

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NUMBER: 2005-0293-PST-E TCEQ ID NO: RN102494408 CASE NO.: 24573
RESPONDENT NAME: MIKE'S GROCERIES & FEED, INC. DBA MIKE'S GROCERY & FEED 21

ORDER TYPE:

<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> SHUTDOWN ORDER	<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> EMERGENCY ORDER	

CASE TYPE:

<input type="checkbox"/> AGRICULTURE	<input type="checkbox"/> AIR	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE	<input type="checkbox"/> MUNICIPAL SOLID WASTE
<input type="checkbox"/> OCCUPATIONAL CERTIFICATION	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> RADIOACTIVE WASTE
<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL	<input type="checkbox"/> USED OIL
<input type="checkbox"/> USED OIL FILTER	<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> DRY CLEANER REGISTRATION	

SITE WHERE VIOLATION(S) OCCURRED: 32002 State Highway 249, Pinehurst, Montgomery County

TYPE OF OPERATION: Convenience store with retail sales of gasoline

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no previous complaints. There is no record of additional pending enforcement actions regarding this facility.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on January 15, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873

TCEQ Enforcement Coordinator: Mr. Daniel Siringi, Enforcement Division, Section III, MC R-10, (409) 898-8799

TCEQ Regional Contact: Ms. Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3646

Respondent: Ms. Linda Gumm, President, Mike's Groceries & Feed, Inc. dba Mike's Grocery & Feed 21, 25302 Decker Prairie Rosehill, Magnolia, Texas 77355

Respondent's Attorney: Not represented by counsel.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date(s) of Investigation(s) Relating to this Case: August 25, 2004</p> <p>Date(s) of NOV(s)/NOE(s) Relating to this Case: February 1, 2005 (NOE)</p> <p>Background Facts:</p> <p>An EDRP was filed on July 7, 2005 and sent to the Respondent via certified and first class mail. The Respondent received notice of the EDRP on July 9, 2005 as evidenced by the signature on the return receipt green card. A default order was set for the October 18, 2006 Agenda, but it was remanded after the Respondent's former registered agent contacted TCEQ staff to inform them of his disassociation with the Respondent. An EDFARP was filed on October 23, 2006 via certified and first class mail. The Respondent's current President received notice of the EDFARP on October 25, 2006 as evidenced by the signature on the green card. The Respondent failed to file an Answer to either the EDRP or EDFARP, failed to request a hearing and failed to schedule a settlement conference.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>PST:</p> <p>Failed to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].</p>	<p>Total Assessed: \$2,100</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>Total Due to General Revenue: \$2,100</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this proposed Order.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Avg. <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Avg. <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>There are no corrective actions because the Respondent no longer owns or operates the facility; Civic Enterprises assumed ownership and operations on September 19, 2004.</p>



DATES	Assigned	31-Jan-2005					
	PCW	06-Jun-2005	Screening	10-Feb-2005	Priority Due	01-Apr-2005	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	Mike's Groceries & Feed, Inc. dba Mike's Grocery & Feed 21
Reg. Ent. Ref. No.	RN102494408
Additional ID No(s).	Petroleum Storage Tank Facility ID No. 74122
Facility/Site Region	12-Houston <input checked="" type="checkbox"/> Major/Minor Source
	Minor Source <input checked="" type="checkbox"/>

CASE INFORMATION			
Enf./Case ID No.	24573	No. of Violations	1
Docket No.	2005-0293-PST-E	Order Type	1660 with deferral <input checked="" type="checkbox"/>
Case Priority	3 <input checked="" type="checkbox"/>	Enf. Coordinator	Daniel O. Siringi
Media Program(s)	Petroleum Storage Tank <input checked="" type="checkbox"/>	EC's Team	Enforcement Team 4 <input checked="" type="checkbox"/>
Multi-Media			
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$2,000
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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	5% Enhancement	Subtotals 2, 3, & 7	\$100
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Notes: The Respondent has one NOV with same or similar violations at this facility within the past five years.

Culpability	No <input checked="" type="checkbox"/>	0% Enhancement	Subtotal 4	\$0
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Notes: The respondent did not meet culpability criteria.

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with a small x)

Notes: The Respondent has not achieved compliance.

Economic Benefit	0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$1,365	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,300	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,100
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OTHER FACTORS AS JUSTICE MAY REQUIRE		Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

Final Penalty Amount **\$2,100**

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,100
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DEFERRAL	0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: This is not an expedited order.

PAYABLE PENALTY	\$2,100
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Screening Date	10-Feb-2005	Docket No.	2005-0293-PST-E	PCW
Respondent	Mike's Groceries & Feed, Inc. dba Mike's Grocery & Feed 21		Policy Revision 2 (September 2002)	
Case ID No.	24573	PCW Revision December 10, 2004		
Reg. Ent. Reference No.	RN102494408			
Additional ID No(s).	Petroleum Storage Tank Facility ID No. 74122			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Daniel O. Siringi			
Site Address	32002 State Highway 249, Pinehurst, Montgomery County			

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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 (number of judgements or consent decrees meeting criteria)	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 (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	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 (number of audits for which notices were)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No **Adjustment Percentage (Subtotal 3)** 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer **Adjustment Percentage (Subtotal 7)** 0%

>> Compliance History Summary

Compliance History Notes The Respondent has one NOV with same or similar violations at this facility within the past five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date	10-Feb-2005	Docket No.	2005-0293-PST-E	PCW
Respondent	Mike's Groceries & Feed, Inc. dba Mike's Grocery & Feed 21			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	24573			<i>PCW Revision December 10, 2004</i>
Reg. Ent. Reference No.	RN102494408			
Additional ID No(s).	Petroleum Storage Tank Facility ID No. 74122			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Daniel O. Siringi			
Violation Number	<input type="text" value="1"/>			
Primary Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 37.815(a) and (b)"/>			
Secondary Rule Cite(s)	<input type="text"/>			
Violation Description	Failure to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs.			
		Base Penalty	<input type="text" value="\$10,000"/>	

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

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

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent <input type="text" value="10%"/>
	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>	
Matrix Notes	<input type="text" value="100% of the rule requirement was not met."/>				

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one use a small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="checkbox"/>

Violation Base Penalty

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$1,365"/>	Violation Final Penalty Total <input type="text" value="\$2,100"/>
	This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$2,100"/>

Economic Benefit Worksheet

Respondent Mike's Groceries & Feed, Inc. dba Mike's Grocery & Feed 21
Case ID No. 24573
Reg. Ent. Reference No. RN102494408
Additional ID No(s). Petroleum Storage Tank Facility ID No. 74122
Media [Statute] 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	Onetime Costs	EB Amount
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Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$1,300	03-Dec-2002	03-Dec-2003	1.0	\$65	\$1,300	\$1,365
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to provide financial assurance for two petroleum USTs (\$650 per tank). Date required is one year prior to initial request. Final date is the initial request date.

Approx. Cost of Compliance \$1,300

TOTAL \$1,365

Compliance History

Customer/Respondent/Owner-Operator: CN601655426 Mike's Groceries & Feed, Inc. Classification: AVERAGE Rating: 1.500
Regulated Entity: RN102494408 MIKES GROCERY & FEED 21 Classification: AVERAGE Site Rating: 1.50
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 74122
REGISTRATION
Location: 32002 STATE HIGHWAY 249, PINEHURST, TX, 77362 Rating Date: 9/1/04 Repeat Violator: NO
TCEQ Region: REGION 12 - HOUSTON
Date Compliance History Prepared: February 17, 2005
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: February 17, 2000 to February 17, 2005

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Daniel Siringi Phone: 409-899-8799

Site Compliance History Components

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 of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

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

2 01/27/2005 (292487)
4 02/23/2004 (281702)

N/A

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 02/23/2004 (281702)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)[G]

30 TAC Chapter 37, SubChapter I 37.815(b)[G]

Description: Failure to provide acceptable financial assurance.

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
AGAINST MIKE'S GROCERIES &
FEED, INC. DBA MIKE'S GROCERY
& FEED 21;
RN102494408

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2005-0293-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's First Amended 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 of the respondent. The respondent made the subject of this Order is Mike's Groceries & Feed, Inc., dba Mike's Grocery & Feed 21 ("Mike's Groceries").

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

FINDINGS OF FACT

1. Mike's Groceries owned and operated a convenience store with retail sales of gasoline located at 32002 State Highway 249, in Pinehurst, Montgomery County, Texas (the "Facility") until September 19, 2004 when Civic Enterprises, Inc. took over ownership and operation of the Facility.
2. Mike's Groceries two underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mike's Groceries USTs contain a regulated substance as defined in the rules of the Commission.
3. During a record review conducted on August 25, 2004, TCEQ contractor, Ipso Facto Consulting, Inc., documented that Mike's Groceries failed to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs.
4. Mike's Groceries received notices of the violation on or about February 1, 2005.

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 Mike's Groceries & Feed, Inc., dba Mike's Groceries & Feed 21" (the "EDPRP") in the TCEQ Chief Clerk's office on July 7, 2005.
6. By letter dated July 7, 2005, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mike's Groceries with notice of the EDPRP. According to the return receipt "green card," Mike's Groceries received notice of the EDPRP on July 9, 2005, as evidenced by the signature on the card.
7. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Mike's Groceries & Feed, Inc., dba Mike's Groceries & Feed 21" (the "EDFARP") in the TCEQ Chief Clerk's office on October 23, 2006.
8. By letter dated October 23, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mike's Groceries with notice of the EDFARP. According to the return receipt "green card," Mike's Groceries received notice of the EDFARP on October 25, 2006, as evidenced by the signature on the card.
9. More than 20 days have elapsed since Mike's Groceries received notice of the EDPRP and the EDFARP, provided by the Executive Director. Mike's Groceries failed to file an answer to the EDPRP or the EDFARP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mike's Groceries is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mike's Groceries failed to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b).
3. As evidenced by Finding of Fact Nos. 5, 6, 7 and 8, the Executive Director has timely served Mike's Groceries with proper notice of the EDPRP and EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).

4. As evidenced by Finding of Fact No. 9, Mike's Groceries has failed to file a timely answer to the EDP RP or the EDFARP, 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 Mike's Groceries and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mike's Groceries for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of two thousand one hundred dollars (\$2,100.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. 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. Mike's Groceries is assessed an administrative penalty in the amount of two thousand one hundred dollars (\$2,100.00) for violations of TEX. WATER CODE chs. 7 and 26, and the rules of the TCEQ. The payment of this administrative penalty and Mike's Groceries' compliance with all the terms and conditions set forth in this Order completely resolve 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 other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Mike's Groceries & Feed, Inc., dba Mike's Grocery & Feed 21 Docket No. 2005-0293-PST-E" to:

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

2. All relief not expressly granted in this Order is denied.
3. The provisions of this Order shall apply to and be binding upon Mike's Groceries.
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 Mike's Groceries shall be made in writing to the Executive Director. Extensions are not effective until Mike's Groceries receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. 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 Mike's Groceries if the Executive Director determines that Mike's Groceries has not complied with one or more of the terms or conditions in this Order.
6. 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.
7. The Chief Clerk shall provide a copy of this 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.

Mike's Groceries & Feed Inc. dba Mike's Groceries & Feed 21
Docket No. 2005-0293-PST-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF RACHAEL R. GAINES

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Rachael R. Gaines. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Mike’s Groceries & Feed, Inc., dba Mike’s Grocery & Feed 21” (the “EDPRP”) was filed with the Office of the Chief Clerk on July 7, 2005.

The EDPRP was sent to Mike’s Groceries & Feed, Inc., dba Mike’s Grocery & Feed 21 (“Mike’s Groceries”) at its last known addresses on July 7, 2005, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card”, Mike’s Groceries received notice of the EDPRP on July 9, 2005, as evidenced by the signature on the card.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the “Executive Director’s First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Mike’s Groceries & Feed, Inc., dba Mike’s Grocery & Feed 21” (the “EDFARP”) with the Office of the Chief Clerk on October 23, 2006.

The EDFARP was sent to Mike’s Groceries & Feed, Inc., dba Mike’s Grocery & Feed 21 (“Mike’s Groceries”) at its last known addresses on October 23, 2006, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card”, Mike’s Groceries received notice of the EDFARP on October 25, 2006, as evidenced by the signature on the card.

More than 20 days have elapsed since Mike’s Groceries received notice of the EDPRP and the EDFARP. Mike’s Groceries failed to file an answer to the EDPRP or the EDFARP, failed to request a hearing, and failed to schedule a settlement conference.”



Rachael R. Gaines

Attorney

Texas Commission on Environmental Quality