

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 46440  
L FAKIR INC. d/b/a West Hardy Diamond  
RN102435146  
Docket No. 2013-0520-PST-E

**Order Type:**

Default Order

**Media:**

Underground Petroleum Storage Tanks (USTs)

**Small Business:**

N/A

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

11419 West Hardy Road, Houston, Harris County

**Type of Operation:**

convenience store with retail sales of gasoline

**Other Significant Matters:**

Additional Pending Enforcement Actions: None  
Past-Due Penalties: None  
Past-Due Fees: None  
Other: None  
Interested Third-Parties: None

**Texas Register Publication Date:** July 17, 2015

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$21,100

**Total Paid to General Revenue:** \$0

**Total Due to General Revenue:** \$21,100

**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:** October 26, 2012  
**Date(s) of NOV(s):** N/A  
**Date(s) of NOE(s):** February 26, 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) [TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A)].
2. Failed to report a suspected release of regulated substance to the TCEQ within 72 hours of discovery [30 TEX. ADMIN. CODE § 334.72].
3. Failed to investigate a suspected release of regulated substance within 30 days of discovery [30 TEX. ADMIN. CODE § 334.74].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**  
N/A

**Technical Requirements:**

N/A - Respondent no longer owns or operates the Facility as of April 14, 2013.

**Litigation Information**

**Date Petition(s) Filed:** April 24, 2015  
**Date Green Card(s) Signed:** April 27, 2015  
**Date Answer(s) Filed:** N/A

**Contact Information**

**TCEQ Attorneys:** Tracy Chandler, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
Rudy Calderon, Public Interest Counsel, (512) 239-6363

**TCEQ Enforcement Coordinator:** Steven Van Landingham, Enforcement Division, (512) 239-5717

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

**Respondent Contact:** Mohammad A. Khan, President, L FAKIR INC., 14340 Torrey Chase Boulevard, Suite 110, Houston, Texas 77014; Mohammad A. Khan, President, L FAKIR INC., 11419 West Hardy Road, Houston, Texas 77076

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



# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

<b>DATES</b>	<b>Assigned</b>	4-Mar-2013		
	<b>PCW</b>	7-Apr-2015	<b>Screening</b>	12-Mar-2013
			<b>EPA Due</b>	

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	L FAKIR INC. dba West Hardy Diamond
<b>Reg. Ent. Ref. No.</b>	RN102435146
<b>Facility/Site Region</b>	12-Houston
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	46440	<b>No. of Violations</b>	3
<b>Docket No.</b>	2013-0520-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>	Michael Meyer
		<b>EC's Team</b>	Enforcement Team 6
<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>	\$17,500
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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>	10.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$1,750
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Notes: Enhancement for one order with a denial of liability and reduction for high performer classification.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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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>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts: \$401  
 Estimated Cost of Compliance: \$7,100  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$19,250
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	9.6%	<b>Adjustment</b>	\$1,850
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended adjustment to offset high performer reduction (\$1,750) and to capture the avoided cost of compliance associated with violation no. 2 (\$100).

<b>Final Penalty Amount</b>	\$21,100
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$21,100
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$0
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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>	\$21,100
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Screening Date 12-Mar-2013

Docket No. 2013-0520-PST-E

PCW

Respondent L FAKIR INC. dba West Hardy Diamond

Policy Revision 3 (September 2011)

Case ID No. 46440

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102435146

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Michael Meyer

### 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> )	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgments 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)** 20%

#### >> 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

Enhancement for one order with a denial of liability and 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** 12-Mar-2013 **Docket No.** 2013-0520-PST-E **PCW**  
**Respondent** L FAKIR INC. dba West Hardy Diamond *Policy Revision 3 (September 2011)*  
**Case ID No.** 46440 *PCW Revision August 3, 2011*  
**Reg. Ent. Reference No.** RN102435146  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Michael Meyer

**Violation Number** 1

**Rule Cite(s)** 30 Tex. Admin. Code § 334.50(b)(1)(A) and Tex. Water Code § 26.3475(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 to exceed 35 days between each monitoring).

**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 14 Number of violation days

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

**Violation Base Penalty** \$3,750

One monthly event is recommended based on documentation of the violation during the February 26, 2013 record review to the March 12, 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** \$72

**Violation Final Penalty Total** \$4,521

**This violation Final Assessed Penalty (adjusted for limits)** \$4,521

# Economic Benefit Worksheet

**Respondent** L FAKIR INC. dba West Hardy Diamond  
**Case ID No.** 46440  
**Reg. Ent. Reference No.** RN102435146  
**Media Violation No.** 1  
**Media** 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)	\$1,500	26-Oct-2012	13-Oct-2013	0.96	\$72	n/a	\$72

**Notes for DELAYED costs**   Estimated cost to monitor 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]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**   \$1,500

**TOTAL**   \$72

**Screening Date** 12-Mar-2013  
**Respondent** L FAKIR INC. dba West Hardy Diamond  
**Case ID No.** 46440  
**Reg. Ent. Reference No.** RN102435146  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Michael Meyer

**Docket No.** 2013-0520-PST-E

**PCW**

*Policy Revision 3 (September 2011)*

*PCW Revision August 3, 2011*

**Violation Number**

**Rule Cite(s)**

**Violation Description**

**Base Penalty**

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0.0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="5.0%"/>

Matrix Notes

**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"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="text" value="x"/>

**Violation Base Penalty**

**Good Faith Efforts to Comply**

Reduction

	Before NOV	NOV to EDRP/ Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	(mark w th x)

Notes

**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** L FAKIR INC. dba West Hardy Diamond  
**Case ID No.** 46440  
**Reg. Ent. Reference No.** RN102435146  
**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				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$100	15-Nov-2012	18-Nov-2012	0.00	\$0	\$100	\$100
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to report a suspected release. The Date Required is the date of the suspected release, and the Final Date is the date the report was due.

Approx. Cost of Compliance \$100

**TOTAL** \$100

Screening Date 12-Mar-2013

Docket No. 2013-0520-PST-E

PCW

Respondent L FAKIR INC. dba West Hardy Diamond

Policy Revision 3 (September 2011)

Case ID No. 46440

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102435146

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Michael Meyer

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.74

Violation Description Failed to investigate a suspected release orf regulated substance within 30 days of discovery. Specifically, SIR records for October 2012 indicated a suspected release that was not investigated.

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 3 87 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
single event		

Violation Base Penalty \$11,250

Three monthly events are recommened from the release investigation due date of December 15, 2012 to the March 12, 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 w th x)

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

Violation Subtotal \$11,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$207

Violation Final Penalty Total \$13,564

This violation Final Assessed Penalty (adjusted for limits) \$13,564

# Economic Benefit Worksheet

**Respondent** L FAKIR INC. dba West Hardy Diamond  
**Case ID No.** 46440  
**Reg. Ent. Reference No.** RN102435146  
**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	15-Dec-2012	13-Oct-2013	0.83	\$207	n/a	\$207

Notes for DELAYED costs

Estimated cost to investigate a suspected release. The Date Required is the date the release investigation was due, and the Final Date is the estimated compliance date.

### 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**

\$207

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 CN603788019, RN102435146, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

**Customer, Respondent, or Owner/Operator:** CN603788019, L FAKIR INC.

**Classification:** HIGH

**Rating:** N/A

**Regulated Entity:** RN102435146, West Hardy Diamond

**Classification:** HIGH

**Rating:** N/A

**Complexity Points:** N/A

**Repeat Violator:** NO

**CH Group:** 14 - Other

**Location:** 11419 W HARDY RD HOUSTON, TX 77076-1942, HARRIS COUNTY

**TCEQ Region:** REGION 12 - HOUSTON

**ID Number(s):** **PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 40146**  
**AIR NEW SOURCE PERMITS ACCOUNT NUMBER HG6318J**

**Compliance History Period:** September 01, 2007 to August 31, 2012

**Rating Year:** 2012

**Rating Date:** 09/01/2012

**Date Compliance History Report Prepared:** April 16, 2015

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** March 11, 2008 to March 11, 2013

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

**Name:** Theresa Stephens

**Phone:** (512) 239-2540

## 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? L FAKIR INC OWNER OPERATOR since 11/8/2010
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? BLUE LINE LLC, OWNER OPERATOR, 8/30/2009 TO 11/7/2010
- 5) If **YES**, when did the change(s) in owner or operator occur? 11/8/2010

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

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

**1 Effective Date: 03/03/2013 ADMINORDER 2012-1654-PST-E (1660 Order-Agreed Order With Denial)**

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)

5C THSC Chapter 382 382.085(b)

Description: Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s), and free of defects that would impair the effectiveness of the system.

Classification: Moderate

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

5C THSC Chapter 382 382.085(b)

Description: Failure to verify proper operation of the Stage II equipment at least once every twelve months or upon major system replacement or modification, whichever occurs first.

### **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  
L FAKIR INC. DBA  
WEST HARDY DIAMOND;  
RN102435146**

§  
§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2013-0520-PST-E**

On \_\_\_\_\_, 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 L FAKIR INC. d/b/a West Hardy Diamond ("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 11419 West Hardy Road in Houston, Harris County, Texas (Facility ID No. 40146) (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 or contained a regulated petroleum substance as defined in the rules of the TCEQ.
2. During an investigation conducted on October 26, 2012, and a record review conducted on February 26, 2013, an 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);
  - b. Failed to report a suspected release of regulated substance to the TCEQ within 72 hours of discovery. Specifically, statistical inventory reconciliation ("SIR") records of October 2012 indicated a suspected release that was not reported; and
  - c. Failed to investigate a suspected release of regulated substance within 30 days of discovery. Specifically, SIR records for October 2012 indicated a suspected release that was not investigated.
3. The Executive Director recognizes that Respondent no longer owns or operates the Facility as of April 14, 2013.
4. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against L FAKIR INC. d/b/a West Hardy Diamond" (the "EDPRP") in the TCEQ Chief Clerk's office on April 24, 2015.

5. By letter dated April 24, 2015, 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. Respondent received notice of the EDPRP on April 27, 2015, as evidenced by USPS.com "Track & Confirm" delivery confirmation records and the signature on the return receipt "green card."
6. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

#### **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), in violation of TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to report a suspected release of regulated substance to the TCEQ within 72 hours of discovery, in violation of 30 TEX. ADMIN. CODE § 334.72.
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to investigate a suspected release of regulated substance within 30 days of discovery, in violation of 30 TEX. ADMIN. CODE § 334.74.
5. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(b)(1).
6. As evidenced by Finding of Fact No. 6, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within 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 twenty-one thousand one hundred dollars (\$21,100.00) 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 twenty-one thousand one hundred dollars (\$21,100.00) for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondent's compliance with all the requirements set forth in this Order resolve only 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 violations which are not raised here.

2. The 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 TCEQ and shall be sent with the notation "Re: L FAKIR INC. d/b/a West Hardy Diamond; Docket No. 2013-0520-PST-E" to:

Financial Administration Division, Revenue Operations 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. 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.
6. 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.
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 fully executed 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

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For the Commission

**AFFIDAVIT OF TRACY CHANDLER**

**STATE OF TEXAS**

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§

**COUNTY OF TRAVIS**

"My name is Tracy Chandler. 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 L FAKIR INC. d/b/a West Hardy Diamond" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on April 24, 2015.

The EDPRP was mailed to Respondent's last known address on April 24, 2015, via certified mail, return receipt requested, postage prepaid. Respondent received notice of the EDPRP on April 27, 2015, as evidenced by USPS.com "Track & Confirm" delivery confirmation records and the signature on the return receipt "green card."

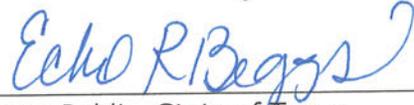
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."



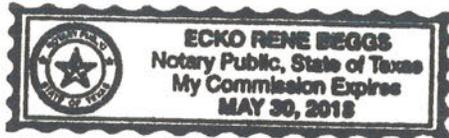
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Tracy Chandler, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

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

Subscribed and sworn to before me on this 29<sup>th</sup> day of June, A.D. 2015.



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Notary Public, State of Texas



Notary without Bond