

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2004-0740-PST-E TCEQ ID NO.: RN101838902 CASE NO.: 15736
RESPONDENT NAME: BIPIN PATEL DBA M & B FOOD STORE

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" 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: 708 North Raguet, Lufkin, Angelina 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.

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 3, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Jim Sallans, Litigation Division, MC 175, (512) 239-2053
 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873
 TCEQ Enforcement Coordinator: Mr. Bryan Elliott, Air Enforcement Section, MC 149, (512) 239-6162
 TCEQ Regional Contact: Mr. Derek Eades, Beaumont Regional Office, MC R-10, (409) 899-8705
 Respondent: Mr. Bipin Patel, Owner, M & B Food Store, 708 North Raguet, Lufkin, Texas 75904
 Respondent's Attorney: Not represented by counsel.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Dates of Complaints Relating to this Case: None</p> <p>Dates of Investigations Relating to this Case: February 27, 2004</p> <p>Dates of NOV/NOEs Relating to this Case: June 7, 2004 (NOE)</p> <p>Background Facts:</p> <p>After the Petition was filed, the Respondent contacted a service company to assist with compliance. Negotiations with the Respondent failed and a second Petition was filed to include revocation. The Respondent received notice of the amended Petition and has failed to respond.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report and is current on his PST Registrations.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to maintain legible copies of all required records regarding the UST system in a secure location on the premises so as to be readily accessible by the system operator and TCEQ personnel [30 TEX. ADMIN. CODE § 334.10(b)(1)]. Failed to report a suspected release from a UST to the TCEQ within 24 hours [30 TEX. ADMIN. CODE § 334.72]. Failed to report a suspected release from a UST to the TCEQ within 30 days [30 TEX. ADMIN. CODE § 334.74]. 	<p>Total Assessed: \$15,000</p> <p>Total Deferred: \$0</p> <p>SEP Conditional Offset: \$0</p> <p>Total Due to General Revenue: \$15,000</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 Order.</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 Provisions</p> <p>The Respondent's UST delivery certificate is revoked immediately upon the effective date of this Order. The Respondent may submit an application for a new delivery certificate only after the Respondent has complied with all of the requirements of this Order.</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Immediately: <ol style="list-style-type: none"> Begin maintaining in a secure location at the Facility copies of the required records pertaining to the UST system and make the copies immediately accessible for reference and use by the UST operator and for inspection upon request by TCEQ personnel; and Being reporting suspected releases to the TCEQ within 24 hours of suspected release. Within 10 days, sent its UST delivery certificate to the TCEQ. Within 30 days, submit all correspondence, reports, and documentation required by Ordering Provisions Nos. 1 and 2.



Penalty Calculation Worksheet (JW)

Policy Revision 2 (09/02)

PCW Revision 2/10/2004

DATES	
PCW 19-Aug-2024	Screening 13-May-2004
Priority Due 10-Sep-2004	EPA Due
RESPONDENT INFORMATION	
Respondent	Bipin Patel dba M & B Food Store
Respondent/Site ID No(s)	Petroleum Storage Tank Facility ID 69845
Facility/Site Region	10 - Beaumont
Major/Minor Source	Minor
CASE INFORMATION	
Enf./Case ID No(s)	15736
Docket No.	2004-0740-PST-E
Case Priority	3
Enf. Coordinator	Jill Reed
Media Program(s)	Petroleum Storage Tank
Admin. Penalty \$ Limit	Minimum \$0 Maximum \$10,000
No. Violations	3
Order Type	1660 with deferral
EC's Team	Enforcement Team 3

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** \$15,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 0% Enhancement **Subtotals 2, 3 & 7** \$0

Notes: No penalty change due to Average Performer classification (by default). **+**

Culpability 0% Enhancement **Subtotal 4** \$0

Notes: No Select Yes/No
The Respondent does not meet culpability criteria. **+**

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

	Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary			
Ordinary			
None of the above	X	(mark with small x)	+

Notes: The case includes past events with no opportunity for compliance.

Economic Benefit 0% Enhancement **Subtotal 6** \$0

\$219	Total EB Amounts	*Capped at the Total EB \$ Amount	
\$4,000	Approx. Cost of Compliance		=

SUM OF SUBTOTALS 1-7 **Final Subtotal** \$15,000

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 \$15,000

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$15,000

DEFERRAL Deferral 0% Reduction **Adjustment** \$0

Reduces the Final Assessed Penalty by the indicated percentage. (enter number only; e.g. 20 for 20% reduction)

Notes: No deferral is recommended due to settlement not being achieved during the 60-day negotiation period. **=**

PAYABLE PENALTY \$15,000

Screening Date 13-May **Docket Number** 2004-0740-PST-E **PCW**
Respondent Bipin Patel dba M & B Food Store **Policy Revision 2 (09/02)**
Case ID No: 15736 **PCW Revision 2/10/2004**
Respondent/Site ID No: Petroleum Storage Tank Facility ID 69845
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Jill Reed
Site Address 708 North Raguet Street, Lufkin, Arneglina County, Texas 75904

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOV's with same or similar violations as those in the current enforcement action (number of NOV's meeting criteria)	0	0%
	Other written NOV's	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 submitted)	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	Environmental management systems in place for one year or more <small>Please enter Yes or No.</small>	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) 0%

>> **Repeat Violator (Subtotal 3)**

No Select Yes/No **Adjustment Percentage (Subtotal 3)** 0%

>> **Compliance History Person Classification (Subtotal 7)**

Average Performer Select High, Average or Poor **Adjustment Percentage (Subtotal 7)** 0%

Compliance History Summary

Compliance History Notes: No penalty change due to Average Performer classification (by default).

Total Adjustment Percentage (Subtotals 2, 3 & 7) 0%

Screening Date	12/04	Docket Number	2004-0740-PST-E	PCW
Respondent	Bipin Patel dba M & B Food Store			Policy Revision 2 (09/02)
Case ID No.	15736			PCW Revision 2/10/2004
Respondent/Site ID No.	Petroleum Storage Tank Facility ID 69845			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Jill Reed			
Violation Number	1			
Primary Rule Cite	30 Tex. Admin. Code § 334.10(b)(1)			
Secondary Cite(s)				
Violation Description	Failure to maintain in a secure location on the premises of the underground storage tank ("UST") facility legible copies of all required records pertaining to an UST system, copies must be immediately accessible for reference and use by the UST system operator, and must be immediately available for inspection upon request by agency personnel.			
		Base Penalty	\$10,000	
» Environmental, Property and Human Health Matrix				
	Harm			
	Release	Major	Moderate	Minor
OR	Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Potential	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			Percent	<input type="text" value=""/>
» Programmatic Matrix				
	Falsification	Major	Moderate	Minor
OR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			Percent	<input type="text" value="10%"/>
Matrix Notes	100% of the rule requirement was not met			
		Adjustment	<input type="text" value="-9,000"/>	
		Base Penalty Subtotal	\$1,000	
Violation Events				
	Number of Violation Events	<input type="text" value="1"/>		
<i>mark only one; use small x</i>	daily	<input type="checkbox"/>		
	monthly	<input type="checkbox"/>		
	quarterly	<input type="checkbox"/>		
	semiannual	<input type="checkbox"/>		
	annual	<input type="checkbox"/>		
	single event	<input checked="" type="checkbox"/>	Violation Base Penalty	<input type="text" value="\$1,000"/>
Events Notes	One (1) single event is recommended based upon the investigation conducted February 27, 2004			
Economic Benefit (EB) for this violation Statutory Limit Test				
	Estimated EB Amount (\$)	<input type="text" value="\$42"/>	Violation Final Penalty total	<input type="text" value="\$1,000"/>
	This Violation Final Assessed Penalty (adjusted for limits)			<input type="text" value="\$1,000"/>

Economic Benefit Worksheet

Respondent: Bipin Patel dba M & B Food Store
 ID Number(s): 15736
 Media [Statute]: Petroleum Storage Tank
 Violation Number: 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)	\$1,000	27-Feb-2004	31-Dec-2004	0.8	\$42	n/a	\$42

Notes for DELAYED costs

Estimated cost to train personal to maintain UST records correctly. The Economic Benefit is calculated from the investigation date (February 27, 2004) until the projected date of compliance (December 31, 2004).

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/equip				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx Cost of Compliance

TOTAL

Screening Date	12 .04	Docket Number	2004-0740-PST-E	PCW
Respondent	Bipin Patal dba M & B Food Store			Policy Revision 2 (09/02)
Case ID No.	15736			PCW Revision 2/10/2004
Respondent/Site ID No.	Petroleum Storage Tank Facility ID 69845			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Jill Reed			
Violation Number	2			
Primary Rule Cite	30 Tex. Admin. Code § 334.72			
Secondary Cite(s)				
Violation Description	The owner or operator of a UST system failed to report a suspected release to the agency within 24 hours when monitoring results from a release detection method indicate that a release may have occurred. Based on the monthly vapor monitoring reports on March 16, 2003, August 16, 2003, September 13, 2003, and January 17, 2004 were suspected releases. No notification reports were received by the TCEQ.			
		Base Penalty		\$10,000
» Environmental, Property and Human Health Matrix				
	Harm			
	Release	Major	Moderate	Minor
OR	Actual			
	Potential			
				Percent <input type="text"/>
» Programmatic Matrix				
	Falsification	Major	Moderate	Minor
OR		X		
				Percent <input type="text" value="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	<input type="text" value="4"/>		
<i>mark only one; use small x</i>	daily			
	monthly			
	quarterly			
	semiannual			
	annual			
	single event	X		
				Violation Base Penalty <input type="text" value="\$4,000"/>
Events Notes	Four (4) single events (one event for each monthly monitoring) are recommended based on the investigation date of February 27, 2004			
Economic Benefit (EB) for this violation Statutory Limit Test				
	Estimated EB Amount (\$)	<input type="text" value="\$177"/>	Violation Final Penalty total	<input type="text" value="\$4,000"/>
			This Violation Final Assessed Penalty (adjusted for limits)	<input type="text" value="\$4,000"/>

Economic Benefit Worksheet

Respondent: Bipin Patel dba M & B Food Store
 ID Number(s): 15736
 Media [Statute]: Petroleum Storage Tank
 Violation Number: 2

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	\$3,000	27-Feb-2004	31-Dec-2004	0.8	\$8	\$169	\$177
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

Estimated cost to investigate and report suspected releases from a UST system. The Economic Benefit is calculated from the investigation date (February 27, 2004) until the project compliance date (December 31, 2004).

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/equip				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx Cost of Compliance

TOTAL

Screening Date	11/04	Docket Number	2004-0740-PST-E	PCW
Respondent	Bipin Patel dba M & B Food Store			Policy Revision 2 (09/02)
Case ID No.	15736			PCW Revision 2/10/2004
Respondent/Site ID No.	Petroleum Storage Tank Facility ID 69845			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Jill Reed			
Violation Number	3			
Primary Rule Cite	30 Tex. Admin. Code § 334.74			
Secondary Cite(s)				
Violation Description	Failure to investigate suspected releases from a UST system based on monthly vapor monitoring reports within 30 days. The monthly vapor monitoring reports for March 16, 2003, August 16, 2003, September 16, 2003, and January 17, 2004 were suspected for releases at the facility.			

Base Penalty \$10,000

» Environmental, Property and Human Health Matrix					
OR	Harm				
	Release	Major	Moderate	Minor	
	Actual				
	Potential	X			Percent 25%
» Programmatic Matrix					
OR	Falsification	Major	Moderate	Minor	
					Percent
Matrix Notes	Failure to investigate suspected releases from a UST system based on monthly vapor monitoring reports can result in the exposure of a significant amount of contaminants which may exceed levels that are protective to human health and the environment.				
				Adjustment	-7,500
				Base Penalty Subtotal	\$2,500

Violation Events					
	Number of Violation Events	4			
<i>mark only one; use small x</i>	daily				
	monthly				
	quarterly				
	semiannual				
	annual				
	single event	X			
				Violation Base Penalty	\$10,000
Events Notes	Four (4) single events (one event for each missed investigation) are recommended based on the investigation date of February 27, 2004				

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount (\$)	\$0
Violation Final Penalty total	\$10,000
This Violation Final Assessed Penalty (adjusted for limits)	\$10,000

Economic Benefit Worksheet

Respondent: Bipin Patel dba M & B Food Store
 ID Number(s): 15736
 Media [Statute]: Petroleum Storage Tank
 Violation Number: 3

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

Economic benefit considered in Violation No. 2.

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/equip				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx Cost of Compliance

TOTAL

Compliance History

Customer/Respondent/Owner-Operator:	CN602490831 PATEL, BIPIN	Classification: AVERAGE BY DEFAULT	Rating: 3.010
Regulated Entity:	RN101838902 M AND B FOOD STORE	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	69845
Location:	708 N RAGUET ST, LUFKIN, TX, 75904	Rating Date: 9/1/03	Repeat Violator: NO
TCEQ Region:	REGION 10 - BEAUMONT		
Date Compliance History Prepared:	May 24, 2004		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	May 24, 1999 to May 24, 2004		

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

Name: Jill Reed Phone: (432) 570-1359

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 04/23/2004 (264600)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
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
BIPIN PATEL DBA M & B
FOOD STORE,
RN101838902**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2004-0740-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 revocation of the respondent's underground storage tank delivery certificate, the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Bipin Patel dba M & B Food Store ("Mr. Patel").

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

FINDINGS OF FACT

1. Mr. Patel owns and operates a convenience store with retail sales of gasoline located at 708 North Raguet, Lufkin, Angelina County, Texas (the "Facility").
2. Mr. Patel's underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Patel's USTs contain a regulated substance as defined in the rules of the Commission.
3. During an inspection on February 27, 2004, a Beaumont Regional Office investigator documented that Mr. Patel:
 - a. Failed to maintain legible copies of all required records regarding the UST system in a secure location on the premises so as to be readily accessible by the system operator and TCEQ personnel. During the inspection, complete records were not readily available upon the request of the regional investigator;
 - b. Failed to report a suspected release from a UST to the TCEQ within 24 hours. During the February 27, 2004, inspection, the regional investigator documented that monthly vapor monitoring reports from March 16, 2003, August 16, 2003, September 13, 2003

and January 17, 2004, indicated suspected releases, and no notification reports were received by the TCEQ; and

- c. Failed to report a suspected release from a UST to the TCEQ within 30 days. During the February 27, 2004, inspection, the regional investigator documented that monthly vapor monitoring reports from March 16, 2003, August 16, 2003, September 16, 2003 and January 17, 2004, indicated suspected releases, and no notification reports were received by the TCEQ.
4. Mr. Patel received notice of the violations on or about April 28, 2004.
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 and Requiring Certain Actions of Bipin Patel dba M & B Food Store" (the "EDPRP") in the TCEQ Chief Clerk's office on December 30, 2004.
6. By letter dated December 30, 2004, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Patel with notice of the EDPRP. According to the return receipt "green card," Mr. Patel received notice of the EDPRP on January 5, 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 and Requiring Certain Actions of Bipin Patel dba M & B Food Store" (the "EDFARP") in the TCEQ Chief Clerk's office on July 18, 2007.
8. By letter dated July 18, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Patel with notice of the EDFARP. According to the return receipt "green card," Mr. Patel received notice of the EDFARP on July 20, 2007, as evidenced by the signature on the card.
9. More than 20 days have elapsed since Mr. Patel received notice of the EDPRP and the EDFARP, provided by the Executive Director. Mr. Patel failed to file an answer to either 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, Mr. Patel 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.a., Mr. Patel failed to maintain legible copies of all required records regarding the UST system in a secure location on the premises so as to be readily accessible by the system operator and TCEQ personnel. During the inspection, complete records were not readily available upon the request of the regional investigator, in violation of 30 TEX. ADMIN. CODE § 334.10(b)(1).
3. As evidenced by Finding of Fact No. 3.b., Mr. Patel failed to report a suspected release from a UST to the TCEQ within 24 hours. During the February 27, 2004, inspection, the regional investigator documented that monthly vapor monitoring reports from March 16, 2003, August 16, 2003, September 13, 2003 and January 17, 2004, indicated suspected releases, and no notification reports were received by the TCEQ, in violation of 30 TEX. ADMIN. CODE § 334.72.
4. As evidenced by Finding of Fact No. 3.c., Mr. Patel failed to report a suspected release from a UST to the TCEQ within 30 days. During the February 27, 2004, inspection, the regional investigator documented that monthly vapor monitoring reports from March 16, 2003, August 16, 2003, September 16, 2003 and January 17, 2004, indicated suspected releases, and no notification reports were received by the TCEQ, in violation of 30 TEX. ADMIN. CODE § 334.74.
5. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director has timely served Mr. Patel with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
6. As evidenced by Finding of Fact Nos. 7 and 8, the Executive Director has timely served Mr. Patel with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
7. As evidenced by Finding of Fact No. 9, Mr. Patel has failed to file a timely answer to either the EDPRP 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 Mr. Patel 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 Mr. Patel 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.

9. An administrative penalty in the amount of fifteen thousand dollars (\$15,000.00) 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.
11. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Mr. Patel 's UST delivery certificate if the Commission finds that good cause exists.
12. Good cause for revocation of Mr. Patel 's UST delivery certificate exists as justified by Findings of Fact Nos. 3, 5, 6, 7, 8, and 9 and Conclusions of Law Nos. 2, 3, 4, 5, 6, and 7.

ORDERING PROVISIONS

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

1. Mr. Patel is assessed an administrative penalty in the amount of fifteen thousand dollars (\$15,000.00) for violations of TEX. WATER CODE ch. 7 and rules of the TCEQ. The payment of this administrative penalty and Mr. Patel 's 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: Bipin Patel dba M & B Food Store; Docket No. 2004-0740-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. Mr. Patel 's UST delivery certificate is revoked immediately upon the effective date of this Order. Mr. Patel may submit an application for a new delivery certificate only after Mr. Patel has complied with all of the requirements of this Order.
3. Within 10 days after the effective date of this Order, Mr. Patel shall send its UST delivery certificate to:

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

4. Mr. Patel shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Mr. Patel shall:
 - i. Begin maintaining in a secure location at the Facility copies of the required records pertaining to the UST system, shall make the copies immediately accessible for reference and use by the UST operator, and for inspection upon request by TCEQ personnel; and
 - ii. Begin reporting suspected releases to the TCEQ within 24 hours of suspected release.
 - b. Within 30 days after the effective date of this Order, Mr. Patel shall submit all correspondence, reports, and documentation required by these Ordering Provisions to:

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

and

Derek Eades, Waste Section Manager
Texas Commission on Environmental Quality
Beaumont Regional Office
3870 Eastex Freeway
Beaumont, Texas 77703

5. All relief not expressly granted in this Order is denied.
6. The provisions of this Order shall apply to and be binding upon Mr. Patel. Mr. Patel is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.

7. 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 Mr. Patel shall be made in writing to the Executive Director. Extensions are not effective until Mr. Patel receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
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 Mr. Patel if the Executive Director determines that Mr. Patel has not complied with one or more of the terms or conditions in this Order.
9. 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.
10. 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.

Bipin Patel dba M & B Food Store
DOCKET NO. 2004-0740-PST-E
Page 7

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF JIM SALLANS

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

"My name is Jim Sallans. 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.

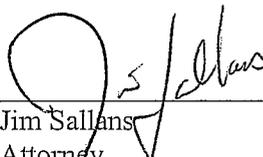
On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Bipin Patel dba M & B Food Store" (the "EDPRP") with the Office of the Chief Clerk on December 30, 2004.

I sent the EDPRP to Mr. Patel at his last known address on December 30, 2004 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Mr. Patel received notice of the EDPRP on January 5, 2005, as evidenced by the signature on the card.

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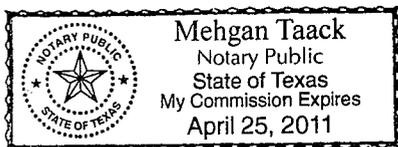
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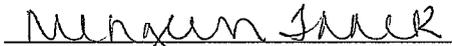


Jim Sallans
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jim Sallans, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 30th day of August, A.D., 2007.





Notary Stamp