

Order Type:
Default Order

Media:
PST

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
3911 Diadem Lane, Kirby, Bexar County

Type of Operation:
a convenience store and a temporarily out-of-service underground storage tank ("UST") system

Other Significant Matters:

Additional Pending Enforcement Actions: None
Past-Due Penalties: \$5,011
Past-Due Fees: None
Other: None
Interested Third-Parties: None

Texas Register Publication Date: June 3, 2022

Comments Received: None

Penalty Information

Total Penalty Assessed: \$8,750

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$8,750

Compliance History Classifications:

Person/CN - satisfactory
Site/RN - satisfactory

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: January 28, 2021

Investigation Information

Complaint Date(s): N/A

Date(s) of Investigation: June 15, 2021

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

Date(s) of NOE(s): August 12, 2021

Violation Information

1. Failed to monitor a temporarily out-of-service UST system for releases [TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE §§ 334.50(b)(1)(A) and 334.54(c)(1)].
2. Failed to meet financial assurance requirements to properly temporarily remove the UST system from service [30 TEX. ADMIN. CODE § 334.54(e)(5)].
3. Failed to re-train the certified Class A and Class B operator within three years of the last training date [30 TEX. ADMIN. CODE § 334.605(a)].
4. Failed to provide an amended registration for any change or additional information to the agency regarding the UST system within 30 days from the date of the occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(1)(B) and (d)(3)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Within 30 days:
 - a. Properly temporarily remove the UST system from service, which includes implementing a release detection method and providing financial assurance; or emptying the USTs of all regulated substances and conducting a site check;
 - b. Re-train the certified Class A/B operator for the Facility; and
 - c. Submit a properly completed UST registration indicating the current operational status of the UST system at the Facility.
2. In lieu of Technical Requirement No.1, within 180 days, permanently remove the UST system from service, which includes the following actions:
 - a. Providing a Construction Notification to the TCEQ at least 30 days prior to any removal activities;
 - b. Employing a Licensed Contractor to perform all removal activities; and
 - c. Within 195 days, submit a completely and accurately filled out registration to reflect the operational status of the UST system as permanently removed from service.
3. Within 225 days, submit written certification to demonstrate compliance with Technical Requirement No. 1 or No. 2.

Litigation Information

Date Petition(s) Filed: April 5, 2022

Date Green Card(s) Signed: April 7, 2022

Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Megan L. Grace, Litigation Division, (512) 239-3400
Garrett Arthur, Public Interest Counsel, (512) 239-6363

TCEQ Litigation Agenda Coordinator: Katherine McKenzie, Litigation Division, (512) 239-2575

TCEQ Enforcement Coordinator: Hailey Johnson, Enforcement Division, (512) 239-1756

TCEQ Regional Contact: Cameron Lopez, San Antonio Regional Office, (210) 490-3096

Respondent Contact: Nadia Kurji, President, ALIAHSAN NADIA ENTERPRISES, INC., 3911 Diadem Lane, Kirby, Texas 78219-1355

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	16-Aug-2021	Screening	26-Aug-2021	EPA Due	
	PCW	14-Mar-2022				

RESPONDENT/FACILITY INFORMATION	
Respondent	ALIAHSAN NADIA ENTERPRISES, INC. dba Diadem Food Mart
Reg. Ent. Ref. No.	RN102014404
Facility/Site Region	13-San Antonio
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	61246	No. of Violations	3
Docket No.	2021-1180-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Hailey Johnson
		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	\$7,000
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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	25.0%	Adjustment	Subtotals 2, 3, & 7	\$1,750
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Notes	Enhancement for one Default Order.
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Culpability	No	0.0%	Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0%	Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$330	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$6,630	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$8,750
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$8,750
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$8,750
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$8,750
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Screening Date 26-Aug-2021

Docket No. 2021-1180-PST-E

PCW

Respondent ALIAHSAN NADIA ENTERPRISES, INC. dba Diadem Food Mart

Policy Revision 5 (January 28, 2021)

Case ID No. 61246

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN102014404

Media Petroleum Storage Tank

Enf. Coordinator Hailey Johnson

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	1	25%
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) 25%

>> 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 Default Order.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 25%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 25%

Screening Date 26-Aug-2021 **Docket No.** 2021-1180-PST-E **PCW**
Respondent ALIAHSAN NADIA ENTERPRISES, INC. dba Diadem Food Mart *Policy Revision 5 (January 28, 2021)*
Case ID No. 61246 *PCW Revision February 11, 2021*
Reg. Ent. Reference No. RN102014404
Media Petroleum Storage Tank
Enf. Coordinator Hailey Johnson

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 334.54(c)(1) and 334.50(b)(1)(A) and 334.54(e)(5) and Tex. Water Code § 26.3475(c)(1)

Violation Description
 Failed to monitor a temporarily out-of-service underground storage tank ("UST") system for releases. Also, failed to meet financial assurance requirements to properly temporarily remove the UST system from service.

Base Penalty \$25,000

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

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

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
					0.0%

Matrix Notes
 Human health or the environment will or could be exposed to pollutants 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 72 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 June 15, 2021 investigation date to the August 26, 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 \$322 **Violation Final Penalty Total** \$4,688

This violation Final Assessed Penalty (adjusted for limits) \$4,688

Economic Benefit Worksheet

Respondent ALIAHSAN NADIA ENTERPRISES, INC. dba Diadem Food Mart
Case ID No. 61246
Reg. Ent. Reference No. RN102014404
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
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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
Other (as needed)	\$5,000	15-Jun-2021	12-Jun-2022	0.99	\$248	n/a	\$248
Other (as needed)	\$1,500	15-Jun-2021	12-Jun-2022	0.99	\$74	n/a	\$74

Notes for DELAYED costs

Estimated delayed cost to implement a release detection method for the USTs at the Facility (\$1,500) and to conduct a site check for the temporarily out-of-service UST system at the Facility (\$5,000). The Dates Required are the investigation date, and the Final Dates are 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

\$6,500

TOTAL

\$322

Screening Date 26-Aug-2021 **Docket No.** 2021-1180-PST-E **PCW**
Respondent ALIAHSAN NADIA ENTERPRISES, INC. dba Diadem Food Mart *Policy Revision 5 (January 28, 2021)*
Case ID No. 61246 *PCW Revision February 11, 2021*
Reg. Ent. Reference No. RN102014404
Media Petroleum Storage Tank
Enf. Coordinator Hailey Johnson

Violation Number

Rule Cite(s)

Violation Description Failed to re-train the certified Class A and Class B operator within three years of the last training date. Specifically, the Class A/B operator training certification expired on February 20, 2021.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="3.0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text" value="x"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0.0%"/>

Matrix Notes Human health or the environment will or could be exposed to insignificant amounts of pollutants that would not 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

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

Violation Base Penalty

Good Faith Efforts to Comply Reduction

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

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

Violation Subtotal

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount **Violation Final Penalty Total**

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent ALIAHSAN NADIA ENTERPRISES, INC. dba Diadem Food Mart
Case ID No. 61246
Reg. Ent. Reference No. RN102014404
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
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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	\$90	20-Feb-2021	12-Jun-2022	1.31	\$6	n/a	\$6
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 delayed cost to re-train the certified Class A/B operator for the Facility. The Date Required is the date the last operator training certification expired, 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

\$90

TOTAL

\$6

Screening Date 26-Aug-2021 **Docket No.** 2021-1180-PST-E **PCW**
Respondent ALIAHSAN NADIA ENTERPRISES, INC. dba Diadem Food Mart *Policy Revision 5 (January 28, 2021)*
Case ID No. 61246 *PCW Revision February 11, 2021*
Reg. Ent. Reference No. RN102014404
Media Petroleum Storage Tank
Enf. Coordinator Hailey Johnson

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.7(d)(1)(B) and (d)(3)

Violation Description
 Failed to provide an amended registration for any change or additional information to the agency regarding the UST system within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current operational status of the UST system at the Facility.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual			
Potential					

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	x			10.0%

Matrix Notes
 100% of the rule requirement was not met.

Adjustment \$22,500

\$2,500

Violation Events

Number of Violation Events 1 72 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$2,500

One single event is recommended.

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 \$2,500

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$2 **Violation Final Penalty Total** \$3,125

This violation Final Assessed Penalty (adjusted for limits) \$3,125

Economic Benefit Worksheet

Respondent ALIAHSAN NADIA ENTERPRISES, INC. dba Diadem Food Mart
Case ID No. 61246
Reg. Ent. Reference No. RN102014404
Media Petroleum Storage Tank
Violation No. 3

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)	\$40	15-Jun-2021	12-Jun-2022	0.99	\$2	n/a	\$2

Notes for DELAYED costs

Estimated delayed cost to submit an amended UST registration to the TCEQ indicating the current operational status of the UST system at the Facility. 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 \$40

TOTAL \$2

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 CN602923450, RN102014404, Rating Year 2020 which includes Compliance History (CH) components from September 1, 2015, through August 31, 2020.

Customer, Respondent, or Owner/Operator: CN602923450, ALIAHSAN NADIA ENTERPRISES, INC. **Classification:** SATISFACTORY **Rating:** 37.50

Regulated Entity: RN102014404, Diadem Food Mart **Classification:** SATISFACTORY **Rating:** 37.50

Complexity Points: 3 **Repeat Violator:** NO

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

Location: 3911 Diadem Lane, Kirby, Bexar County, Texas 78219-1355

TCEQ Region: REGION 13 - SAN ANTONIO

ID Number(s):

PETROLEUM STORAGE TANK REGISTRATION
REGISTRATION 48994

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

Date Compliance History Report Prepared: August 19, 2021

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: August 19, 2016 to August 19, 2021

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

Name: Hailey Johnson

Phone: (512) 239-1756

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

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

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

1 Effective Date: 04/26/2019 ADMINORDER 2018-0408-PST-E (Findings Order-Default)

Classification: Moderate

Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)
30 TAC Chapter 37, SubChapter I 37.815(b)

Description: Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum UST system, in violation of 30 TEX. ADMIN. CODE §37.815(a) and (b).

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(d)
30 TAC Chapter 334, SubChapter C 334.49(a)(1)

Description: Failed to provide corrosion protection for the UST system, in violation of 30 TEX. ADMIN. CODE §334.49(a) (1) and TEX. WATER CODE §26.3475(d).

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

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

Item 1 May 10, 2019 (1556220)

Item 2 August 14, 2019 (1582947)

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
ALIAHSAN NADIA ENTERPRISES,
INC. DBA DIADEM FOOD MART;
RN102014404**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2021-1180-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 and corrective action of the respondent. The respondent made the subject of this Order is ALIAHSAN NADIA ENTERPRISES, INC. dba Diadem 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(78) and (75), a temporarily out-of-service underground storage tank ("UST") system and a convenience store located at 3911 Diadem Lane near Kirby, Bexar County, Texas (Facility ID No. 48994) (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 June 15, 2021, an investigator documented that Respondent:
 - a. Failed to monitor a temporarily out-of-service UST system for releases;
 - b. Failed to meet financial assurance requirements to properly temporarily remove the UST system from service;
 - c. Failed to re-train the certified Class A and Class B operator within three years of the last training date. Specifically, the Class A/B operator training expired on February 20, 2021; and
 - d. Failed to provide an amended registration for any change or additional information to the agency regarding the UST system within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current operational status of the UST system at the Facility.
3. 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 ALIAHSAN NADIA ENTERPRISES, INC. dba Diadem Food Mart" (the "EDPRP") in the TCEQ Chief Clerk's office on April 5, 2022.

4. By letter dated April 5, 2022, sent to Respondent's last known address via certified mail, return receipt requested, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on April 7, 2022, as evidenced by the signature on the card.
5. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to monitor a temporarily out-of-service UST system for releases, in violation of TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE §§ 334.50(b)(1)(A) and 334.54(c)(1).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to meet financial assurance requirements to properly temporarily remove the UST system from service, in violation of 30 TEX. ADMIN. CODE § 334.54(e)(5).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to re-train the certified Class A and Class B operator within three years of the last training date, in violation of 30 TEX. ADMIN. CODE § 334.605(a).
5. As evidenced by Finding of Fact No. 2.d., Respondent failed to provide an amended registration for any change or additional information to the agency regarding the UST system within 30 days from the date of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(1)(B) and (d)(3).
6. As evidenced by Findings of Fact Nos. 3 and 4, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(b)(1).
7. As evidenced by Finding of Fact No. 5, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
8. 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.
9. An administrative penalty in the amount of eight thousand seven hundred fifty dollars (\$8,750.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
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.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of eight thousand seven hundred fifty dollars (\$8,750.00) for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondent's compliance with all the requirements set forth in this Order resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations which are not raised here.

2. The penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to TCEQ and shall be sent with the notation "Re: ALIAHSAN NADIA ENTERPRISES, INC. dba Diadem Food Mart; Docket No. 2021-1180-PST-E" to:

Financial Administration Division
Revenue Operations Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

3. Respondent shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Order:

- i. Properly temporarily remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.54, which includes implementing a release detection method and providing financial assurance; or emptying the USTs of all regulated substances and conducting a site check, in accordance with 30 TEX. ADMIN. CODE §§ 334.50 and 37.867;
- ii. Re-train the certified Class A/B operator for the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.605; and
- iii. Submit a properly completed UST registration indicating the current operational status of the UST system at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

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

- b. In lieu of Corrective Action Ordering Provision No. 3.a., within 180 days after the effective date of this Order, permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55, which includes the following actions:

- i. Providing a Construction Notification to the TCEQ at least 30 days prior to any removal activities; and
- ii. Employing a Licensed UST Contractor to perform all removal activities, including:
 1. Removing the USTs from the ground, abandoning the USTs in place, or conducting a permanent change-in-service;
 2. Emptying the USTs of all regulated substances and accumulated sludges or residues, and purging the USTs of all residual vapors;
 3. Handling, transporting, and properly disposing of the empty USTs, the regulated substances removed from the UST system, and any contaminated soils, backfill material, groundwater, wash water, or other similar materials removed from the UST system or Facility;
 4. Determining whether or not there has been a release of regulated substance from the UST system, performance of a comprehensive site assessment, reporting confirmed or suspected releases to the TCEQ, preparing a detailed written record of the release determination, and compliance with all applicable corrective action requirements; and

- iii. Within 195 days after the effective date of this Order, submit a completely and accurately filled out registration to reflect the operational status of the UST system as permanently removed from service, in accordance with 30 TEX. ADMIN. CODE § 334.7, to:

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

- c. Within 225 days after the effective date of this Order, submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Corrective Action Ordering Provision No. 3.a. or 3.b. The certification 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 certification and copies of documentation necessary to demonstrate compliance with these Corrective Action Ordering Provisions 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

4. All relief not expressly granted in this Order is denied.
5. 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.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Order Compliance Team at the address listed above.

7. 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.
8. 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.
9. 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.
10. 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.
11. 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 MEGAN L. GRACE

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 ALIAHSAN NADIA ENTERPRISES, INC. dba Diadem Food Mart" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on April 5, 2022.

The EDPRP was mailed to Respondent's last known address on April 5, 2022, via certified mail, return receipt requested, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on April 7, 2022, as evidenced by the signature on the card.

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

"My name is Megan L. Grace, 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 10th day of May, 2022

A handwritten signature in cursive script, appearing to read "Megan L. Grace".

Declarant