

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

**DOCKET NO.: 2004-1008-PST-E TCEQ ID: RN100737493 CASE NO.: 17392
RESPONDENT NAME: BOUNTHEUNG NOYMAN DBA BOAT CLUB GROCERY**

| | | |
|--|---|--|
| 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 |
| <p>SITE WHERE VIOLATION(S) OCCURRED: 5300 Boat Club Road, Fort Worth, Tarrant County</p> <p>TYPE OF OPERATION: 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 May 5, 2008. 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, Air Enforcement Section, MC 219, (512) 239-0321 TCEQ Regional Contact: Mr. Sam Barrett, DFW Regional Office, MC R-4, (817) 588-5903 Respondent: Mr. Bountheung Noymany, Owner and Operator, 5300 Boat Club Road, Fort Worth, Texas 76135 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 of Complaints Relating to this Case: N/A</p> <p>Dates of Investigation Relating to this Case: July 1, 2002 and October 19, 2007</p> <p>Date of NOV and NOE Relating to this Case: September 27, 2002 (NOV) August 23, 2004 (NOE)</p> <p>Background Facts: The EDP RP was filed on February 15, 2006. The EDFARP was filed on October 26, 2007. The Respondent did not file an answer, request a hearing or request 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>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) & (b)].</p> <p>2. Failed to pay outstanding UST fees for FA Account No. 0057899U for fiscal years 2005-2007 [30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702].</p> | <p>Total Assessed: \$6,750</p> <p>Total Due to General Revenue: \$6,750</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 type="checkbox"/> Average <input checked="" type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" 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>Technical Requirements</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Within 10 days shall send in its delivery certificate. 2. Within 30 days, Respondent shall: <ol style="list-style-type: none"> a. Submit written certification demonstrating current financial assurance for its petroleum USTs to TCEQ. b. Submit payment for all outstanding fees, including any associated penalties and interest, on FA Account No. 0057899U. 3. Within 45 days, submit written certification of compliance with Ordering Provisions. |



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 19, 2005

| | | | | | | |
|--------------|-----------------|-------------|------------------|-------------|----------------|-------------|
| DATES | Assigned | 17-Jan-2006 | Screening | 14-Jul-2004 | EPA Due | 12-Oct-2004 |
| | PCW | 15-Feb-2006 | | | | |

| | |
|--|---|
| RESPONDENT/FACILITY INFORMATION | |
| Respondent | Noymany Boutheung dba Boat Club Grocery |
| Reg. Ent. Ref. No. | RN100737493 |
| Facility/Site Region | 4-Dallas/Fort Worth |
| Major/Minor Source | Minor Source |

| | | | |
|--|------------------------|--------------------------|--------------------|
| CASE INFORMATION | | | |
| Enf./Case ID No. | 17392 | No. of Violations | 2 |
| Docket No. | 2004-1008-PST-E | Order Type | 1660 |
| Media Program(s) | Petroleum Storage Tank | Enf. Coordinator | Harvey Wilson |
| Multi-Media | | EC's Team | Enforcement Team 4 |
| Admin. Penalty \$ Limit Minimum | \$0 | Maximum | \$10,000 |

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** \$5,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 35% Enhancement **Subtotals 2, 3, & 7** \$1,750

Notes The site has received 1 NOV with the same or a similar violation, 1 Agreed Order, and is classified as a poor performer.

Culpability No 0% Enhancement **Subtotal 4** \$0

Notes Respondent does not meet the culpability criteria.

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

| | | |
|---------------|------------|-------------------------------|
| | Before NOV | NOV to EDPRP/Settlement Offer |
| Extraordinary | | |
| Ordinary | | |
| N/A | X | (mark with a small x) |

Notes The Respondent is not in compliance.

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

| | | |
|-----------------------------------|---------|--|
| Total EB Amounts | \$3,150 | <i>*Capped at the Total EB \$ Amount</i> |
| Approx. Cost of Compliance | \$3,000 | |

SUM OF SUBTOTALS 1-7 **Final Subtotal** \$6,750

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 \$6,750

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$6,750

DEFERRAL **Adjustment** \$0

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

Notes No deferral recommended because settlement was not achieved within the sixty day expedited settlement period.

PAYABLE PENALTY \$6,750

Screening Date 14-Jul-2004

Docket No. 2004-1008-PST-E

PCW

Respondent Noymany Boutheung dba Boat Club Grocery

Policy Revision 2 (September 2002)

Case ID No. 17392

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN100737493

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Harvey Wilson

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>) | 1 | 20% |
| | 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 (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 (<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) 25%

>> Repeat Violator (Subtotal 3)

No <

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Poor Performer <

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance History Notes

The site has received 1 NOV with the same or a similar violation, 1 Agreed Order, and is classified as a poor performer.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 35%

Screening Date 14-Jul-2004

Docket No. 2004-1008-PST-E

PCW

Respondent Noymany Boutheung dba Boat Club Grocery

Policy Revision 2 (September 2002)

Case ID No. 17392

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN100737493

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Harvey Wilson

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 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 \$10,000

>> Environmental, Property and Human Health Matrix

| | | Harm | | | |
|---------|-----------|-------|----------|-------|---------|
| Release | | Major | Moderate | Minor | |
| OR | Actual | | | | Percent |
| | Potential | | | | |

>> Programmatic Matrix

| Falsification | Major | Moderate | Minor | Percent |
|---------------|-------|----------|-------|---------|
| | X | | | 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 5

| | | |
|--------------------------------|------------|--|
| mark only one use a small x | daily | |
| | monthly | |
| | quarterly | |
| | semiannual | |
| | annual | |
| single event | X | |

Violation Base Penalty \$5,000

Five (5) single events (1 event per tank) are recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3,150

Violation Final Penalty Total \$6,750

This violation Final Assessed Penalty (adjusted for limits) \$6,750

Economic Benefit Worksheet

Respondent Noymany Boutheung dba Boat Club Grocery
 Case ID No. 17392
 Reg. Ent. Reference No. RN100737493
 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 |
|--------------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| 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

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|--|-----------|---------------|-------------|-----|----------------|---------------|-----------|
| 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] | \$3,000 | 28-May-2002 | 28-May-2003 | 1.0 | \$150 | \$3,000 | \$3,150 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Approx. Cost of Compliance **\$3,000**

TOTAL \$3,150

Screening Date 14-Jul-2004

Docket No. 2004-1008-PST-E

PCW

Respondent Noymany Boutheung dba Boat Club Grocery

Policy Revision 2 (September 2002)

Case ID No. 17392

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN100737493

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Harvey Wilson

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Base Penalty

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

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

>> **Programmatic Matrix**

| Falsification | Major | Moderate | Minor | Percent <input type="text"/> |
|----------------------|----------------------|----------------------|----------------------|------------------------------|
| <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> | |

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

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

Violation Base Penalty

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Noymany Boutheung dba Boat Club Grocery
 Case ID No. 17392
 Reg. Ent. Reference No. RN100737493
 Media [Statute] Petroleum Storage Tank
 Violation No. 2

| | |
|------------------|-----------------------|
| Percent Interest | Years of Depreciation |
| 5.0 | 15 |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|--------------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| 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] | | | | 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: | CN601260854 BOUNTHEUNG NOYMANY | Classification: POOR | Rating: 50.000 |
| Regulated Entity: | RN100737493 BOAT CLUB GROCERY | Classification: POOR | Site Rating: 50.00 |
| ID Number(s): | PETROLEUM STORAGE TANK REGISTRATION | REGISTRATION | 66667 |
| Location: | 5300 BOAT CLUB RD, FORT WORTH, TX, 76135 | Rating Date: 9/1/03 Repeat Violator: NO | |
| TCEQ Region: | REGION 04 - DFW METROPLEX | | |
| Date Compliance History Prepared: | July 13, 2004 | | |
| Agency Decision Requiring Compliance History: | Enforcement | | |
| Compliance Period: | July 13, 1999 to July 13, 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.

| | |
|---|----------------------------|
| Effective Date: 7/23/01 | ADMINORDER 2000-0046-PST-E |
| Classification: Moderate | |
| Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(C)(iii) | |
| Description: Requires the respondent to maintain the Stage II vapor recovery system in proper operating condition, free of defects. | |
| Classification: Moderate | |
| Citation: 30 TAC Chapter 115, SubChapter C 115.245(2) | |
| Description: Failed to conduct pressure decay testing annually. | |
| Classification: Minor | |
| Citation: 30 TAC Chapter 115, SubChapter C 115.246(6) | |
| Description: Failed to keep a record of the daily inspections conducted at the Station. | |
| Classification: Moderate | |
| Citation: 5C THC Chapter 382, SubChapter A 382.085[G] | |
| Description: Unauthorized emissions. | |

- 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 | 09/30/1999 | (141257) |
| 2 | 07/09/2004 | (279913) |
| 3 | 07/27/1999 | (142398) |
| 4 | 09/27/2002 | (275185) |
| 5 | 09/29/1999 | (IE0014426001005) |

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

Date: 09/27/2002 (275185)

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
CONCERNING
BOUNTHEUNG NOYMAN DBA
BOAT CLUB GROCERY:
RN100737493**

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2004-1008-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary 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 and corrective action of the respondent. The respondent made the subject of this Order is Bountheung Noymany dba Boat Club Grocery ("Noymany").

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

FINDINGS OF FACT

1. Noymany owns and operates a store with retail sales of gasoline located at 5300 Boat Club Road, in Fort Worth, Tarrant County, Texas (the "Facility").
2. Noymany's five underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Noymany's USTs contain a regulated substance as defined in the rules of the Commission.
3. During a record review inspection on July 1, 2002, TCEQ Financial Administrative Staff investigator documented that Noymany 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.
4. During a record review inspection on October 19, 2007, TCEQ central office staff documented that Noymany failed to pay outstanding UST fees for FA Account No. 0057899U for fiscal years 2005-2007.

5. Noymany received notice of the violations on or about September 27, 2002 and October 30, 2007.
6. 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 Bountheung Noymany dba Boat Club Grocery" (the "EDPRP") in the TCEQ Chief Clerk's office on February 15, 2006.
7. By letter dated February 15, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Noymany with notice of the EDPRP. According to the return receipt "green card", Noymany received notice of the EDPRP prior to February 21, 2006, as evidenced by the signature on the card.
8. More than 20 days have elapsed since Noymany received notice of the EDPRP, provided by the Executive Director. Noymany failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.
9. 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 Bountheung Noymany dba Boat Club Grocery" (the "EDFARP") in the TCEQ Chief Clerk's office on October 26, 2007.
10. By letter dated October 26, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Noymany with notice of the EDFARP. According to the return receipt "green card", Noymany received notice of the EDFARP on October 30, 2007, as evidenced by the signature on the card.
11. More than 20 days have elapsed since Noymany received notice of the EDFARP, provided by the Executive Director. Noymany failed to file an answer to 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, Noymany is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3., Noymany 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,

in violation of 30 TEX. ADMIN. CODE § 37.815(a) & (b).

3. As evidenced by Finding of Fact No. 4., Noymany failed to pay outstanding UST fees for FA Account No. 0057899U for fiscal years 2005-2007, in violation of 30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702.
4. As evidenced by Finding of Fact Nos. 6 and 7 the Executive Director has timely served Noymany with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
5. As evidenced by Finding of Fact No. 8, Noymany has failed to file a timely answer to the EDPRP, 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 Noymany and assess the penalty recommended by the Executive Director.
6. As evidenced by Finding of Fact Nos. 9 and 10 the Executive Director has timely served Noymany 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. 11, Noymany has failed to file a timely answer to 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 Noymany 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 Noymany 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 Six Thousand Seven Hundred Fifty Dollars (\$6,750.00) 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 Noymany's UST delivery certificate if the Commission finds that good cause exists.

12. Good cause for revocation of Noymany's UST delivery certificate exists as justified by Finding of Fact Nos. 3,4, 6-11 and Conclusion of Law Nos. 2-11.

ORDERING PROVISIONS

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

1. Noymany is assessed an administrative penalty in the amount of Six Thousand Seven Hundred Fifty Dollars (\$6,750.00) for violations of TEX. WATER CODE chs. 7 and 26 and rules of the TCEQ. The payment of this administrative penalty and Noymany'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: Bountheung Noymany dba Boat Club Grocery; Docket No. 2004-1008-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. Noymany's UST delivery certificate is revoked immediately upon the effective date of this Order. Noymany may submit an application for a new delivery certificate only after Noymany has complied with all of the requirements of this Order.
3. Within 10 days after the effective date of this Order, Noymany 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. Noymany shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Order, Noymany shall:
- i. Submit written certification demonstrating current financial assurance for his petroleum USTs, as required by 30 Tex. Admin. Code § 37.815(a) and (b) to :

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

- ii. Submit payment for all outstanding fees, including any associated penalties and interest, on FA Account No. 0057899U with the notation, "Re: Bountheung Noymany dba Boat Club Grocery" FA Account No. 0057899U" 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

- b. Within 45 days after the effective date of the Commission Order, Noymany shall submit written certification of compliance with Ordering Provisions 4.a.i.-ii. and copies of 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

The documentation required shall include a certification notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this documentation and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, and those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and

belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.”

5. All relief not expressly granted in this Order is denied.
6. The provisions of this Order shall apply to and be binding upon Noymany. Noymany 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. If Noymany fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Noymany's failure to comply is not a violation of this Order. Noymany shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Noymany shall notify the Executive Director within seven days after Noymany becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
8. 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 Noymany shall be made in writing to the Executive Director. Extensions are not effective until Noymany receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
9. 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 Noymany if the Executive Director determines that Noymany has not complied with one or more of the terms or conditions in this Order.
10. 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.
11. 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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF REBECCA M. COMBS

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Rebecca M. Combs. 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 Bountheung Noymany dba Boat Club Grocery’ (the ‘EDPRP’) with the Office of the Chief Clerk on February 15, 2006.

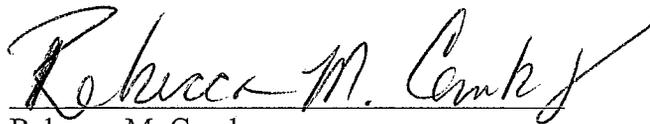
I sent the EDPRP to Noymany at it his last known address on February 15, 2006 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt ‘green card’, Noymany received notice of the EDPRP on or before February 21, 2006, as evidenced by the signature on the card.

More than 20 days have elapsed since Noymany received notice of the EDPRP. Noymany failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference”.

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 and Requiring Certain Actions of Bountheung Noymany dba Boat Club Grocery’ (the ‘EDFARP’) with the Office of the Chief Clerk on October 26, 2007.

I sent the EDFARP to Noymany at it his last known address on October 26, 2007 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt ‘green card’, Noymany received notice of the EDFARP on or before October 30, 2007, as evidenced by the signature on the card.

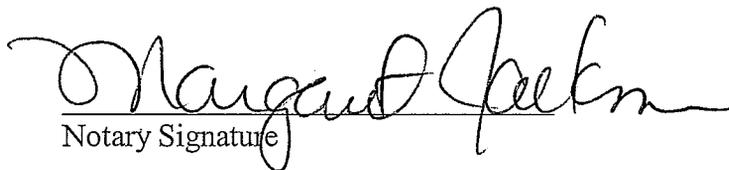
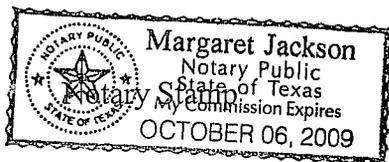
More than 20 days have elapsed since Noymany received notice of the EDFARP. Noymany failed to file an answer to the EDFARP, failed to request a hearing, and failed to schedule a settlement conference”.



Rebecca M. Combs
Attorney
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 12 day of March, 2008.



Notary Signature