

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Erin E. Chancellor, *Interim Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 19, 2023

To: Persons on the Attached Mailing List (Via email only)

Re: Executive Director's Request for Remand regarding a Default Shutdown Order concerning Hassan LLC dba Culebra Food Stop; TCEQ Docket No. 2021-0084-PST-E.

The above-referenced matter is currently scheduled to be considered by the Texas Commission on Environmental Quality at its April 26, 2023, public meeting. However, the Executive Director filed a request to remand this item on April 17, 2023, as the Respondent in this case signed an Agreed Order and submitted a penalty payment on the same date. Pursuant to 30 TAC § 10.4, this matter is hereby remanded to the Executive Director.

If you have any questions about this matter, please contact Colleen Ford, Assistant General Counsel at Colleen.Ford@tceq.texas.gov.

Respectfully,

A handwritten signature in black ink that reads "Mary Smith".

Mary Smith
General Counsel

Mailing List

Mailing List
Hassan LLC dba Culebra Food Stop
TCEQ Docket No. 2021-0084-PST-E

Sharmin Sultana
Hassan LLC
5416 Nutmeg Trail
Leon Valley, Texas 78238-2324
210/544-6911
mdkamrulhassan90@yahoo.com

Sheldon Wayne
TCEQ Office of Public Interest Counsel MC 103
P.O. Box 13087
Austin, Texas 78711-3087
512/239-6363 FAX 512/239-6377
Garrett.arthur@tceq.texas.gov

Melissa Cordell
Michael Parrish
Leslie Gann
Stuart Beckley
TCEQ Enforcement Division MC 219
P.O. Box 13087
Austin, Texas 78711-3087
512/239-2545 FAX 512/239-2550
Melissa.cordell@tceq.texas.gov
Michael.parrish@tceq.texas.gov
Leslie.gann@tceq.texas.gov
Stuart.beckley@tceq.texas.gov

Docket Clerk
TCEQ Office of Chief Clerk MC 105
P.O. Box 13087
Austin, Texas 78711-3087
512/239-3300 FAX 512/239-3311
<https://www14.tceq.texas.gov/epic/efiling/>

Ryan Vise
TCEQ External Relations Division MC 118
P.O. Box 13087
Austin, Texas 78711-3087
512/239-0010 FAX 512/239-5000
pep@tceq.texas.gov

Courtney Gooris
TCEQ Dallas/Fort Worth Regional Office MC R-4
2309 Gravel Dr.
Fort Worth, Texas 76118-6951
817/588-5863 FAX 817/588-5700
Courtney.Gooris@tceq.texas.gov

Kyle Lucas
TCEQ Alternative Dispute Resolution MC 222
P.O. Box 13087
Austin, Texas 78711-3087
512/239-0687 FAX 512-239-4015
Kyle.lucas@tceq.texas.gov

Jack Higginbotham
TCEQ San Antonio Regional Office MC R-13
14250 Judson Rd.
San Antonio, Texas 78233-4480
210/490-3096 FAX 210/545-4329
jack.higginbotham@tceq.texas.gov

Gitanjali Yadav
Katherine Mckenzie
Taylor Pearson
TCEQ Litigation Division MC 175
P.O. Box 13087
Austin, Texas 78711-3087
512/239-0600 FAX 512/239-3434
Gitanjali.Yadav@tceq.texas.gov
Katherine.mckenzie@tceq.texas.gov
Taylor.Pearson@tceq.texas.gov

TCEQ Interoffice Memorandum

To: Mary Smith, General Counsel
Colleen Ford, Assistant General Counsel

Thru: Anna Treadwell, Senior Attorney
AMT Litigation Division

From: *TP* Taylor Pearson, Staff Attorney
Litigation Division

Date: April 17, 2023

Subject: **Request for Remand**
April 26, 2023 Commission Agenda
Item No. 16 - HASSAN LLC
Docket No. 2021-0084-PST-E

The Executive Director respectfully requests that the above-referenced item be remanded to the Executive Director. A signed Agreed Order and penalty payment were received on April 17, 2023.

Respondent Contact:

Sharmin Sultana, Owner
HASSAN LLC
5416 Nutmeg Trail
Phone: 210-544-6911
Email: mdkamrulhassan90@yahoo.com

Respondent has been notified of this Request for Remand. Please do not hesitate to call me at (512) 920-3265 if you have any questions regarding this matter.

TCEQ Interoffice Memorandum

cc: Courtney Gooris, Enforcement Coordinator
Jack Higginbotham, San Antonio Regional Office
Sheldon Wayne, Office of Public Interest Counsel
Michael Parrish, Enforcement Division
Leslie Gann, Enforcement Division
Stuart Beckley, Enforcement Division
Gill Valls, Office of the General Counsel
Sharmin Sultana, Owner, HASSAN LLC

Hassan LLC dba Culebra Food Stop

RN101436483

Docket No. 2021-0084-PST-E

Order Type:

Default Shutdown Order (SOAH Evidentiary Hearing)

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

1302 Laven Drive, San Antonio, Bexar County

Type of Operation:

Underground storage tank (“UST”) system and a 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 24, 2023

Comments Received:

None

Penalty Information**Total Penalty Assessed:** \$7,500**Total Paid to General Revenue:** \$0**Total Due to General Revenue:** \$7,500**Compliance History Classifications:**

Person/CN - High

Site/RN - High

Major Source:

No

Statutory Limit Adjustment:

None

Applicable Penalty Policy:

April 2014

Investigation Information**Complaint Date(s):** N/A**Date(s) of Investigation:** November 17, 2020**Date(s) of NOV(s):** N/A**Date(s) of NOE(s):** January 4, 2021

Hassan LLC dba Culebra Food Stop

RN101436483

Docket No. 2021-0084-PST-E

Violation Information

1. Failed to designate, train, and certify at least one named individual for each class of operator - Class A, Class B, and Class C - for the Facility [30 TEX. ADMIN. CODE § 334.602(a)].
2. Failed to monitor the UST and the associated pressurized piping in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring for tanks and associated pressurized piping installed on or after January 1, 2009 [TEX. WATER CODE § 26.3475(a) and (c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(B) and (b)(2)(A)(iii)].

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

On January 9, 2021, designated, trained, and certified a Class A/B Operator for the Facility.

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. Secure the dispensers to prevent access;
 - d. Empty the USTs of all regulated substances; and
 - e. Temporarily remove the USTs from service.
2. 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 including payment of the administrative penalty in full.
3. 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.
4. Immediately 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 Requirement Nos. 1, 4 and 5.
7. If Respondent elects to permanently remove from service any portion of the UST system at the Facility, immediately, permanently remove the UST system from service, and within 15 days submit a written report documenting compliance.
8. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline:
 - a. Implement interstitial monitoring release detection for the UST and associated pressurized piping at the Facility;
 - b. Designate, train, and certify at least on named individual as a Class C Operator for the Facility; and
 - c. Obtain a new fuel delivery certificate.
9. 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.
10. Within 10 days of resuming sales of gasoline, submit written certification to demonstrate compliance with Technical Requirement Nos. 8 and 9.

Hassan LLC dba Culebra Food Stop

RN101436483

Docket No. 2021-0084-PST-E

Litigation Information

Date Petition(s) Filed: March 19, 2021
Date(s) of Service: March 22, 2021
Date Answer(s) Filed: May 7, 2021
SOAH Referral Date: May 26, 2021
Hearing Date(s):
 Preliminary hearing: August 26, 2021
 Evidentiary hearing: March 1, 2022 (defaulted)

Contact Information

TCEQ Attorneys: Taylor Pearson, Litigation Division, (512) 239-3400
 Sheldon Wayne, Public Interest Counsel, (512) 239-6363
TCEQ Litigation Agenda Coordinator: Katherine McKenzie, Litigation Division, (512) 239-2575
TCEQ Enforcement Coordinator: Courtney Gooris, Enforcement Division, (817) 588-5863
TCEQ Regional Contact: Cameron Lopez, San Antonio Regional Office, (210) 490-3096
Respondent Contact: Sharmin Sultana, Hassan LLC, 5416 Nutmeg Trail, Leon Valley, Texas 78238-2324
Respondent's Attorney: N/A

THIS PAGE INTENTIONALLY LEFT BLANK



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

DATES	Assigned	7-Jan-2021			
	PCW	23-Feb-2021	Screening	8-Jan-2021	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	Hassan LLC dba Culebra Food Stop
Reg. Ent. Ref. No.	RN101436483
Facility/Site Region	13-San Antonio
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	60250	No. of Violations	2
Docket No.	2021-0084-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Courtney Atkins
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$7,500
---	-------------------	----------------

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	-10.0% Adjustment	Subtotals 2, 3, & 7	-\$750
---------------------------	--------------------------	--------------------------------	---------------

Notes	Reduction for High Performer classification.
--------------	--

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
--------------------	----	-------------------------	-------------------	------------

Notes	The Respondent does not meet the culpability criteria.
--------------	--

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
--	-------------------	------------

Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
-------------------------	--------------------------	-------------------	------------

Total EB Amounts	\$76	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$1,600	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$6,750
-----------------------------	-----------------------	----------------

OTHER FACTORS AS JUSTICE MAY REQUIRE	11.1% Adjustment	\$750
---	-------------------------	--------------

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Recommended adjustment to offset High Performer reduction.
--------------	--

Final Penalty Amount	\$7,500
-----------------------------	----------------

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$7,500
-----------------------------------	-------------------------------	----------------

DEFERRAL	0.0% Reduction Adjustment	\$0
-----------------	----------------------------------	------------

Reduces the Final Assessed Penalty by the indicated percentage.

Notes	Deferral not offered for non-expedited settlement.
--------------	--

PAYABLE PENALTY	\$7,500
------------------------	----------------

Screening Date 8-Jan-2021

Docket No. 2021-0084-PST-E

PCW

Respondent Hassan LLC dba Culebra Food Stop

Policy Revision 4 (April 2014)

Case ID No. 60250

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101436483

Media Petroleum Storage Tank

Enf. Coordinator Courtney Atkins

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of 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%
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Reduction for High Performer classification.

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

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% -10%

Screening Date 8-Jan-2021

Docket No. 2021-0084-PST-E

PCW

Respondent Hassan LLC dba Culebra Food Stop

Policy Revision 4 (April 2014)

Case ID No. 60250

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101436483

Media Petroleum Storage Tank

Enf. Coordinator Courtney Atkins

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.602(a)

Violation Description Failed to designate, train, and certify at least one named individual for each class of operator - Class A, Class B, and Class C- for the Facility. Specifically, the Respondent failed to designate, train, and certify a Class A, B, and C Operator for the Facility.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual					5.0%
Potential			x		

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent

Human health or the environment will or could be exposed to significant amounts of pollutants that 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 3 275 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$3,750

Three quarterly events are recommended from the April 9, 2020 expiration date of the previous training to the January 8, 2021 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	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 \$4

Violation Final Penalty Total \$3,750

This violation Final Assessed Penalty (adjusted for limits) \$3,750

Economic Benefit Worksheet

Respondent Hassan LLC dba Culebra Food Stop
Case ID No. 60250
Reg. Ent. Reference No. RN101436483
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

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	\$10	9-Apr-2020	3-Nov-2021	1.57	\$1	n/a	\$1
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$90	9-Apr-2020	9-Jan-2021	0.75	\$3	n/a	\$3

Notes for DELAYED costs

Estimated delayed cost to designate, train, and certify a Class C Operator at the Facility (\$10). The Date Required is the expiration date of the previous training and the Final Date is the estimated date of compliance.

Estimated delayed cost to designate, train, and certify a Class A/B Operator at the Facility (\$90.) The Date Required is the expiration date of the previous training and the Final Date is the date the corrective action was completed.

Avoided Costs

ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$4

Screening Date 8-Jan-2021

Docket No. 2021-0084-PST-E

PCW

Respondent Hassan LLC dba Culebra Food Stop

Policy Revision 4 (April 2014)

Case ID No. 60250

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101436483

Media Petroleum Storage Tank

Enf. Coordinator Courtney Atkins

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 334.50(b)(1)(B) and (b)(2)(A)(iii) and Tex. Water Code § 26.3475(c)(1) and (a)

Violation Description

Failed to monitor the underground storage tank ("UST") and the associated pressurized piping in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring for tanks and associated pressurized piping installed on or after January 1, 2009. Specifically, the tank and associated pressurized piping were installed on December 17, 2018, and the Respondent was not monitoring them using interstitial 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	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

52 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$3,750

One quarterly event is recommended from the November 17, 2020 investigation date to the January 8, 2021 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	

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 \$3,750

This violation Final Assessed Penalty (adjusted for limits) \$3,750

Economic Benefit Worksheet

Respondent Hassan LLC dba Culebra Food Stop
Case ID No. 60250
Reg. Ent. Reference No. RN101436483
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

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	17-Nov-2020	3-Nov-2021	0.96	\$72	n/a	\$72

Notes for DELAYED costs

Estimated delayed cost to implement interstitial monitoring release detection for the UST and associated pressurized piping at the Facility (\$1,500). The Date Required is the investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				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

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

Compliance History Report for CN605610336, RN101436483, Rating Year 2020 which includes Compliance History (CH) components from September 1, 2015, through August 31, 2020.

Customer, Respondent, or Owner/Operator: CN605610336, HASSAN LLC **Classification:** HIGH **Rating:** 0.00

Regulated Entity: RN101436483, Culebra Food Stop **Classification:** HIGH **Rating:** 0.00

Complexity Points: 2 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 1302 Laven Drive, San Antonio, Bexar County, Texas

TCEQ Region: REGION 13 - SAN ANTONIO

ID Number(s):
PETROLEUM STORAGE TANK REGISTRATION
REGISTRATION 5942

Compliance History Period: September 01, 2015 to August 31, 2020 **Rating Year:** 2020 **Rating Date:** 09/01/2020

Date Compliance History Report Prepared: January 08, 2021

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: January 08, 2016 to January 08, 2021

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.
Name: Courtney Atkins **Phone:** (512) 239-1118

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) Who is the current owner/operator? Hassan LLC OWNER OPERATOR since 10/1/2018
- 4) Who was/were the prior owner(s)/operator(s)? AL-HABIB INTERNATIONAL INC, OWNER OPERATOR, 1/20/2015 to 9/30/2018

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

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

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

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

Item 1 January 09, 2018 (1454645)

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

Component Appendices

Appendix A

All NOVs Issued During Component Period 1/8/2016 and 1/8/2021

N/A

For Informational Purposes Only

Appendix B

All Investigations Conducted During Component Period January 08, 2016 and January 08, 2021

(1454645)

Item 1*

January 09, 2018**

For Informational Purposes Only

(1697113)

Item 2

December 30, 2020

For Informational Purposes Only

* No violations documented during this investigation

**Investigation applicable for the Compliance History Rating period between 09/01/2015 and 08/31/2020.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
HASSAN LLC DBA CULEBRA FOOD
STOP;
RN101436483**

**§
§
§
§
§
§**

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT AND SHUTDOWN ORDER

DOCKET NO. 2021-0084-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 respondent made the subject of this Order is Hassan LLC dba Culebra Food Stop ("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(78) and (75), an underground storage tank ("UST") system and a convenience store with retail sales of gasoline located at 1302 Laven Drive in San Antonio, Bexar County, Texas (Facility ID No. 5942) (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 November 17, 2020, an investigator documented that Respondent:
 - a. Failed to designate, train, and certify at least one named individual for each class of operator—Class A, Class B, and Class C—for the Facility. Specifically, Respondent failed to designate, train, and certify a Class A, B, and C Operator for the Facility; and
 - b. Failed to monitor the UST and the associated pressurized piping in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring for tanks and associated pressurized piping installed on or after January 1, 2009. Specifically, the tank and associated pressurized piping were installed on December 17, 2018, and Respondent was not monitoring them using interstitial monitoring.
3. The Executive Director recognizes that Respondent designated, trained, and certified a Class A/B Operator for the Facility on January 9, 2021.
4. By letter dated January 4, 2021, Respondent was provided with written notice of the violations 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 violations were not corrected.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain

Actions of Hassan LLC dba Culebra Food Stop” (the “EDPRP”) in the TCEQ Chief Clerk’s office on March 19, 2021.

6. Respondent filed an answer requesting a hearing on May 7, 2021, and the matter was referred to the State Office of Administrative Hearings (“SOAH”) on May 26, 2021.
7. On September 10, 2021, the Administrative Law Judge (“ALJ”) issued Order No. 2, which set the evidentiary hearing for March 1, 2022. 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.
8. On March 1, 2022, the ALJ convened the evidentiary hearing. Respondent failed to appear, and the Executive Director requested that the ALJ enter a finding that Respondent was served with proper notice of the hearing and 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.
9. On March 8, 2022, the ALJ entered a finding that Respondent was served with proper notice of the hearing by SOAH Order No. 4. On August 24, 2022, the ALJ remanded the matter to the Executive Director by Letter of Remand on Default Dismissal so that TCEQ may dispose of this case on a default basis.
10. By letter dated January 24, 2023, 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.
11. 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.b. has been corrected.
12. The USTs at the Facility do not have release detection as required by TEX. WATER CODE § 26.3475(a) and (c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(B) and (b)(2)(A)(iii), 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.a., Respondent failed to designate, train, and certify at least one named individual for each class of operator—Class A, Class B, and Class C—for the Facility, in violation of 30 TEX. ADMIN. CODE § 334.602(a).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to monitor the UST and the associated pressurized piping in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring for tanks and associated pressurized piping installed on or after January 1, 2009, in violation of TEX. WATER CODE § 26.3475(a) and (c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(B) and (b)(2)(A)(iii).
4. As evidenced by Finding of Fact No. 6, 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(d) and 30 TEX. ADMIN. CODE § 70.109.
5. As evidenced by Finding of Fact No. 7, Respondent was provided proper notice of the evidentiary hearing in accordance with TEX. GOV’T CODE §§ 2001.051(1) and 2001.052, TEX. WATER CODE § 7.058, 1 TEX. ADMIN. CODE §§ 155.105(b), 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.

6. As evidenced by Findings of Fact Nos. 8 and 9, Respondent failed to appear for the evidentiary hearing, and pursuant to TEX. GOV'T CODE § 2001.056(4) and 1 TEX. ADMIN. CODE § 155.501(e), 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).
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 seven thousand five hundred dollars (\$7,500.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
9. As evidenced by Findings of Fact Nos. 2.b., 4, 10, and 11, 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.
10. 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.
11. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.
12. 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.
13. Good cause for revocation of the Facility's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2 and 5 through 8, and Conclusions of Law Nos. 2 through 6.
14. As evidenced by Findings of Fact Nos. 11 and 12, 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 of 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 Provision 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. 3 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 written certification in accordance with Ordering Provision No. 13, below, to demonstrate compliance with Ordering Provision Nos. 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 seven thousand five hundred dollars (\$7,500.00) 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: Hassan LLC dba Culebra Food Stop; Docket No. 2021-0084-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 interstitial monitoring release detection for the UST and associated pressurized piping at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.50;
 - b. Designate, train, and certify at least one named individual as a Class C Operator for the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.602; and
 - c. 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 Provision 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.”

The written certifications and supporting documentation necessary to demonstrate compliance with these Ordering Provisions shall be sent to:

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

and:

Waste Section Manager
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Road
San Antonio, Texas 78233-4480

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 Enforcement Division 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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



UNSWORN DECLARATION OF TAYLOR W. PEARSON

“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 Hassan LLC dba Culebra Food Stop’ (the “EDPRP”) was filed in the TCEQ Chief Clerk’s office on March 19, 2021.

Respondent filed an answer requesting a hearing on May 7, 2021, and the matter was referred to the State Office of Administrative Hearings (“SOAH”) on May 26, 2021. On September 10, 2021, the ALJ issued Order No. 2, which set the evidentiary hearing for March 1, 2022. 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.

Respondent failed to appear at the hearing on March 1, 2022. At that hearing, I requested that the ALJ enter a finding that Respondent was served with proper notice of the hearing and the matter be remanded to the Executive Director pursuant to 1 TEX. ADMIN. CODE § 155.501(e), which gives an ALJ the authority to remand the case back to the TCEQ for informal disposition on a default basis in accordance with TEX. GOV’T CODE § 2001.056.

The ALJ remanded the matter to the Executive Director by Letter of Remand on Default Dismissal, issued on August 24, 2022, so that TCEQ may dispose of this case on a default basis.

As of the date of this declaration, I am not aware of any evidence that indicates that Respondent has corrected the release detection violation click to choose noted during the November 17, 2020, investigation.”

“My name is Taylor Wayne Pearson, and I am an employee of the following governmental agency: Texas Commission on Environmental Quality. I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the foregoing is true and correct.”

Executed in Travis County,
State of Texas,
on the 24th day of January, 2023

A handwritten signature in blue ink that reads "Taylor Pearson".

Declarant