

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 47064  
Moutawakil Enterprises, L.L.C. d/b/a Super Food Mart 42  
RN102028115  
Docket No. 2013-1160-PST-E

**Order Type:**  
Default Order

**Media:**  
PST

**Small Business:**  
Yes

**Location(s) Where Violation(s) Occurred:**  
1500 Goodnight Boulevard, Wills Point, Van Zandt 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:** December 20, 2013

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$9,015  
**Total Paid to General Revenue:** \$0  
**Total Due to General Revenue:** \$9,015

**Compliance History Classifications:**  
Person/CN – High  
Site/RN – High

**Major Source:** No  
**Statutory Limit Adjustment:** None  
**Applicable Penalty Policy:** September 2011

**Investigation Information**

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** April 4, 2013  
**Date(s) of NOV(s):** N/A  
**Date(s) of NOE(s):** May 29, 2013

**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 release detection for the pressurized piping associated with the UST system [TEX. WATER CODE § 26.3475(a) and (c)(1) and TEX. ADMIN. CODE § 334.50(b)(1)(A) and (b)(2)].
2. Failed to maintain 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 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:**

Respondent no longer owns or operates the facility as of January 7, 2014.

**Technical Requirements:**

N/A

**Litigation Information**

**Date Petition(s) Filed:** September 24, 2013

**Date Green Card(s) Signed:** September 26, 2013

**Date Answer(s) Filed:** N/A

**Contact Information**

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

**TCEQ Enforcement Coordinator:** Jessica Schildwachter, Enforcement Division, 512 / 239-2617

**TCEQ Regional Contact:** Michael Brashear, Tyler Regional Office, 903 / 535-5176

**Respondent Contact:** Chakib Moutawakil, Director, Moutawakil Enterprises, L.L.C., 1505 Grande Boulevard, Tyler, Texas 75703

**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

<b>DATES</b>	<b>Assigned</b>	3-Jun-2013	<b>Screening</b>	13-Jun-2013	<b>EPA Due</b>	
	<b>PCW</b>	18-Sep-2013				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Moutawakil Enterprises, L.L.C. dba Super Food Mart 42
<b>Reg. Ent. Ref. No.</b>	RN102028115
<b>Facility/Site Region</b>	5-Tyler
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	47064	<b>No. of Violations</b>	3
<b>Docket No.</b>	2013-1160-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>		<b>Enf. Coordinator</b>	Jessica Schildwachter
		<b>EC's Team</b>	Enforcement Team 5
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$7,500</b>
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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>	<b>-10.0%</b> Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>-\$750</b>
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Notes: Reduction for high performer classification.

<b>Culpability</b>	No	<b>0.0%</b> Enhancement	<b>Subtotal 4</b>	<b>\$0</b>
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>\$0</b>
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<b>Economic Benefit</b>	<b>0.0%</b> Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts	\$1,598
Approx. Cost of Compliance	\$3,438

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$6,750</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	<b>33.6%</b>	<b>Adjustment</b>	<b>\$2,265</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: The Executive Director recommends an enhancement to capture the avoided costs of compliance associated with Violation Nos. 1 and 3 and an upward adjustment to offset the reduction for compliance history.

<b>Final Penalty Amount</b>	<b>\$9,015</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$9,015</b>
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<b>DEFERRAL</b>	<b>0.0%</b> Reduction	<b>Adjustment</b>	<b>\$0</b>
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

<b>PAYABLE PENALTY</b>	<b>\$9,015</b>
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**Screening Date** 13-Jun-2013

**Docket No.** 2013-1160-PST-E

**PCW**

**Respondent** Moutawakil Enterprises, L.L.C. dba Super Food Ma

*Policy Revision 3 (September 2011)*

**Case ID No.** 47064

*PCW Revision August 3, 2011*

**Reg. Ent. Reference No.** RN102028115

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** Jessica Schildwachter

### 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	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%

*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)** 0%

**>> Repeat Violator (Subtotal 3)**

No

**Adjustment Percentage (Subtotal 3)** 0%

**>> Compliance History Person Classification (Subtotal 7)**

High Performer

**Adjustment Percentage (Subtotal 7)** -10%

**>> Compliance History Summary**

**Compliance History Notes**

Reduction for high performer classification.

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

**>> Final Compliance History Adjustment**

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

Screening Date 13-Jun-2013

Docket No. 2013-1160-PST-E

PCW

Respondent Moutawakil Enterprises, L.L.C. dba Super Food Mart 42

Policy Revision 3 (September 2011)

Case ID No. 47064

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102028115

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jessica Schildwachter

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 underground storage tanks ("USTs") for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Also, failed to provide release detection for the pressurized piping associated with the UST system. Specifically, the annual piping tightness and line leak detector tests had not been 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

70 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$3,750

One quarterly event is recommended from the April 4, 2013 investigation date to the June 13, 2013 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 \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$191

Violation Final Penalty Total \$4,508

This violation Final Assessed Penalty (adjusted for limits) \$4,508

# Economic Benefit Worksheet

**Respondent** Moutawakil Enterprises, L.L.C. dba Super Food Mart 42  
**Case ID No.** 47064  
**Reg. Ent. Reference No.** RN102028115  
**Media** Petroleum Storage Tank  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				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	4-Apr-2013	31-Jan-2014	0.83	\$62	n/a	\$62

**Notes for DELAYED costs** Estimated cost to implement a release detection method for the USTs at the Facility. 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]	\$118	4-Apr-2012	4-Apr-2013	1.92	\$11	\$118	\$129
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs** Estimated cost to conduct the annual piping tightness and line leak detector tests. The Date Required is one year prior to the investigation date and the Final Date is the investigation date.

<b>Approx. Cost of Compliance</b>	\$1,618	<b>TOTAL</b>	\$191
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Screening Date 13-Jun-2013

Docket No. 2013-1160-PST-E

PCW

Respondent Moutawakil Enterprises, L.L.C. dba Super Food Mart 42

Policy Revision 3 (September 2011)

Case ID No. 47064

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102028115

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jessica Schildwachter

Violation Number 2

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

Violation Description

Failed to maintain 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

70 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an 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

Statutory Limit Test

Estimated EB Amount \$21

Violation Final Penalty Total \$1,503

This violation Final Assessed Penalty (adjusted for limits) \$1,503

# Economic Benefit Worksheet

**Respondent** Moutawakil Enterprises, L.L.C. dba Super Food Mart 42  
**Case ID No.** 47064  
**Reg. Ent. Reference No.** RN102028115  
**Media Violation No.** Petroleum Storage Tank  
 2

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	4-Apr-2013	31-Jan-2014	0.83	\$21	n/a	\$21
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs** Estimated cost to maintain UST records. The date required is the 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**

<b>Approx. Cost of Compliance</b>	\$500	<b>TOTAL</b>	\$21
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Screening Date 13-Jun-2013

Docket No. 2013-1160-PST-E

PCW

Respondent Moutawakil Enterprises, L.L.C. dba Super Food Mart 42

Policy Revision 3 (September 2011)

Case ID No. 47064

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102028115

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jessica Schildwachter

Violation Number 3

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.

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 2 365 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$2,500

Two single events (one event per UST) are 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 \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,386

Violation Final Penalty Total \$3,005

This violation Final Assessed Penalty (adjusted for limits) \$3,005

# Economic Benefit Worksheet

**Respondent** Moutawakil Enterprises, L.L.C. dba Super Food Mart 42  
**Case ID No.** 47064  
**Reg. Ent. Reference No.** RN102028115  
**Media Violation No.** Petroleum Storage Tank  
 3

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				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	4-Apr-2012	4-Apr-2013	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 cost to provide financial assurance for two 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 Report

**PUBLISHED** Compliance History Report for CN604044289, RN102028115, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

<b>Customer, Respondent, or Owner/Operator:</b>	CN604044289, Moutawakil Enterprises, L.L.C.	<b>Classification:</b> HIGH	<b>Rating:</b> 0.00
<b>Regulated Entity:</b>	RN102028115, SUPER FOOD MART 42	<b>Classification:</b> HIGH	<b>Rating:</b> 0.00
<b>Complexity Points:</b>	2	<b>Repeat Violator:</b>	NO
<b>CH Group:</b>	14 - Other		
<b>Location:</b>	1500 GOODNIGHT BLVD WILLS POINT, TX 75169-2807, VAN ZANDT COUNTY		
<b>TCEQ Region:</b>	REGION 05 - TYLER		
<b>ID Number(s):</b>	PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 72917		

**Compliance History Period:** September 01, 2007 to August 31, 2012      **Rating Year:** 2012      **Rating Date:** 09/01/2012

**Date Compliance History Report Prepared:** June 12, 2013

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** June 12, 2008 to June 12, 2013

## **TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.**

**Name:** Jessica Schildwachter

**Phone:** (512) 239-2617

## **Site and Owner/Operator History:**

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? YES
- 3) If YES for #2, who is the current owner/operator? Moutawakil Enterprises, L.L.C. OWNER OPERATOR since 1/1/2012
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)?  
AMPM Enterprises, Inc., OWNER OPERATOR, 2/26/2008 to 12/31/2011  
G. W. Distributing, Inc., OWNER, 8/31/1987 to 2/25/2008
- 5) If YES, when did the change(s) in owner or operator occur? 1/1/2012

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

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

N/A

### **B. Criminal convictions:**

N/A

### **C. Chronic excessive emissions events:**

N/A

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

Item 1 July 14, 2011 (913093)

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

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

N/A

### **F. Environmental audits:**

N/A

### **G. Type of environmental management systems (EMSs):**

N/A

### **H. Voluntary on-site compliance assessment dates:**

N/A

### **I. Participation in a voluntary pollution reduction program:**

N/A

### **J. Early compliance:**

N/A

### **Sites Outside of Texas:**

N/A

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# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
MOUTAWAKIL ENTERPRISES, L.L.C.  
DBA SUPER FOOD MART 42;  
RN102028115**

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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2013-1160-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. The respondent made the subject of this Order is Moutawakil Enterprises, L.L.C. d/b/a Super Food Mart 42 ("Respondent").

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

### **FINDINGS OF FACT**

1. Respondent owned and operated, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), an underground storage tank ("UST") system and a convenience store with retail sales of gasoline located at 1500 Goodnight Boulevard in Wills Point, Van Zandt County, Texas (Facility ID No. 72917) (the "Facility"). The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the rules of the TCEQ, and contain a regulated petroleum substance as defined in the rules of the TCEQ.
2. During an investigation conducted on April 4, 2013, 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 release detection for the pressurized piping associated with the UST system by failing to conduct the annual piping tightness and line leak detector tests;
  - b. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel; and
  - c. 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.
3. Respondent received notice of the violations on or about June 3, 2013.
4. The Executive Director recognizes that Respondent no longer owns and operates the Facility as of January 7, 2014.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Moutawakil Enterprises, L.L.C. d/b/a Super Food Mart 42" (the "EDPRP") in the TCEQ Chief Clerk's office on September 24, 2013.

6. By letter dated September 24, 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 September 26, 2013, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

#### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the TCEQ.
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 release detection for the pressurized piping associated with the UST system by failing to conduct the annual piping tightness and line leak detector tests, in violation of TEX. WATER CODE § 26.3475(a) and (c)(1) and 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 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 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).
5. As evidenced by Findings of Fact Nos. 5 and 6, 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. 7, 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 TCEQ'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 fifteen dollars (\$9,015.00) 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. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

### ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of nine thousand fifteen dollars (\$9,015.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here.
2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Moutawakil Enterprises, L.L.C. d/b/a Super Food Mart 42; Docket No. 2013-1160-PST-E" to:

Financial Administration Division, Revenues Section  
Texas Commission on Environmental Quality  
Attention: Cashier's Office, MC 214  
P.O. Box 13088  
Austin, Texas 78711-3088
3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Respondent.
5. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

**AFFIDAVIT OF STEVEN M. FISHBURN**

**STATE OF TEXAS**

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**COUNTY OF TRAVIS**

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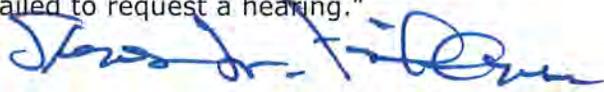
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"My name is Steven M. Fishburn. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Moutawakil Enterprises, L.L.C. d/b/a Super Food Mart 42" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on September 24, 2013.

The EDPRP was mailed to Respondent's last known address on September 24, 2013, via certified mail, return receipt requested, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on September 26, 2013, as evidenced by the signature on the card.

More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."



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

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

Given under my hand and seal of office this 18th day of February, A.D. 2014.



**Notary without Bond**



Notary Signature