

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 45863
H&A Group Inc d/b/a Sean Food Mart
RN102265451
Docket No. 2012-2718-PST-E

Order Type:

Default Order (SOAH preliminary hearing)

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

1600 South 17th Street, Waco, McLennan 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: January 31, 2014

Comments Received: None

Penalty Information

Total Penalty Assessed: \$8,879

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$8,879

Compliance History Classifications:

Person/CN – Unclassified
Site/RN – Unclassified

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2011

Investigation Information

Complaint Date(s): N/A

Date(s) of Investigation: November 9, 2012

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

Date(s) of NOE(s): December 12, 2012

H&A Group Inc d/b/a Sean Food Mart**RN102265451****Docket No. 2012-2718-PST-E****Violation Information**

1. Failed to 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 30 TEX. ADMIN. CODE §§ 334.50(b)(1)(A) and (b)(2)].
2. Failed to provide corrosion protection for the UST system [TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(a)(1)].
3. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b)].

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

Respondent no longer owns or operates the Facility as of January 14, 2014.

Technical Requirements:

N/A

Litigation Information

Date Petition(s) Filed: July 12, 2013
Date Green Card(s) Signed: July 17, 2013
Date Answer(s) Filed: September 6, 2013
SOAH Referral Date: October 9, 2013
Hearing Date(s):
Preliminary hearing: November 21, 2013 (defaulted)

Contact Information

TCEQ Attorneys: David A. Terry, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Garrett Arthur, Public Interest Counsel, (512) 239-6363
TCEQ Enforcement Coordinator: Mike Pace, Enforcement Division, (817) 588-5933
TCEQ Regional Contact: David Mann, Waco Regional Office, (254) 751-0335
Respondent Contact: Hassan Ahmad, President, H&A Group Inc, 3130 North 18th Street, Waco, Texas 76708
Respondent's Attorney: William F. Brown, 210 North Sixth Street, Waco, Texas 76701



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	17-Dec-2012		
	PCW	16-Apr-2013	Screening	18-Dec-2012
			EPA Due	

RESPONDENT/FACILITY INFORMATION	
Respondent	H&A Group Inc dba Sean Food Mart
Reg. Ent. Ref. No.	RN102265451
Facility/Site Region	9-Waco
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	45863	No. of Violations	3
Docket No.	2012-2718-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Mike Pace
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$8,750
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ADJUSTMENTS (+/-) TO SUBTOTAL 1	
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.	
Compliance History	0.0% Enhancement Subtotals 2, 3, & 7
Notes	No adjustment for compliance history.

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
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$485	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$8,118		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$8,750
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OTHER FACTORS AS JUSTICE MAY REQUIRE	1.5%	Adjustment	\$129
Reduces or enhances the Final Subtotal by the indicated percentage.			
Notes	Recommended enhancement to capture the avoided cost of compliance associated with violation no. 1.		
	Final Penalty Amount	\$8,879	

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$8,879
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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	\$8,879
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Screening Date 18-Dec-2012

Docket No. 2012-2718-PST-E

PCW

Respondent H&A Group Inc dba Sean Food Mart

Policy Revision 3 (September 2011)

Case ID No. 45863

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102265451

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Mike Pace

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%
<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)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

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

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100%

Screening Date 18-Dec-2012 **Docket No.** 2012-2718-PST-E **PCW**
Respondent H&A Group Inc dba Sean Food Mart *Policy Revision 3 (September 2011)*
Case ID No. 45863 *PCW Revision August 3, 2011*
Reg. Ent. Reference No. RN102265451
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Mike Pace

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 Respondent did not conduct the annual piping tightness test.

Base Penalty \$25,000

>> **Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				15.0%
	Potential	x			

>> **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 39 Number of violation days

<i>mark only one with an x</i>	daily	
	weekly	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$3,750

One quarterly event is recommended based on the documentation of the violation during the November 9, 2012 investigation to the December 18, 2012 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 \$181

Violation Final Penalty Total \$3,805

This violation Final Assessed Penalty (adjusted for limits) \$3,805

Economic Benefit Worksheet

Respondent H&A Group Inc dba Sean Food Mart
Case ID No. 45863
Reg. Ent. Reference No. RN102265451
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	9-Nov-2012	18-Jul-2013	0.69	\$52	n/a	\$52

Notes for DELAYED costs
 Estimated cost of monitoring the USTs for releases. 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	9-Nov-2011	9-Nov-2012	1.92	\$11	\$118	\$129
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs
 Estimated avoided cost for conducting the annual piping tightness test. The date required is one year prior to the investigation date, and the final date is the investigation date.

Approx. Cost of Compliance	\$1,618	TOTAL	\$181
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Screening Date 18-Dec-2012
Respondent H&A Group Inc dba Sean Food Mart
Case ID No. 45863
Reg. Ent. Reference No. RN102265451
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Mike Pace

Docket No. 2012-2718-PST-E

PCW

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

Violation Number

Rule Cite(s)

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

Violation Description

Failed to provide corrosion protection for the UST system.

Base Penalty

>> **Environmental, Property and Human Health Matrix**

OR

Release	Harm		
	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>

Percent

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent

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

Violation Events

Number of Violation Events

Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text" value="x"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

One quarterly event is recommended based on the documentation of the violation during the November 9, 2012 investigation to the December 18, 2012 screening date.

Good Faith Efforts to Comply

Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	(mark with x)

Notes

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

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent H&A Group Inc dba Sean Food Mart
Case ID No. 45863
Reg. Ent. Reference No. RN102265451
Media Violation No. Petroleum Storage Tank
 2

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	\$6,000	9-Nov-2012	18-Jul-2013	0.69	\$14	\$275	\$289
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 a corrosion protection system and test the 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

\$289

Screening Date 18-Dec-2012
Respondent H&A Group Inc dba Sean Food Mart
Case ID No. 45863
Reg. Ent. Reference No. RN102265451
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Mike Pace

Docket No. 2012-2718-PST-E

PCW

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 334.10(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

39 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

Statutory Limit Test

Estimated EB Amount \$15

Violation Final Penalty Total \$1,268

This violation Final Assessed Penalty (adjusted for limits) \$1,268

Economic Benefit Worksheet

Respondent H&A Group Inc dba Sean Food Mart
Case ID No. 45863
Reg. Ent. Reference No. RN102265451
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	\$500	9-Nov-2012	18-Jun-2013	0.61	\$15	n/a	\$15
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

Approx. Cost of Compliance

\$500

TOTAL

\$15

The TCEQ is committed to accessibility.

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



Compliance History Report

PUBLISHED Compliance History Report for CN603634973, RN102265451, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator: CN603634973, H&A Group Inc

Classification: UNCLASSIFIED

Rating: -----

Regulated Entity: RN102265451, Sean Food Mart

Classification: UNCLASSIFIED

Rating: -----

Complexity Points: 3

Repeat Violator: NO

CH Group: 14 - Other

Location: 1600 S 17TH ST WACO, TX 76706-2036, MCLENNAN COUNTY

TCEQ Region: REGION 09 - WACO

ID Number(s): PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 47417

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

Date Compliance History Report Prepared: December 17, 2012

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: December 17, 2007 to December 17, 2012

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

Name: Mike Pace

Phone: (817) 588-5933

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? H&A Group Inc
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? AKRM, LLC
ISBAT LLC
- 5) If YES, when did the change(s) in owner or operator occur? 9/15/2011
9/14/2010

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.):

N/A

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
H&A GROUP INC D/B/A
SEAN FOOD MART;
RN102265451**

§
§
§
§
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§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2012-2718-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 H&A Group Inc d/b/a Sean Food Mart ("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 1600 South 17th Street in Waco, McLennan County, Texas (Facility ID No. 47417) (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 November 9, 2012, a University of Texas-Arlington ("UTA") PST Program investigator (TCEQ contractor) 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 test;
 - b. Failed to provide corrosion protection for the UST system; and
 - c. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel.
3. Respondent received notice of the violations on or about December 17, 2012.
4. The Executive Director recognizes that Respondent no longer owns or operates the Facility as of January 14, 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 H&A Group Inc d/b/a Sean Food Mart" (the "EDPRP") in the TCEQ Chief Clerk's office on July 12, 2013.

6. By letter dated July 12, 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 July 17, 2013, as evidenced by the signature on the card.
7. Respondent filed an answer requesting a hearing on September 6, 2013, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on October 9, 2013.
8. On October 21, 2013, the TCEQ Chief Clerk mailed notice of the November 21, 2013, preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Respondent.
9. On November 21, 2013, the Administrative Law Judge ("ALJ") convened the preliminary hearing. Respondent failed to appear, and the Executive Director requested that the matter be dismissed from the SOAH Docket and remanded to the Executive Director so that a Default Order may be entered by the Commission.
10. On November 25, 2013, the ALJ entered a finding that Respondent was served with proper notice of the hearing and remanded the matter to the Executive Director by SOAH Order No. 1, Granting Motion to Dismiss and Remand so that TCEQ may dispose of this case on a default basis.

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, 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 provide corrosion protection for the UST system, in violation of TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(a)(1).
4. As evidenced by Finding of Fact No. 2.c., 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).
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 filed an answer requesting a hearing as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105, and the matter was referred to SOAH pursuant to 1 TEX. ADMIN. CODE §§ 155.53(b) and 155.101(b) and 30 TEX. ADMIN. CODE § 70.109.
7. As evidenced by Finding of Fact No. 8, Respondent was provided proper notice of the preliminary hearing in accordance with TEX. GOV'T CODE §§ 2001.051(1) and 2001.052, TEX. WATER CODE § 7.058, 1 TEX. ADMIN. CODE §§ 155.103(a) and (c)(3), 155.401 and 155.501, and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.23, 39.25, 39.405, 39.413, 39.423, 39.425 and 80.6.

8. As evidenced by Findings of Fact Nos. 9 and 10, Respondent failed to appear for the preliminary hearing, and pursuant to TEX. GOV'T CODE § 2001.056(4), TEX. WATER CODE § 7.057, and 1 TEX. ADMIN. CODE § 155.501(d), the ALJ dismissed the case from the SOAH docket so that the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director pursuant to 30 TEX. ADMIN. CODE § 70.106(b).
9. 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.
10. An administrative penalty in the amount of eight thousand eight hundred seventy-nine dollars (\$8,879.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
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.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of eight thousand eight hundred seventy-nine dollars (\$8,879.00) 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: H&A Group Inc d/b/a Sean Food Mart; Docket No. 2012-2718-PST-E" to:

Financial Administration Division, Revenues Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088
3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Respondent.
5. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent

shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF DAVID A. TERRY

STATE OF TEXAS

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§
§

COUNTY OF TRAVIS

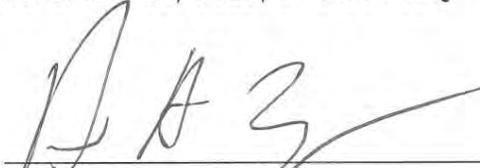
"My name is David A. Terry. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

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 H&A Group Inc d/b/a Sean Food Mart" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on July 12, 2013.

Respondent filed an answer requesting a hearing on September 6, 2013, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on October 9, 2013. On October 21, 2013, the TCEQ Chief Clerk mailed notice of the November 21, 2013, preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Respondent.

Respondent failed to appear at the hearing on November 21, 2013. At that hearing, I requested that the ALJ enter a finding that Respondent was served with proper notice of the hearing and the matter be remanded to the Executive Director pursuant to 1 TEX. ADMIN. CODE § 155.501(d), which gives an ALJ the authority to remand the case back to the TCEQ for informal disposition on a default basis in accordance with TEX. GOV'T CODE § 2001.056.

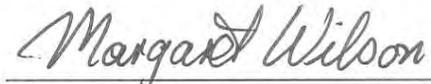
The ALJ remanded the matter to the Executive Director by SOAH Order No. 1, Granting Motion to Dismiss and Remand, issued on November 25, 2013, so that TCEQ may dispose of this case on a default basis."



David A. Terry, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared David A. Terry, 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 5th day of MARCH, A.D. 2014.



Notary Signature

