

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2

DOCKET NO.: 2005-1960-PST-E TCEQ ID: RN103993069 CASE NO.: 27393

RESPONDENT NAME: ANTONIO VERA AND ROMAN VERA DBA JESSIE'S DRIVE THRU

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

SITE WHERE VIOLATION(S) OCCURRED: Corner of Kenyon and Richardson, Hidalgo County

TYPE OF OPERATION: Convenience store with retail sales of gasoline

SMALL BUSINESS: Yes No

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

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 December 4, 2006. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846
 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873
TCEQ Enforcement Coordinator: Ms. Judy Kluge, Waste Enforcement Section, MC R-4, (817) 588-5825
TCEQ Regional Contact: Mr. Sam Barrett, DFW Regional Office, MC R-4, (817) 588-5903
Respondent: Messrs. Antonio Vera and Roman Vera, Owners and Operators, 2012 East University Drive, Edinburg, Texas 78539
Respondent's Attorney: Not represented by counsel on this enforcement matter.

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 of Complaints Relating to this Case: None</p> <p>Dates of Investigation(s) Relating to this Case: July 15, 2005, November 14, 2005</p> <p>Date of NOV/NOE Relating to this Case: July 15, 2005 (NOV) November 16, 2005 (NOE)</p> <p>Background Facts:</p> <p>The Respondents returned a signed Agreed Order with payment in full on May 8, 2006.</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>1. 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 petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].</p>	<p>Total Assessed: \$1,050</p> <p>Total Deferred: \$0</p> <p>Total Paid to General Revenue: \$1,050</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>Ordering Provision(s):</p> <p>The Respondent shall submit documentation that demonstrates current 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 petroleum USTs.</p>



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 19, 2005

DATES	Assigned	21-Nov-2005		
	PCW	03-Feb-2006	Screening	22-Nov-2005
	EPA Due			

RESPONDENT/FACILITY INFORMATION	
Respondent	Antonio Vera and Roman Vera dba Jessie's Drive Thru
Reg. Ent. Ref. No.	RN103993069
Facility/Site Region	15-Harlingen <input type="checkbox"/> Major/Minor Source <input checked="" type="checkbox"/> Minor Source

CASE INFORMATION			
Enf./Case ID No.	27393	No. of Violations	1
Docket No.	2005-1960-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Judy Kluge
Multi-Media		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 \$1,000

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 \$50

Notes: Enhancement for one NOV with same or similar violations.

Culpability No 0% Enhancement Subtotal 4 \$0

Notes: The respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction Subtotal 5 \$0

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with a small x)

Notes: The respondent is not yet in compliance.

Economic Benefit 0% Enhancement* Subtotal 6 \$0

Total EB Amounts	\$683	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$650	

SUM OF SUBTOTALS 1-7 Final Subtotal \$1,050

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

Final Penalty Amount \$1,050

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$1,050

DEFERRAL 0% Reduction Adjustment \$0

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 \$1,050

Screening Date 22-Nov-2005 Docket No. 2005-1960-PST-E

PCW

Respondent Antonio Vera and Roman Vera dba Jessie's Drive Thru

Policy Revision 2 (September 2002)

Case ID No. 27393

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN103993069

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

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%
Other	<i>Please Enter Yes or No</i>		
	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

Enhancement for one NOV with same or similar violations.

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

Screening Date 22-Nov-2005 **Docket No.** 2005-1960-PST-E **PCW**
Respondent Antonio Vera and Roman Vera dba Jessie's Drive Thru *Policy Revision 2 (September 2002)*
Case ID No. 27393 *PCW Revision May 19, 2005*
Reg. Ent. Reference No. RN103993069
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Judy Kluge
Violation Number 1
Primary Rule Cite(s) 30 Tex. Admin. Code § 37.815(a) and (b)
Secondary Rule Cite(s)
Violation Description Failure 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 petroleum USTs.

Base Penalty \$10,000

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

		Harm			
Release		Major	Moderate	Minor	
OR	Actual				Percent
	Potential				

>> **Programmatic Matrix**

		Falsification	Major	Moderate	Minor	
			X			Percent 10%
Matrix Notes		100% of the rule requirement was not met.				

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

Violation Events

Number of Violation Events 1
mark only one use a small x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$1,000

One single event (one event per tank) is recommended based upon the record review conducted on November 14, 2005.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount \$683	Violation Final Penalty Total \$1,050
This violation Final Assessed Penalty (adjusted for limits) \$1,050	

Economic Benefit Worksheet

Respondent: Antonio Vera and Roman Vera dba Jessie's Drive Thru
 Case ID No: 27393
 Reg. Ent. Reference No: RN103993069
 Media [Statute]: Petroleum Storage Tank
 Violation No: 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	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]	\$650	08-Apr-2004	08-Apr-2005	1.0	\$33	\$650	\$683
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Notes for AVOIDED costs	Estimated cost to provide financial assurance for one petroleum UST (\$650 per tank) for one year prior to April 8, 2005 request for financial assurance documentation.						

Approx. Cost of Compliance \$650

TOTAL \$683

Compliance History

Customer/Respondent/Owner-Operator:	CN602480196 Antonio Vera and Roman Vera	Classification: AVERAGE	Rating: 1.50
Regulated Entity:	RN103993069 JESSIES DRIVE THRU	Classification: AVERAGE	Site Rating: 1.50
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	76038
Location:	CORNER OF KENYON & RICHARDSON	Rating Date: September 01 05	Repeat Violator: NO
TCEQ Region:	REGION 15 - HARLINGEN		
Date Compliance History Prepared:	December 01, 2005		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	December 01, 2000 to December 01, 2005		

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

Name: Melissa Keller Phone: 512-239-1768

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | No |
| 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.)
 - 1 07/15/2005 (431432)
 - 2 11/16/2005 (437466)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - Date: 07/15/2005 (431432)
 - Self Report? NO
 - 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
 - Classification: Moderate
- 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 ANTONIO VERA
AND ROMAN VERA DBA
JESSIE'S DRIVE THRU;
RN103993069**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2005-1960-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 Antonio Vera and Roman Vera dba Jessie's Drive Thru ("Messrs. Vera") under the authority of TEX. WATER CODE chs. 7 and 26, and 30 TEX. ADMIN. CODE chs. 37 and 70. The Executive Director of the TCEQ, represented by the Litigation Division, and Messrs. Vera, appear before the Commission and together stipulate that:

1. Messrs. Vera own and operate a convenience store with retail sales of gasoline located at corner of Kenyon and Richardson in Edinburg, Hildago County, Texas (the "Facility").
2. Messrs. Veras' one underground storage tank ("UST") is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Messrs. Veras' one UST contains a regulated petroleum substance as defined in the rules of the Commission.
3. 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 chs. 7 and 26 and the TCEQ rules.
4. The Commission and Messrs. Vera agree that the Commission has jurisdiction to enter this Agreed Order, and that Messrs. Vera are subject to the Commission's jurisdiction.
5. Messrs. Vera received notice of the violations alleged in Section II ("Allegations") on or about November 21, 2005.

6. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Messrs. Vera of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
7. An administrative penalty in the amount of one thousand fifty dollars (\$1,050.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Messrs. Vera has paid one thousand fifty dollars (\$1,050.00) of the administrative penalty.
8. 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.
9. The Executive Director of the TCEQ and Messrs. Vera have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
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 Messrs. Vera has not complied with one or more of the terms or conditions in 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

Messrs. Vera, owners and operators of the Facility, are alleged to have violated 30 TEX. ADMIN. CODE § 37.815(a) and (b), for failing 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 petroleum USTs during a record review conducted on November 14, 2005.

III. DENIALS

Messrs. Vera generally denies each allegation in Section II ("Allegations").

IV. ORDER

1. It is, therefore, ordered by the TCEQ that Messrs. Vera pay an administrative penalty as set forth in Section I, Paragraph 7 above. The payment of this administrative penalty and Messrs. Vera'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 not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Antonio Vera and Roman Vera, Docket No. 2005-1960-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. It is further ordered that Messrs. Vera shall within 30 days after the effective date of this Agreed Order submit documentation that demonstrates current 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 petroleum USTs, in accordance with 30 TEX. ADMIN. CODE § 37.815 to:

Mr. Rob Norris, Senior Financial Analyst
Financial Assurance Unit, MC 184
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

and

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

3. The provisions of this Agreed Order shall apply to and be binding upon Messrs. Vera. Messrs. Vera are 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.

4. If Messrs. Vera fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Messrs. Veras' failure to comply is not a violation of this Agreed Order. Messrs. Vera shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Messrs. Vera shall notify the Executive Director within seven days after Messrs. Vera becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Messrs. Vera shall be made in writing to the Executive Director. Extensions are not effective until Messrs. Vera receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Messrs. Vera 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, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. 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 Messrs. Vera, or three days after the date on which the Commission mails notice of the Order to Messrs. Vera, 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

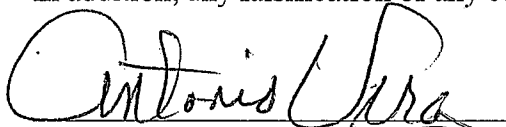
12/11/06
Date

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.

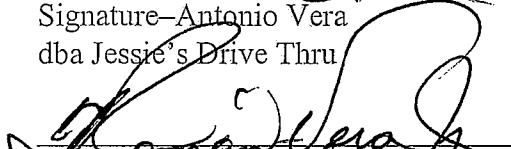
I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- 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—Antonio Vera
dba Jessie's Drive Thru

April 24, 2006
Date


Signature—Roman Vera
dba Jessie's Drive Thru

May 8, 2006
Date