Facility.
2. Within 45 days, conduct a site investigation for all areas at the Facility that were and may have been affected by the release of regulated substances and submit a report which summarizes the findings of the site investigation (the "Site Investigation Report") to the Executive Director for review and approval. The Site Investigation Report shall include a proposal for corrective action, if required. Upon approval, implement the proposal in accordance with the approved implementation schedule.
3. Within 60 days, submit an amended registration to reflect the correct number of USTs at the Facility.
4. Within 75 days, submit written certification to demonstrate compliance.

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE No. 42990  
TIMALSINA BROTHERS ENTERPRISE, INC. d/b/a Eastex Truck Stop  
RN101738870  
Docket No. 2011-2157-PST-E

**Litigation Information**

**Date Petition(s) Filed:** May 4, 2012  
**Date Answer(s) Filed:** August 30, 2012  
**SOAH Referral Date:** March 27, 2012  
**Hearing Date(s):**  
Preliminary hearing: May 16, 2013 (scheduled)  
**Settlement Date:** May 15, 2013

**Contact Information**

**TCEQ Attorneys:** Rudy Calderon, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
Garrett Arthur, Public Interest Counsel, (512) 239-6363  
**TCEQ Enforcement Coordinator:** Margarita Dennis, Enforcement Division, (817) 588-5800  
**TCEQ Regional Contact:** Jason Ybarra, Houston Regional Office, (713) 767-3500  
**Respondent:** Rakesh Timalsina, President, TIMALSINA BROTHERS ENTERPRISE, INC., 6047  
Dwyer Drive, Humble, Texas 77396  
**Respondent's Attorney:** N/A

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# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	24-Oct-2011	
	<b>PCW</b>	23-Mar-2012	<b>Screening</b> 26-Oct-2011
			<b>EPA Due</b> <input type="text"/>

<b>RESPONDENT/FACILITY INFORMATION</b>			
<b>Respondent</b>	TIMALSINA BROTHERS ENTERPRISE, INC. dba Eastex Truck Stop		
<b>Reg. Ent. Ref. No.</b>	RN101738870		
<b>Facility/Site Region</b>	12-Houston	<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	42990	<b>No. of Violations</b>	5
<b>Docket No.</b>	2011-2157-PST-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>	<input type="text"/>	<b>Enf. Coordinator</b>	Wallace Myers
		<b>EC's Team</b>	Enforcement Team 7
<b>Admin. Penalty \$ Limit Minimum</b>	<input type="text" value="\$0"/>	<b>Maximum</b>	<input type="text" value="\$10,000"/>

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<input type="text" value="\$10,000"/>
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	2.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<input type="text" value="\$200"/>
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Notes:

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	<input type="text" value="\$0"/>
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Notes:

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<input type="text" value="\$625"/>
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	<input type="text" value="\$0"/>
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Total EB Amounts:   
 Approx. Cost of Compliance:   
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<input type="text" value="\$9,575"/>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	<input type="text" value="14.5%"/>	<b>Adjustment</b>	<input type="text" value="\$1,386"/>
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	<input type="text" value="\$10,961"/>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<input type="text" value="\$10,961"/>
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<b>DEFERRAL</b>	<input type="text" value="0.0%"/>	Reduction	<b>Adjustment</b>	<input type="text" value="\$0"/>
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

<b>PAYABLE PENALTY</b>	<input type="text" value="\$10,961"/>
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**Screening Date** 26-Oct-2011

**Docket No.** 2011-2157-PST-E

**PCW**

**Respondent** TIMALSINA BROTHERS ENTERPRISE, INC. dba Eastex Truck Stop  
**Case ID No.** 42990

*Policy Revision 2 (September 2002)*

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN101738870

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** Wallace Myers

### Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 2%

#### >> 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 one NOV with dissimilar violations.

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

Screening Date 26-Oct-2011

Docket No. 2011-2157-PST-E

PCW

Respondent TIMALSINA BROTHERS ENTERPRISE, INC. dba Eastex Truck Stop

Policy Revision 2 (September 2002)

Case ID No. 42990

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101738870

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.50(d)(1)(B)(ii), (d)(1)(B)(iii)(I) and Tex. Water Code § 26.3475(c)(1)

Violation Description Failed to conduct reconciliation of inventory control at least once a month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons. Also, failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day.

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 71 Number of violation days

daily	
weekly	
monthly	
quarterly	x
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 August 16, 2011 investigation to the October 26, 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 \$71

Violation Final Penalty Total \$2,919

This violation Final Assessed Penalty (adjusted for limits) \$2,919

# Economic Benefit Worksheet

**Respondent** TIMALSINA BROTHERS ENTERPRISE, INC. dba Eastex Truck Stop  
**Case ID No.** 42990  
**Reg. Ent. Reference No.** RN101738870  
**Media Violation No.** 1  
**Media Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	16-Aug-2011	26-Jul-2012	0.95	\$71	n/a	\$71

**Notes for DELAYED costs**  
 Estimated cost to provide a method of release detection for the underground storage tank ("UST") system including volume measurement and reconciliation of inventory control. 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 \$1,500

**TOTAL** \$71

Screening Date 26-Oct-2011

Docket No. 2011-2157-PST-E

PCW

Respondent TIMALSINA BROTHERS ENTERPRISE, INC. dba Eastex Truck Stop

Policy Revision 2 (September 2002)

Case ID No. 42990

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101738870

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Violation Number 2

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

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 Number of violation days 7

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

Violation Base Penalty \$2,500

One monthly event is recommended based on documentation of the violation during the August 16, 2011 investigation to the August 23, 2011 compliance date.

Good Faith Efforts to Comply

25.0% Reduction

\$625

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

Notes The Respondent came into compliance on August 23, 2011 prior to the Notice of Enforcement issued on October 21, 2011.

Violation Subtotal \$1,875

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$2,204

This violation Final Assessed Penalty (adjusted for limits) \$2,204

# Economic Benefit Worksheet

**Respondent** TIMALSINA BROTHERS ENTERPRISE, INC. dba Eastex Truck Stop  
**Case ID No.** 42990  
**Reg. Ent. Reference No.** RN101738870  
**Media Violation No.** 2 Petroleum Storage Tank

Percent Interest	Years of Depreciation
5.0	15

**Item Cost**   **Date Required**   **Final Date**   **Yrs**   **Interest Saved**   **Onetime Costs**   **EB Amount**  
**Item Description**   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)	\$1,000	16-Aug-2011	23-Aug-2011	0.02	\$1	n/a	\$1

Notes for DELAYED costs

Estimated cost to repair and test the corrosion protection system. The date required is the date of the investigation and the final date is the date of compliance.

### Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$1,000

**TOTAL** \$1

Screening Date 26-Oct-2011

Docket No. 2011-2157-PST-E

PCW

Respondent TIMALSINA BROTHERS ENTERPRISE, INC. dba Eastex Truck Stop

Policy Revision 2 (September 2002)

Case ID No. 42990

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101738870

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 334.74

Violation Description

Failed to perform confirmation steps for a release of regulated substances within 30 days of discovery. Specifically, on April 22, 2011 the Respondent reported a release of approximately 155 gallons of petroleum product into the dispenser sump, parking lot, and observation well, however, a system test and site check were not conducted within 30 days.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of this violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2

158 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,000

Two quarterly events are recommended from the release investigation due date of May 21, 2011 to the October 26, 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 \$2,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$296

Violation Final Penalty Total \$2,335

This violation Final Assessed Penalty (adjusted for limits) \$2,335

# Economic Benefit Worksheet

**Respondent** TIMALSINA BROTHERS ENTERPRISE, INC. dba Eastex Truck Stop  
**Case ID No.** 42990  
**Reg. Ent. Reference No.** RN101738870  
**Media Violation No.** Petroleum Storage Tank  
 3

Percent Interest	Years of Depreciation
5.0	15

**Item Cost**   **Date Required**   **Final Date**   **Yrs**   **Interest Saved**   **Onetime Costs**   **EB Amount**  
**Item Description**   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)	\$5,000	21-May-2011	26-Jul-2012	1.18	\$296	n/a	\$296

**Notes for DELAYED costs**   Estimated cost to perform suspected release confirmation steps and submit a report. The date required is the date the release investigation was due 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**   \$5,000   **TOTAL**   \$296

Screening Date 26-Oct-2011

Docket No. 2011-2157-PST-E

PCW

Respondent TIMALSINA BROTHERS ENTERPRISE, INC. dba Eastex Truck Stop

Policy Revision 2 (September 2002)

Case ID No. 42990

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101738870

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 334.7(d)(3)

Violation Description Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the correct number of USTs at the Facility.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
		x			10%

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 71 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an 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 \$5

Violation Final Penalty Total \$1,168

This violation Final Assessed Penalty (adjusted for limits) \$1,168

# Economic Benefit Worksheet

**Respondent** TIMALSINA BROTHERS ENTERPRISE, INC. dba Eastex Truck Stop  
**Case ID No.** 42990  
**Reg. Ent. Reference No.** RN101738870  
**Media Violation No.** 4  
**Media 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
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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	16-Aug-2011	10-Aug-2012	0.99	\$5	n/a	\$5

Notes for DELAYED costs

Estimated cost to accurately prepare and submit an updated UST registration. 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	\$100	<b>TOTAL</b>	\$5
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Screening Date 26-Oct-2011

Docket No. 2011-2157-PST-E

PCW

Respondent TIMALSINA BROTHERS ENTERPRISE, INC. dba Eastex Truck Stop

Policy Revision 2 (September 2002)

Case ID No. 42990

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101738870

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Violation Number 5

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

Violation Description Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs. Specifically, two of the four USTs at the Facility were not covered under the current financial assurance policy.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
		x			10%

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2 365 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$2,000

Two single events are recommended for the two USTs at the Facility lacking financial assurance coverage.

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 \$2,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,386

Violation Final Penalty Total \$2,335

This violation Final Assessed Penalty (adjusted for limits) \$2,335

## Economic Benefit Worksheet

**Respondent** TIMALSINA BROTHERS ENTERPRISE, INC. dba Eastex Truck Stop  
**Case ID No.** 42990  
**Reg. Ent. Reference No.** RN101738870  
**Media Violation No.** Petroleum Storage Tank  
 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)				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]	\$1,320	16-Aug-2010	16-Aug-2011	1.00	\$66	\$1,320	\$1,386
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to provide financial assurance for two petroleum USTs (\$660 per tank). The date required is one year prior to the investigation date and the final date is the investigation date.

Approx. Cost of Compliance

\$1,320

**TOTAL**

\$1,386

# Compliance History

Customer/Respondent/Owner-Operator: CN603825233 TIMALSINA BROTHERS ENTERPRISE, INC. Classification: AVERAGE Rating: 1.50  
 Regulated Entity: RN101738870 Eastex Truck Stop Classification: AVERAGE Site Rating: 1.50  
 ID Number(s): PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 68373  
 Location: 6047 DWYER DR, HUMBLE, TX, 77396  
 TCEQ Region: REGION 12 - HOUSTON  
 Date Compliance History Prepared: October 26, 2011  
 Agency Decision Requiring Compliance History: Enforcement  
 Compliance Period: October 26, 2006 to October 26, 2011  
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
 Name: Wallace Myers Phone: 512-239-6580

## 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        |        | Thomson Enterprises, Inc.           |
|  | OPR        |        | TIMALSINA BROTHERS ENTERPRISE, INC. |
| 4. If Yes, who was/were the prior owner(s)/operator(s)?  | OWNOPR     |        | Thomson Enterprises, Inc.           |
| 5. When did the change(s) in owner or operator occur?  | 01/31/2011 | OWNOPR | Thomson Enterprises, Inc.           |
| 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 06/28/2011 (908731)  
 2 10/21/2011 (956415)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
**Date: 06/28/2011 (908731) CN603825233**  
 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.
- 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 TIMALSINA BROTHERS ENTERPRISE, INC. D/B/A EASTEX TRUCK STOP; RN101738870

§ § § § § § §

BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AGREED ORDER

DOCKET NO. 2011-2157-PST-E

I. JURISDICTION AND STIPULATIONS

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding TIMALSINA BROTHERS ENTERPRISE, INC. d/b/a Eastex Truck Stop ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent together stipulate that:

- 1. Respondent 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 6047 Dwyer Drive in Humble, Harris County, Texas (Facility ID No. 68373) (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. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Executive Director and Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondent is subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of ten thousand nine hundred sixty-one dollars (\$10,961.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid four hundred sixty-one dollars (\$461.00) of the administrative penalty. The remaining amount of ten thousand five hundred dollars (\$10,500.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of three hundred dollars (\$300.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and

- payable without demand or notice. In addition, Respondent's failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Agreed Order.
6. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
  7. The Executive Director and Respondent agree on a settlement of the matters addressed in this Agreed Order, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
  8. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions contained in this Agreed Order.
  9. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
  10. The provisions of this Agreed Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.
  11. The Executive Director recognizes that Respondent began providing proper corrosion protection for the UST system on August 23, 2011.

## II. ALLEGATIONS

1. During an investigation conducted on August 16, 2011, a TCEQ Houston Regional Office investigator documented that Respondent:
  - a. Failed to conduct reconciliation of inventory control at least once a month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons, in violation of TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii);
  - b. Failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day, in violation of TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(iii)(I);
  - c. 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);
  - d. Failed to perform confirmation steps for a release of regulated substances within 30 days of discovery, in violation of 30 TEX. ADMIN. CODE § 334.74. Specifically, on April 22, 2011, Respondent reported a release of approximately 155 gallons of petroleum product into the dispenser sump, parking lot, and observation well, however, a system test and site check were not conducted within 30 days;
  - e. Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3). Specifically, the registration was not updated to reflect the correct number of USTs at the Facility; and

- f. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b). Specifically, two of the four USTs at the Facility were not covered under the current financial assurance policy.
2. Respondent received notice of the violations on or about October 26, 2011.

### III. DENIALS

Respondent generally denies each Allegation in Section II.

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Respondent pay an administrative penalty as set forth in Section I, Paragraph 5, above. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the Allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective actions or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: TIMALSINA BROTHERS ENTERPRISE, INC. d/b/a Eastex Truck Stop, Docket No. 2011-2157-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 conducting reconciliation of inventory control at least once a month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons, in accordance with 30 TEX. ADMIN. CODE § 334.50;
    - ii. Begin recording inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day, in accordance with 30 TEX. ADMIN. CODE § 334.50; and
    - iii. Submit documentation that demonstrates acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of all petroleum USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 37.815.
  - b. Within 45 days after the effective date of this Agreed Order, Respondent shall conduct a site investigation for all areas at the Facility that were and may have been affected by the release of regulated substances and submit a report which summarizes the findings of the site investigation (the "Site Investigation Report") to the Executive Director for review and approval. The Site Investigation Report shall include a proposal for corrective action, if required.

The proposal shall be submitted in accordance with 30 TEX. ADMIN. CODE ch. 334, subchs. D and G (relating to Release Reporting and Corrective Action, and Target Concentration Criteria, respectively) or other applicable guidance approved by the Executive Director. Upon review, possible modification, and approval by the Executive Director, Respondent shall implement the proposal in accordance with the approved implementation schedule.

- c. Within 60 days after the effective date of this Agreed Order, Respondent shall submit an amended registration to reflect the correct number of USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

Registration and Reporting Section  
Permitting & Registration Support Division, MC129  
Texas Commission on Environmental Quality  
P.O. Box 13087

Austin, Texas 78711-3087

- d. Within 75 days after the effective date of this Agreed Order, Respondent shall submit written certification to demonstrate compliance with Ordering Provisions Nos. 2.a. through 2.c. 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 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  
Houston Regional Office  
Texas Commission on Environmental Quality  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486

3. All relief not expressly granted in this Agreed Order is denied.
4. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

5. If Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Agreed Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission" "owner" "person" "writing" and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
9. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails a copy of the fully executed Agreed Order to Respondent, whichever is earlier.

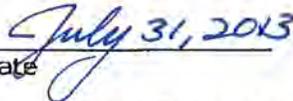
TIMALSINA BROTHERS ENTERPRISE, INC. d/b/a Eastex Truck Stop  
Docket No. 2011-2157-PST-E  
Page 6

**SIGNATURE PAGE**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

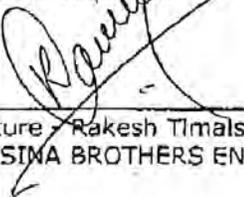
  
\_\_\_\_\_  
Date

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 TIMALSINA BROTHERS ENTERPRISE, INC. d/b/a Eastex Truck Stop, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

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

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

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

  
\_\_\_\_\_  
Signature: Rakesh Timalisina, President  
TIMALSINA BROTHERS ENTERPRISE, INC.

  
\_\_\_\_\_  
Date