

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE No. 49977
TAHIR ENTERPRISES, INC. d/b/a Buy N Bye Drive In
RN101782043
Docket No. 2015-0120-PST-E

Order Type:

Agreed Order

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

1310 North Pine Street, Kountze, Hardin 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: February 26, 2016

Comments Received: None

Penalty Information

Total Penalty Assessed: \$9,755

Total Paid to General Revenue: \$305

Total Due to General Revenue: \$9,450

Payment Plan: 35 payments of \$270 each

Compliance History Classifications:

Person/CN – Satisfactory

Site/RN – Satisfactory

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: December 15 - 17, 2014
Date(s) of NOV(s): N/A
Date(s) of NOE(s): January 14, 2015

Violation Information

1. Failed to provide corrosion protection for the underground storage tank ("UST") system [TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(a)(1)].
2. Failed to provide release detection for the pressurized piping associated with the USTs [TEX. WATER CODE § 26.3475(a) and 30 TEX. ADMIN. CODE § 334.50(b)(2)].
3. Failed to install an emergency shutoff valve (also known as shear or impact valve) on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser [30 TEX. ADMIN. CODE § 334.45(c)(3)(A)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

1. Securely anchored the emergency shutoff valve as of January 22, 2015;
2. Began providing release detection for the pressurized piping as of January 29, 2015; and
3. Began providing corrosion protection for the UST system as of February 5, 2015.

Technical Requirements:

None

Litigation Information

Date Petition(s) Filed: May 21, 2015; October 21, 2015 (EDFARP)
Date Answer Filed: June 5, 2015; June 12, 2015
SOAH Referral Date: July 9, 2015
Preliminary Hearing: August 20, 2015
Evidentiary Hearing: December 16, 2015 (scheduled)
Settlement Date: January 18, 2016

Contact Information

TCEQ Attorneys: Meaghan Bailey, 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: Marilyn Gates, Beaumont Regional Office, (409) 898-3838
Respondent Contact: Tahir Mahmood, President, TAHIR ENTERPRISES, INC., 1101 Hawkhill Drive, Friendswood, Texas 77546; Tahir Mahmood, President, TAHIR ENTERPRISES, INC., 3222 Shaver Street, Pasadena, Texas 77504-1305
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	20-Jan-2015		
	PCW	14-Oct-2015	Screening	22-Jan-2015
			EPA Due	

RESPONDENT/FACILITY INFORMATION	
Respondent	TAHIR ENTERPRISES, INC. dba Buy N Bye Drive In
Reg. Ent. Ref. No.	RN101782043
Facility/Site Region	10-Beaumont
Major/Minor Source	Minor

CASE INFORMATION		No. of Violations	3
Enf./Case ID No.	49977	Order Type	1660
Docket No.	2015-0120-PST-E	Government/Non-Profit	No
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Steven Van Landingham
Multi-Media		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	20.0% Enhancement	Subtotals 2, 3, & 7	\$1,750
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Notes: Enhancement for one order containing a denial of liability

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	-\$875
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$149
Estimated Cost of Compliance	\$2,118

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$9,625
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OTHER FACTORS AS JUSTICE MAY REQUIRE	1.4%	Adjustment	\$130
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with violation no. 2.

Final Penalty Amount	\$9,755
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$9,755
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DEFERRAL	0.0% Reduction	Adjustment	\$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.

PAYABLE PENALTY	\$9,755
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Screening Date 22-Jan-2015

Docket No. 2015-0120-PST-E

PCW

Respondent TAHIR ENTERPRISES, INC. dba Buy N Bye Drive In

Policy Revision 4 (April 2014)

Case ID No. 49977

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101782043

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Van Landingham

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)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one order containing a denial of liability

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 20%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 20%

Screening Date 22-Jan-2015 **Docket No.** 2015-0120-PST-E **PCW**
Respondent TAHIR ENTERPRISES, INC. dba Buy N Bye Drive In *Policy Revision 4 (April 2014)*
Case ID No. 49977 *PCW Revision March 26, 2014*
Reg. Ent. Reference No. RN101782043
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Steven Van Landingham

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 underground storage tank ("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 checked="" 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 checked="" 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 from the December 15, 2014 investigation to the January 22, 2015 screening date.

Good Faith Efforts to Comply

Reduction

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

Notes
The Respondent came into compliance on February 5, 2015, after the Notice of Enforcement ("NOE") dated January 14, 2015.

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 TAHIR ENTERPRISES, INC. dba Buy N Bye Drive In
Case ID No. 49977
Reg. Ent. Reference No. RN101782043
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	\$1,500	15-Dec-2014	5-Feb-2015	0.14	\$1	\$14	\$15
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 repair the rectifier and test the corrosion protection system. The date required is the investigation date, and the final date is the 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
 (Empty box for notes)

Approx. Cost of Compliance \$1,500 **TOTAL** \$15

Screening Date 22-Jan-2015

Docket No. 2015-0120-PST-E

PCW

Respondent TAHIR ENTERPRISES, INC. dba Buy N Bye Drive In

Policy Revision 4 (April 2014)

Case ID No. 49977

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101782043

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Van Landingham

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 334.50(b)(2) and Tex. Water Code § 26.3475(a)

Violation Description

Failed to provide release detection for the pressurized piping associated with the USTs. Specifically, the Respondent did not conduct the annual line leak detector test on the diesel product line.

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

365 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	x
single event	

Violation Base Penalty \$3,750

One annual event is recommended for the period preceding the December 15, 2014 investigation.

Good Faith Efforts to Comply

10.0%

Reduction \$375

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		x
N/A		(mark w th x)

Notes

The Respondent came into compliance on January 29, 2015, after the NOE dated January 14, 2015.

Violation Subtotal \$3,375

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$130

Violation Final Penalty Total \$4,181

This violation Final Assessed Penalty (adjusted for limits) \$4,181

Economic Benefit Worksheet

Respondent TAHIR ENTERPRISES, INC. dba Buy N Bye Drive In
Case ID No. 49977
Reg. Ent. Reference No. RN101782043
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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	15-Dec-2013	29-Jan-2015	2.04	\$12	\$118	\$130
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct the annual line leak detector test. The date required is one year before the investigation date, and the final date is the compliance date.

Approx. Cost of Compliance \$118

TOTAL \$130

Screening Date 22-Jan-2015

Docket No. 2015-0120-PST-E

PCW

Respondent TAHIR ENTERPRISES, INC. dba Buy N Bye Drive In

Policy Revision 4 (April 2014)

Case ID No. 49977

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101782043

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Van Landingham

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.45(c)(3)(A)

Violation Description Failed to install an emergency shutoff valve (also known as shear or impact valve) on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 5.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

38 Number of violation days

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

Violation Base Penalty \$1,250

One quarterly event is recommended from the December 15, 2014 investigation to the January 22, 2015 screening date.

Good Faith Efforts to Comply

10.0%

Reduction \$125

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		x
N/A		(mark w th x)

Notes The Respondent came into compliance on January 22, 2015, after the NOE dated January 14, 2015.

Violation Subtotal \$1,125

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4

Violation Final Penalty Total \$1,394

This violation Final Assessed Penalty (adjusted for limits) \$1,394

Economic Benefit Worksheet

Respondent TAHIR ENTERPRISES, INC. dba Buy N Bye Drive In
Case ID No. 49977
Reg. Ent. Reference No. RN101782043
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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment	\$500	15-Dec-2014	22-Jan-2015	0.10	\$0	\$3	\$4
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 properly install and anchor a shutoff valve at the Station. The date required is the investigation date, and the final date is the compliance date.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$4

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 CN600964142, RN101782043, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

Customer, Respondent, or Owner/Operator: CN600964142, TAHIR ENTERPRISES, INC. **Classification:** SATISFACTORY **Rating:** 11.25

Regulated Entity: RN101782043, BUY N BYE DRIVE IN **Classification:** SATISFACTORY **Rating:** 11.25

Complexity Points: 7 **Repeat Violator:** NO

CH Group: 01 - Gas Stations with convenience Stores and other Gas Stations

Location: 1310 NORTH PINE STREET KOUNTZE, TX 77625-9382, HARDIN COUNTY

TCEQ Region: REGION 10 - BEAUMONT

ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 34775

Compliance History Period: September 01, 2009 to August 31, 2014 **Rating Year:** 2014 **Rating Date:** 09/01/2014

Date Compliance History Report Prepared: January 22, 2015

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: January 22, 2010 to January 22, 2015

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

Name: Steven Van Landingham

Phone: (512) 239-5717

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? Tahir Enterprises, Inc. OWNER OPERATOR since 12/1/2010
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)?
NOURIN ENTERPRISES INC, OWNER, 9/13/2008 to 12/1/2010
NOURIN ENTERPRISES INC, OWNER OPERATOR, 8/10/2007 to 11/30/2010
Tahir Enterprises, Inc., OWNER OPERATOR, 9/13/2008 to 11/30/2010
- 5) If YES, when did the change(s) in owner or operator occur? 12/1/2010

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

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

- 1 **Effective Date:** 11/12/2012 **ADMINORDER 2012-0540-PST-E (1660 Order-Agreed Order With Denial)**

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)
30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)

Description: Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of 30 TAC § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1).

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)
30 TAC Chapter 334, SubChapter A 334.10(b)(1)(B)

Description: Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel, in violation of 30 TAC § 334.10(b).

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
TAHIR ENTERPRISES, INC. DBA
BUY N BYE DRIVE IN;
RN101782043**

**§
§
§
§
§
§**

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2015-0120-PST-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding TAHIR ENTERPRISES, INC. d/b/a Buy N Bye Drive In ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent together stipulate that:

1. Respondent owns and operates, 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 1310 North Pine Street in Kountze, Hardin County, Texas (Facility ID No. 34775) (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. The Executive Director and Respondent agree that TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, and 7.073, and that Respondent is subject to TCEQ's jurisdiction. The TCEQ has jurisdiction in this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and the rules of the TCEQ.
3. The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of nine thousand seven hundred fifty-five dollars (\$9,755.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid three hundred five dollars (\$305.00) of the penalty. The remaining amount of nine thousand four hundred fifty dollars (\$9,450.00) shall be paid in thirty-five (35) monthly payments of two hundred seventy dollars (\$270.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until the penalty is paid in full. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Order, including the payment schedule, the Executive Director may accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Respondent's failure to meet the payment schedule of this Order and/or the acceleration of any remaining balance constitutes the failure by Respondent to timely and satisfactorily comply with all the terms of this Order.

5. The Executive Director and Respondent agree on a settlement of the matters addressed in this Order, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a). Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
6. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions contained in this Order.
7. This Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
8. This Order shall terminate five years from its effective date or upon full compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Executive Director recognizes that Respondent implemented the following corrective actions at the Facility:
 - a. Securely anchored the emergency shutoff valve as of January 22, 2015;
 - b. Began providing release detection for the pressurized piping as of January 29, 2015; and
 - c. Began providing corrosion protection for the UST system as of February 5, 2015.

II. ALLEGATIONS

1. During an investigation conducted from December 15, 2014 through December 17, 2014, an investigator documented that Respondent:
 - a. 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);
 - b. Failed to provide release detection for the pressurized piping associated with the USTs, in violation of TEX. WATER CODE § 26.3475(a) and 30 TEX. ADMIN. CODE § 334.50(b)(2). Specifically, Respondent did not conduct the annual line leak detector test on the diesel product line; and
 - c. Failed to install an emergency shutoff valve (also known as shear or impact valve) on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser, in violation of 30 TEX. ADMIN. CODE § 334.45(c)(3)(A).

III. DENIALS

Respondent generally denies each Allegation in Section II.

IV. ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty as set forth in Section I, Paragraph 4. The payment of this penalty and Respondent's compliance with all of the requirements set forth in this Order resolve only the Allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective actions

or penalties for violations which are not raised here. Penalty payments shall be made payable to TCEQ and shall be sent with the notation "Re: TAHIR ENTERPRISES, INC. d/b/a Buy N Bye Drive In, Docket No. 2015-0120-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

2. All relief not expressly granted in this Order is denied.
3. The duties and provisions imposed by this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
4. 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.
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. This Order, issued by the Commission, shall not be admissible against Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Order, or (2) pursue violations of a statute within TCEQ's jurisdiction or of a rule adopted or an order or permit issued by the TCEQ under such a statute.
7. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms: electronic transmission, owner, person, writing, and written, shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
8. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date



For the Executive Director



Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

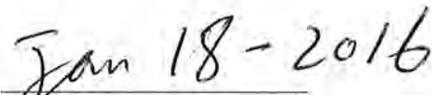
I also understand that failure to comply with the Ordering Provisions in this Order and/or failure to timely pay the penalty amount may result in:

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

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



Signature - Tahir Mahmood, President
TAHIR ENTERPRISES, INC.
1101 Hawkhill Drive
Friendswood, Texas 77625-9382



Date

TAHIR ENTERPRISES, INC.
3222 Shaver Street
Pasadena, Texas 77504

If mailing address has changed, please check this box and provide the new address below:
