

**EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE No. 50751  
H Shaheen LLC dba AM Food Mart  
RN101381705  
Docket No. 2015-0973-PST-E**

**Order Type:**

Default Shutdown Order (SOAH Preliminary Hearing)

**Media:**

PST

**Small Business:**

Yes

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

1602 Highway 6 South, 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:** September 23, 2016

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$4,500

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

**Total Due to General Revenue:** \$4,500

**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:** May 29, 2015

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

**Date(s) of NOE(s):** June 24, 2015

**H Shaheen LLC dba AM Food Mart****RN101381705****Docket No. 2015-0973-PST-E****Violation Information**

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)].

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

None

**Technical Requirements:**

1. Immediately shut down operations of all USTs at the Facility:
  - a. Cease dispensing fuel from the USTs;
  - b. Cease receiving deliveries of regulated substances into the USTs;
  - c. Padlock the dispensers;
  - d. Empty the USTs of all regulated substances; and
  - e. Temporarily remove the USTs from service.
2. The USTs shall remain out of service until such time as Respondent demonstrates to the satisfaction of the Executive Director that the release detection violation has been corrected and Respondent obtains a new fuel delivery certificate for the Facility.
3. The Facility's UST fuel delivery certificate is revoked immediately. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements set forth in the Order, including payment of the administrative penalty in full.
4. Immediately, Respondent shall cease accepting fuel at the Facility until such time as a valid delivery certificate is obtained from the TCEQ.
5. Within 10 days, Respondent shall surrender the Facility's UST fuel delivery certificate to the TCEQ.
6. Within 15 days, submit a detailed written report documenting the steps taken to comply with Technical Requirements Nos. 1, 4, and 5.
7. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline:
  - a. Implement a release detection method for all USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.50; and
  - b. Obtain a new fuel delivery certificate.
8. Upon obtaining a new fuel delivery certificate, post the fuel delivery certificate in a location at the Facility where the delivery certificate is clearly visible at all times.
9. Within 10 days of resuming sales of gasoline, submit written certification to demonstrate compliance with Technical Requirements Nos. 7 and 8.

**Litigation Information**

<b>Date Petition(s) Filed:</b>	January 4, 2016
<b>Date Green Card(s) Signed:</b>	January 6, 2016
<b>Date Answer(s) Filed:</b>	March 30, 2016
<b>SOAH Referral Date:</b>	May 11, 2016
<b>Hearing Date(s):</b>	
Preliminary hearing:	August 4, 2016 (defaulted)

**EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE No. 50751**  
**H Shaheen LLC dba AM Food Mart**  
**RN101381705**  
**Docket No. 2015-0973-PST-E**

**Contact Information**

**TCEQ Attorneys:** Clayton Smith, Litigation Division, (512) 239-3400  
Ryan Rutledge, Litigation Division, (512) 239-3400  
Vic McWherter, Public Interest Counsel, (512) 239-6363

**TCEQ Enforcement Coordinator:** John Fennell, Enforcement Division, (512) 239-2616

**TCEQ Regional Contact:** Jason Ybarra, Houston Regional Office, (713) 767-3615

**Respondent Contact:** Syed Rizvi, Manager, H Shaheen LLC, 1602 Highway 6 South, Houston, Texas  
77077

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



# Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

<b>DATES</b>	<b>Assigned</b>	29-Jun-2015		
	<b>PCW</b>	2-Jun-2016	<b>Screening</b>	29-Jun-2015
			<b>EPA Due</b>	

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	H Shaheen LLC dba AM Food Mart
<b>Reg. Ent. Ref. No.</b>	RN101381705
<b>Facility/Site Region</b>	12-Houston
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>		<b>No. of Violations</b>	1
<b>Enf./Case ID No.</b>	50751	<b>Order Type</b>	1660
<b>Docket No.</b>	2015-0973-PST-E	<b>Government/Non-Profit</b>	No
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Enf. Coordinator</b>	John Fennell
<b>Multi-Media</b>		<b>EC's Team</b>	Enforcement Team 7
<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>	\$3,750
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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.

<b>Compliance History</b>	20.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$750
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Notes: Enhancement for one previous order with denial of liability.

<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: \$63  
 Estimated Cost of Compliance: \$1,500  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$4,500
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	\$4,500
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$4,500
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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>	\$4,500
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Screening Date 29-Jun-2015

Docket No. 2015-0973-PST-E

PCW

Respondent H Shaheen LLC dba AM Food Mart

Policy Revision 4 (April 2014)

Case ID No. 50751

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101381705

Media [Statute] Petroleum Storage Tank

Enf. Coordinator John Fennell

### 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 previous order with 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 29-Jun-2015

Docket No. 2015-0973-PST-E

PCW

Respondent H Shaheen LLC dba AM Food Mart

Policy Revision 4 (April 2014)

Case ID No. 50751

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101381705

Media [Statute] Petroleum Storage Tank

Enf. Coordinator John Fennell

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 exceed 35 days between each monitoring).

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	Harm		
	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants that 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

31 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$3,750

One monthly event is recommended from the May 29, 2015 investigation to the June 29, 2015 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDRP/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 \$63

Violation Final Penalty Total \$4,500

This violation Final Assessed Penalty (adjusted for limits) \$4,500

# Economic Benefit Worksheet

**Respondent** H Shaheen LLC dba AM Food Mart  
**Case ID No.** 50751  
**Reg. Ent. Reference No.** RN101381705  
**Media Violation No.** 1  
**Media Violation No.** 1

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	29-May-2015	29-Mar-2016	0.84	\$63	n/a	\$63

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** \$63

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 CN604332023, RN101381705, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

**Customer, Respondent, or Owner/Operator:** CN604332023, H Shaheen LLC **Classification:** SATISFACTORY **Rating:** 6.75

**Regulated Entity:** RN101381705, AM Food Mart **Classification:** SATISFACTORY **Rating:** 6.75

**Complexity Points:** 4 **Repeat Violator:** NO

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

**Location:** 1602 Highway 6 South, Houston, Texas 77077-2802, Harris County

**TCEQ Region:** REGION 12 - HOUSTON

**ID Number(s):** **PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 17921**

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

**Date Compliance History Report Prepared:** June 29, 2015

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** June 29, 2010 to June 29, 2015

**TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.**  
**Name:** John Fennell **Phone:** (512) 239-2616

## 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? NO
- 3) If **YES** for #2, who is the current owner/operator? N/A
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If **YES**, when did the change(s) in owner or operator occur? N/A

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

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

- 1 **Effective Date:** 02/10/2012 **ADMINORDER 2011-1109-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 USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).

### **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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
H SHAHEEN LLC  
DBA AM FOOD MART;  
RN101381705**

**§  
§  
§  
§  
§**

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

**DEFAULT AND SHUTDOWN ORDER**

**DOCKET NO. 2015-0973-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, corrective action of the respondent, and revocation of the facility's fuel delivery certificate. The Commission also considered the Executive Director's Motion requesting the entry of an Order requiring the respondent to shut down and remove from service the underground storage tanks ("USTs") located at 1602 Highway 6 South in Houston, Harris County, Texas. The respondent made the subject of this Order is H Shaheen LLC dba AM Food Mart ("Respondent").

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

**FINDINGS OF FACT**

1. Respondent owns and operates, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), a UST system and a convenience store with retail sales of gasoline located at 1602 Highway 6 South in Houston, Harris County, Texas (Facility ID No. 17921) (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 May 29, 2015, an investigator documented that 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).
3. By letter dated June 24, 2015, Respondent was provided with written notice of the violation and of TCEQ's authority to shut down and remove from service USTs not in compliance with release detection, spill and/or overfill prevention, corrosion protection, and/or financial assurance requirements if the violation was not corrected.
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 and

Requiring Certain Actions of H Shaheen LLC dba AM Food Mart” (the “EDPRP”) in the TCEQ Chief Clerk’s office on January 4, 2016.

5. Respondent filed an answer requesting a hearing on March 30, 2016, and the matter was referred to the State Office of Administrative Hearings (“SOAH”) on May 11, 2016.
6. On May 23, 2016, the TCEQ Chief Clerk mailed notice of the June 23, 2016 preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Respondent.
7. On June 23, 2016, the Administrative Law Judge (“ALJ”) convened the preliminary hearing. The Executive Director requested a continuance at the hearing.
8. On July 21, 2016, the ALJ issued Order No. 2, which reset the preliminary hearing for August 4, 2016. The SOAH docket clerk mailed a copy of Order No. 2 to Respondent at its last known address via first class mail, postage pre-paid.
9. On August 4, 2016, the ALJ reconvened 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 August 17, 2016, 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. 3 Granting Motion to Dismiss and Remand, so that TCEQ may dispose of this case on a default basis.
11. By letter dated August 30, 2016, the Executive Director provided Respondent with notice of TCEQ’s intent to order the USTs at the Facility to be shut down and removed from service if Respondent failed to correct the release detection violation within 30 days after Respondent’s receipt of the notice.
12. As of the date of entry of this Order, Respondent has not provided the Executive Director with documentation demonstrating that the release detection violation alleged in Finding of Fact No. 2 has been corrected.
13. The USTs at the Facility do not have release detection as required by TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A), and may be releasing petroleum products to the environment. Therefore, conditions at the Facility constitute an imminent peril to public health, safety, and welfare.

### **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, 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. 5, 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.
  4. As evidenced by Findings of Fact Nos. 6 and 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.
  5. 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 TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106(b).
  6. 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.
  7. An administrative penalty in the amount of four thousand five hundred dollars (\$4,500.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
  8. As evidenced by Findings of Fact Nos. 2, 3, 11, and 12, Respondent failed to correct documented violations of TCEQ release detection requirements within 30 days after Respondent received notice of the violations and notice of the Executive Director's intent to shut down the USTs at the Facility.
  9. TEX. WATER CODE §§ 26.3475(e) and 26.352(i) authorize the Commission to order a UST owner or operator to shut down a UST system if, within 30 days after receiving notice of the violations, the owner or operator fails to correct violations of TCEQ regulatory requirements relating to release detection for tanks and/or piping, spill and/or overflow prevention for tanks, corrosion protection for tanks and/or piping, and/or acceptable financial assurance.
  10. 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.
  11. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke the Facility's UST fuel delivery certificate if the Commission finds that good cause exists.

12. Good cause for revocation of the Facility's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2 and 4 through 9 and Conclusions of Law Nos. 2 through 5.
13. As evidenced by Findings of Fact Nos. 12 and 13, current conditions at the Facility constitute an imminent peril to public health, safety, and welfare. Therefore, pursuant to the Administrative Procedure Act, TEX. GOV'T CODE § 2001.144(a)(3), this Order is final and effective on the date it is signed by the Commission.

### **ORDERING PROVISIONS**

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

1. Immediately upon the effective date of this Order, Respondent shall take the following steps to shut down operations of all USTs at the Facility:
  - a. Cease dispensing fuel from the USTs;
  - b. Cease receiving deliveries of regulated substances into the USTs;
  - c. Secure the dispensers to prevent access;
  - d. Empty the USTs of all regulated substances in accordance with 30 TEX. ADMIN. CODE § 334.54(d); and
  - e. Temporarily remove the USTs from service in accordance with 30 TEX. ADMIN. CODE § 334.54.
2. The Facility's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements set forth in this Order, including payment of the administrative penalty in full.
3. The USTs at the Facility shall remain out of service, pursuant to TEX. WATER CODE § 26.3475(e) and as directed by Ordering Provisions Nos. 1.a. through 1.e. until such time as Respondent demonstrates to the satisfaction of the Executive Director that the release detection violation noted in Conclusion of Law No. 2 has been corrected and Respondent obtains a new fuel delivery certificate for the Facility.
4. Immediately upon the effective date of this Order, Respondent shall cease accepting fuel at the Facility until such time as a valid delivery certificate is obtained from the TCEQ in accordance with 30 TEX. ADMIN. CODE §§ 334.7 and 334.8.
5. Within 10 days after the effective date of this Order, Respondent shall send the Facility's UST fuel delivery certificate to:

Petroleum Storage Tank Registration Team, MC 138  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

6. Within 15 days after the effective date of this Order, Respondent shall submit a detailed written report, in accordance with Ordering Provision No. 13, below, documenting the steps taken to comply with Ordering Provisions Nos. 1.a. through 1.e., 4 and 5.
7. If Respondent elects to permanently remove from service any portion of the UST system at the Facility, Respondent shall, immediately upon the effective date of this Order, permanently remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.55, and within 15 days after the effective date of this Order, shall submit a written report documenting compliance with 30 TEX. ADMIN. CODE § 334.55 to:

Petroleum Storage Tank Registration Team, MC 138  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087
8. Respondent is assessed an administrative penalty in the amount of four thousand five hundred dollars (\$4,500.00) 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.
9. 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: H Shaheen LLC dba AM Food Mart; Docket No. 2015-0973-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
10. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline, Respondent shall undertake the following technical requirements:
  - a. Implement a release detection method for all USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.50; and
  - b. Obtain a new fuel delivery certificate from the TCEQ.
11. Upon obtaining a new fuel delivery certificate, Respondent shall post the fuel delivery certificate in a location at the Facility where the delivery certificate is clearly visible at all times, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii).
12. Within 10 days of resuming retail sales of gasoline, Respondent shall submit written certification, in accordance with Ordering Provision No. 13, below, to demonstrate compliance with Ordering Provisions Nos. 10 and 11.

13. The certifications required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by Respondent, and shall include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Respondent shall submit the written certifications and supporting documentation necessary to demonstrate compliance with these Ordering Provisions to:

Order Compliance Team  
Texas Commission on Environmental Quality  
Enforcement Division, MC 149A  
P.O. Box 13087  
Austin, Texas 78711-3087

and:

Waste Section Manager  
Houston Regional Office  
Texas Commission on Environmental Quality  
5425 Polk Street, Suite H  
Houston, Texas 77023-1452

14. All relief not expressly granted in this Order is denied.
15. The provisions of 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.
16. 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. Extension requests shall be sent to the Order Compliance Team at the address listed above.
17. 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.

18. 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.
19. 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.
20. 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.
21. 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**

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

\_\_\_\_\_  
Date

**AFFIDAVIT OF CLAYTON SMITH**

**STATE OF TEXAS**

**§**

**COUNTY OF TRAVIS**

**§**

**§**

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

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of H Shaheen LLC dba AM Food Mart" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on January 4, 2016.

The EDPRP was mailed to Respondent's last known address on January 4, 2016, via certified mail, return receipt requested, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on January 6, 2016, as evidenced by the signature on the card.

Respondent filed an answer requesting a hearing on March 30, 2016, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on May 11, 2016. On July 21, 2016, the Administrative Law Judge ("ALJ") issued Order No. 2, which reset the preliminary hearing for August 4, 2016. The SOAH docket clerk mailed a copy of Order No. 2 to Respondent at its last known address via first class mail, postage pre-paid, pursuant to 1 TEX. ADMIN CODE ch. 155.

Respondent failed to appear at the hearing on August 4, 2016. At that hearing, counsel for the Executive Director 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 agency 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. 3, Granting Motion to Dismiss and Remand, issued on August 17, 2016, so that TCEQ may dispose of this case on a default basis.

By letter dated August 30, 2016, sent via first class mail and certified mail, return receipt requested article no. 7015 0640 0006 9895 6095, I provided Respondent with notice of the TCEQ's intent to order the USTs at the Facility be shut down and removed from service if the violation pertaining to release detection was not corrected within 30 days of Respondent's receipt of the letter. According to the return receipt "green card," Respondent received the notice on September 1, 2016.

As of the date of this affidavit, I am not aware of any evidence that indicates that Respondent has corrected the release detection violation noted during the May 29, 2015, investigation."

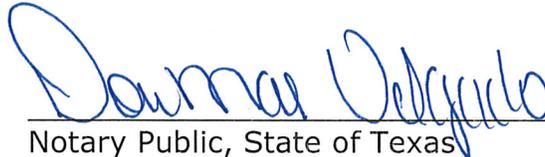


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Clayton Smith, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

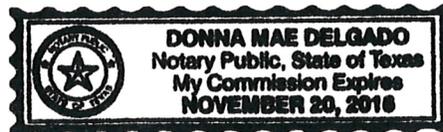
Before me, the undersigned authority, on this day personally appeared Clayton Smith, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Subscribed and sworn to before me on this 14th day of September, A.D. 2016.



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Notary Public, State of Texas



Notary without Bond