

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
JAWAID W. SAMANA,
KJ HOLDINGS, INC., AND
H. ERWIN WILBANKS;
RN102398427**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2015-1395-MLM-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Jawaid W. Samana, KJ HOLDINGS, INC., and H. Erwin Wilbanks (collectively "Respondents") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondents together stipulate that:

1. Respondents owned and operated, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), an inactive underground storage tank ("UST") system located at 2525 Southmore Avenue in Pasadena, Harris County, Texas (Facility ID No. 40106) (the "Facility"). The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contain or contained a regulated petroleum substance as defined in the rules of the TCEQ.
2. The Executive Director and Respondents agree that TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, and 7.073, and that Respondents are subject to TCEQ's jurisdiction. The TCEQ has jurisdiction in this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and the rules of the TCEQ.
3. The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by Respondents of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of eight thousand seven hundred fifty dollars (\$8,750.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondents paid three hundred fifty dollars (\$350.00) of the penalty. The remaining amount of eight thousand four hundred dollars (\$8,400.00) shall be paid in thirty-five (35) monthly payments of two hundred forty dollars (\$240.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until the penalty is paid in full. If Respondents fails to timely and satisfactorily comply with the payment requirements of this Order, including the payment schedule, the Executive Director may accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Respondents' failure to meet the payment schedule of this Order and/or the acceleration of any remaining balance constitutes the failure by Respondents to

timely and satisfactorily comply with all the terms of this Order. The Executive Director and Respondents agree on a settlement of the matters addressed in this Order, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a). Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.

5. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Respondents has not complied with one or more of the terms or conditions contained in this Order.
6. This Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
7. This Order shall terminate five years from its effective date or upon full compliance with all the terms and conditions set forth in this Order, whichever is later.
8. The Executive Director recognizes that Respondents implemented the following corrective measures at the Facility as of December 10, 2015:
 - a. Permanently removed the UST system from service; and
 - b. Submitted an amended registration updating the current owner and operator information and reflecting the operational status of the UST system as permanently removed from service.

II. ALLEGATIONS

1. After investigations conducted on April 7, 2014 and October 13, 2014, TCEQ staff documented that Respondents:
 - a. Failed to notify the agency of any change or additional information regarding the UST system within 30 days of the date of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE §§ 334.7(d)(3) and 334.54(e)(2). Specifically, the registration had not been updated to reflect the current owner, operator, and operational status of the UST system; and
 - b. Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, in violation of 30 TEX. ADMIN. CODE § 334.47(a)(2).

III. DENIALS

Respondents generally deny each Allegation in Section II.

IV. ORDERING PROVISIONS

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

1. Respondents are assessed an administrative penalty as set forth in Section I, Paragraph 4. The payment of this penalty and Respondents' compliance with all of the requirements set forth in this Order resolve only the Allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations which are not raised here. Penalty payments shall be made payable to TCEQ and shall be sent with the notation "Jawaid W. Samana, KJ HOLDINGS, INC., and H. Erwin Wilbanks, Docket No. 2015-1395-MLM-E" to:

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


2. All relief not expressly granted in this Order is denied.
3. The duties and provisions imposed by this Order shall apply to and be binding upon Respondents. Respondents are ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
4. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondents shall be made in writing to the Executive Director. Extensions are not effective until Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. If Respondents fail 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, Respondents' failure to comply is not a violation of this Order. Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondents shall notify the Executive Director within seven days after Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. This Order, issued by the Commission, shall not be admissible against Respondents in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Order, or (2) pursue violations of a statute within TCEQ's jurisdiction or of a rule adopted or an order or permit issued by the TCEQ under such a statute.
7. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms: electronic transmission, owner, person, writing, and written, shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
8. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date



For the Executive Director

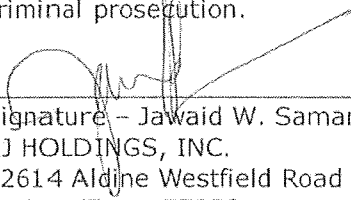
March 4, 2016
Date

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

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

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

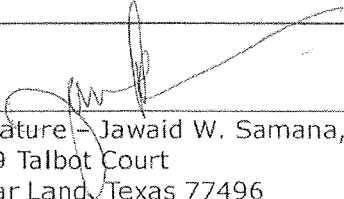
In addition, I understand that any falsification of any compliance documents may result in criminal prosecution.



Signature - Jawaid W. Samana, President
KJ HOLDINGS, INC.
22614 Aldine Westfield Road
Spring, Texas 77373

1-18-2016
Date

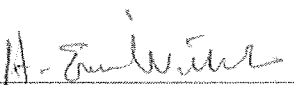
If mailing address has changed, please check this box and provide the new address below:




Signature - Jawaid W. Samana, Individually
7519 Talbot Court
Sugar Land, Texas 77496

1-18-2016
Date

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



Signature - H. Erwin Wilbanks
One Riverway, Suite 1700
Houston, Texas 77056



Date

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