

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

**DOCKET NO.: 2005-0784-PST-E TCEQ ID NOS.: 48005 AND RN102026465 ENF CASE NO.: 21486
RESPONDENT NAME: DANNY CRUMP DBA SOUTHEND GROCERY**

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 1101 S. Jefferson Avenue, Mt. Pleasant, Titus County</p> <p>TYPE OF OPERATION: convenience store with retail sales of gasoline</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on April 23, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Rebecca M. Combs, Litigation Division, MC 175, (512) 239-6939; Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Mr. Harvey Wilson, Enforcement Division, Section II, MC 219, (512) 239-0321 TCEQ Regional Contact: Mr. Michael Brashear, Tyler Regional Office, MC R-5, (903) 535-5176 Respondent: Mr. Danny Crump, Owner, Southend Grocery, 1101 South Jefferson Avenue, Mt. Pleasant, Texas 75455 Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><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: April 2, 2003 and August 16, 2004</p> <p>Date(s) of NOV(s)/NOE(s) Relating to this Case: June 24, 2003 (NOV) and October 7, 2004 (NOE)</p> <p>Background Facts: The EDPRP was filed on April 19, 2005. An Agreed Order was negotiated.</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 demonstrate 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 petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].</p>	<p>Initial Calculated Penalty: \$1,600</p> <p>Total Assessed: \$1,200</p> <p>Total Deferred: \$0</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$1,200</p> <p>The Respondent has paid \$1,200 of the administrative penalty in full.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <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>Explanation of Initial Calculated Penalty Reduction:</p> <p>The penalty was reduced due to risk of litigation.</p>	<p>The Executive Director recognizes that the Respondent obtained financial assurance on May 14, 2003.</p>



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 17, 2004

DATES							
PCW	28-Oct-2004	Screening	28-Oct-2004	Priority Due	26-Jan-2005	EPA Due	

RESPONDENT/FACILITY INFORMATION	
Respondent	Danny Crump dba Southend Grocery
Reg. Ent. Ref. No.	RN102026465
Additional ID No(s)	Petroleum Storage Tank Facility ID No: 48005
Facility/Site Region	5-Tyler <input checked="" type="checkbox"/> Major/Minor Source <input type="checkbox"/> Minor Source <input checked="" type="checkbox"/>

CASE INFORMATION			
Enf./Case ID No.	Enforcement Case ID No: 21486	No. of Violations	1
Docket No.	2004-1772-PST-E	Order Type	1660 without deferral <input checked="" type="checkbox"/>
Case Priority	3 <input checked="" type="checkbox"/>	Enf. Coordinator	Jill McNew
Media Program(s)	Petroleum Storage Tank <input checked="" type="checkbox"/>	EC's Team	Enforcement Team 3 <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: A 5% enhancement is due to the respondent having been issued an NOV dated June 24, 2003 for the same or a similar violation.

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

Good Faith Effort to Comply	25% Reduction	Subtotal 5	-\$500
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	X	
N/A		(mark with a small x)

Notes: The respondent is now in compliance having provided proof of financial assurance with a begin date of May 14, 2003.

Economic Benefit	0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$1,155	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,100	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,600
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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	\$1,600
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$1,600
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DEFERRAL	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended because the respondent was issued an NOV dated June 24, 2003 for the same or a similar violation.

PAYABLE PENALTY	\$1,600
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Screening Date	28-Oct-2004	Docket No.	2004-1772-PST-E	PCW
Respondent	Danny Crump dba Southend Grocery	Policy Revision 2	(September 2002)	
Case ID No.	Enforcement Case ID No. 21486	PCW Revision	May 17, 2004	
Reg. Ent. Reference No.	RN102026465			
Additional ID No(s)	Petroleum Storage Tank Facility ID No. 48005			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Jill McNew			
Site Address	1101 S. Jefferson Avenue, Mt. Pleasant, Titus County, Texas			

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 (<i>number of NOVs meeting criteria</i>)	1	5%
	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 judgements 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</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 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 A 5% enhancement is due to the respondent having been issued an NOV dated June 24, 2003 for the same or a similar violation

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

Screening Date	28-Oct-2004	Docket No.	2004-1772-PST-E	PCW
Respondent	Danny Crump dba Southend Grocery			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	Enforcement Case ID No. 21486			<i>PCW Revision May 17, 2004</i>
Reg. Ent. Reference No.	RN102026465			
Additional ID No(s)	Petroleum Storage Tank Facility ID No. 48005			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Jill McNew			
Violation Number	<input type="text" value="1"/>			
Primary Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 37.815 (a) & (b)"/>			
Secondary Rule Cite(s)	<input type="text"/>			
Violation Description	<input type="text" value="Failure to demonstrate 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 petroleum storage tanks."/>			
Base Penalty	<input type="text" value="\$10,000"/>			

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

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

OR

>> **Programmatic Matrix**

	Major	Moderate	Minor	
Falsification	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Percent <input type="text" value="10%"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

<i>mark only one use a small x</i>	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="\$1,155"/>	Violation Final Penalty Total <input type="text" value="\$1,600"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,600"/>	

Economic Benefit Worksheet

Respondent: Danny Crump dba Southend Grocery
 Case ID No: Enforcement Case ID No. 21486
 Reg. Ent. Reference No: RN102026465
 Additional ID No(s): Petroleum Storage Tank Facility ID No. 48005
 Media [Statute]: Petroleum Storage Tank
 Violation No: 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	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]	\$1,100	02-Apr-2002	02-Apr-2003	1.0	\$55	\$1,100	\$1,155
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Notes for AVOIDED costs							
The estimated cost to provide financial assurance for the petroleum USTs. Date Required is one year prior to the record review date. Final Date is one year later as this is an annual requirement.							

Approx. Cost of Compliance \$1,100

TOTAL \$1,155

Compliance History

Customer/Respondent/Owner-Operator:	CN601677057 CRUMP, DANNY	Classification: AVERAGE	Rating: 1.000
Regulated Entity:	RN102026465 SOUTHEND GROCERY	Classification: AVERAGE	Site Rating: 1.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	48005
Location:	1101 S JEFFERSON AVE, MT PLEASANT, TX, 75455	Rating Date: 9/1/04	Repeat Violator: NO
TCEQ Region:	REGION 05 - TYLER		
Date Compliance History Prepared:	November 09, 2004		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	November 09, 1999 to November 09, 2004		

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

Name: Jill McNew Phone: 512-239-0560

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? | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>N/A</u> |
| 5. When did the change(s) in ownership occur? | <u>N/A</u> |

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.)
- | | | |
|---|------------|----------|
| 1 | 12/22/1999 | (48944) |
| 2 | 10/08/2004 | (290490) |
| 3 | 06/24/2003 | (276806) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- Date: 06/24/2003 (276806)
- 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 (EMS).
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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF
AN ENFORCEMENT ACTION
AGAINST DANNY CRUMP DBA
SOUTHEND GROCERY;
TCEQ PST FACILITY ID NO. 48005;
RN102026465**

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§
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§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2005-0784-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Danny Crump dba Southend Grocery ("Crump") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Crump, appear before the Commission and together stipulate that:

1. Crump owns and operates a convenience store with retail sales of gasoline located at 1101 S. Jefferson Avenue, in Mt. Pleasant, Titus County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and Crump agree that the Commission has jurisdiction to enter this Agreed Order, and that Crump is subject to the Commission's jurisdiction.
4. Crump received notice of the violations alleged in Section II ("Allegations") on or about October 12, 2004.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Crump of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of one thousand two hundred dollars (\$1,200.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Crump has paid one thousand two hundred dollars (\$1,200.00) of the administrative penalty.

7. 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.
8. The Executive Director of the TCEQ and Crump have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that Crump obtained financial assurance on May 14, 2003.
10. 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 Crump has not complied with one or more of the terms or conditions of this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable, and if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

Crump is alleged to have violated 30 TEX. ADMIN. CODE § 37.815(a) and (b) by failing to demonstrate acceptable financial assurance, during a record reviews on April 2, 2003, and August 16, 2004, for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks.

III. DENIALS

Crump generally denies the allegation in Section II.

IV. ORDER

1. It is, therefore, ordered by the TCEQ that Crump pay an administrative penalty as set forth in Section I, Paragraph six above. The payment of this administrative penalty and Crump's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering requiring corrective action or penalties for violations which are

Danny Crump dba Southend Grocery
TCEQ Docket No. 2005-0784-PST-E
Agreed Order Page 3

not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Danny Crump dba Southend Grocery, Docket No. 2005-0784-PST-E" to:

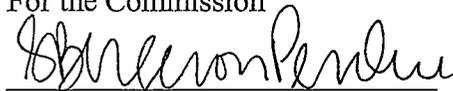
Financial Administration Division, Revenue Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon Crump. Crump is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against Crump in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction's, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T Code § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Crump, or three days after the date on which the Commission mails notice of the Order to Crump, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

6/7/07

Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, 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 my failure to comply with the Ordering Provision, if any, in this Order and /or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- 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 against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

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



Signature

5-30-2007

Date

DANNY CRUMP

Name (Printed or typed)

OWNER

Title

Authorized representative of
Danny Crump dba Southend Grocery