

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2003-1120-PST-E TCEQ ID NO: RN101736866, RN101382919 and RN101433837

CASE NO.: 145911 AND 16643/2

RESPONDENT NAME: SAMMY'S GROCERIES, INC. DBA SAMMY'S GROCERIES NO. 1, SAMMY'S GROCERIES NO. 2, AND YOUNG'S DRIVE IN 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: 13110 Crosby Lynchburg Rd, Crosby (No. 1); 2810 Market Street, Baytown, (No: 2); 2105 N Pruet, Baytown (Young's Drive In), Harris County</p> <p>TYPE OF OPERATION: Convenience store with retail sales of gasoline</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding these facility locations.</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 November 12, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Rebecca M. Combs, Litigation Division, MC 175, (512) 239-6939 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Ms. Catherine Albrecht, Water Enforcement Section, MC R-12, (713) 767-3672 TCEQ Regional Contact: Ms. Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623 Respondent: Mr. Aslam Virani, Registered Agent, Sammy's Groceries, Inc., 13110 Crosby Lynchburg Road, Crosby, Texas 77532 Respondent's Attorney: Not represented by counsel.</p>		

DBA SAMMY'S GROCERIES NO. 1, SAMMY'S GROCERIES NO. 2, AND YOUNG'S DRIVE IN GROCERY
DOCKET NO.: 2003-1120-PST-E

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: May 29, 2002 and September 27, 2002</p> <p>Date of NOV's Relating to this Case: May 29, 2002 and September 27, 2002</p> <p>Background Facts:</p> <p>The EDRP was filed and served on the Respondent on April 2, 2004. The Respondent never filed an Answer, requested a hearing or requested a settlement conference.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>PST</p> <p>Failed to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].</p>	<p>Total Assessed: \$11,320</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Settlement</p> <p><input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Due to General Revenue: \$11,320</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalties but will be required to do so under the terms of this proposed Order.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input type="checkbox"/> Avg. <input checked="" type="checkbox"/> Poor <input type="checkbox"/> N/A</p> <p>Person Compliance History Classifications: <input type="checkbox"/> High <input type="checkbox"/> Avg. <input checked="" type="checkbox"/> Poor <input type="checkbox"/> N/A</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 shall undertake the following technical requirements:</p> <p>1.) Immediately, Respondent's delivery certificate for Sammy's Groceries No.2 is revoked.</p> <p>2.) Within 10 days, Respondent shall send in the delivery certificate for Sammy's Groceries No. 2.</p> <p>2.) Within 30 days, obtain certified, documented proof of 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 for Sammy's Groceries No. 2.</p>



Policy Revision 2 (09/02)

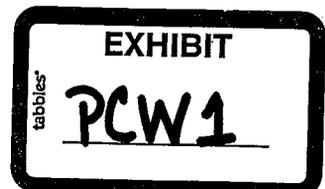
Penalty Calculation Worksheet (PCW)

PCW Revision 6/12/2003

DATES		PCW 30-Sep-2003	Screening 30-Sep-2003	Priority Due 28-Jan-2004	EPA Due
RESPONDENT INFORMATION					
Respondent	Sammy's Groceries, Inc. dba Sammy's Groceries No. 1				
Respondent/Site ID No(s)	PST Facility ID No: 45487, RN101736866				
Facility/Site Region	12, Houston	<input checked="" type="checkbox"/>	Major/Minor Source	Minor	<input checked="" type="checkbox"/>
CASE INFORMATION					
Enf./Case ID No(s)	145911		No. Violations	1	
Docket No.	2003-1120-PST-E		Order Type	660 Without Deferral	
Case Priority	3		EC's Team	Enforcement Team 5	
Enf. Coordinator	Sherry Smith				
Media Program(s)	Petroleum Storage Tank				
Admin. Penalty \$ Limit	Minimum \$0	Maximum \$10,000			

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)		Subtotal 1	\$4,000
ADJUSTMENTS (+/-) TO SUBTOTAL 1			
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the Indicated percentage.			
Compliance History		7% Enhancement	Subtotal 2, 3 & 7: \$280
Notes	Respondent was issued one NOV for same or similar violations and one NOV with unrelated violations within the past five years.		+
Culpability		0% Enhancement	Subtotal 4: \$0
Notes	Respondent does not meet any of the culpability criteria.		+
Good Faith Effort to Comply		0% Reduction	Subtotal 5: \$0
Notes	Respondent has not returned to compliance.		+
Economic Benefit		0% Enhancement	Subtotal 6: \$0
	\$2,730 Total EB Amounts	*Capped at the Total EB \$ Amount	=
	\$2,600 Approx. Cost of Compliance		=
SUM OF SUBTOTALS 1-7		Final Subtotal	\$4,280
OTHER FACTORS AS JUSTICE MAY REQUIRE		Adjustment	\$0
Notes			=
		Final Penalty Amount	\$4,280
STATUTORY LIMIT ADJUSTMENT		Final Assessed Penalty	\$4,280
DEFERRAL		Adjustment	\$0
Notes	Respondent received an NOV for same or similar violations within the past five years.		=
PAYABLE PENALTY			\$4,280



Screening Date	30-Sep-2003	Docket Number	2003-1120-PST-E	PCW
Respondent	Sammy's Groceries, Inc. dba Sammy's Groceries No. 1	Policy Revision	2 (09/02)	
Case ID No.	145911	PCW Revision	6/12/2003	
Respondent/Site ID No.	PST Facility ID No. 45487, RN101736866			
Media/Statute	Petroleum Storage Tank			
Env. Coordinator	Sherry Smith			
Site Address	13110 Crosby Lynchburg Road, Crosby, Harris County			

Compliance History Worksheet

Compliance History, Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	1	2%
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	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) 7%

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

Respondent was issued one NOV for same or similar violations and one NOV with unrelated violations within the past five years.

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

Screening Date	30-Sep-03	Docket Number	2003-1120-PST-E	PCW
Respondent	Sammy's Groceries, Inc. dba Sammy's Groceries No. 1			Policy Revision 2 (09/02)
Case ID No.	145911			PCW Revision 6/12/2003
Respondent Site ID No.	PST Facility ID No. 45487, RN101736866			
Media (Statute)	Petroleum Storage Tank			
Ent. Coordinator	Sherry Smith			

Violation Number	
Primary Rule Cite	30 Tex. Admin. Code § 37.815(a) and (b)
Secondary 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 <input type="text"/>
	Potential				
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"/>			
mark only one; use small x	daily				
	monthly				
	quarterly				
	semiannual				
	annual				
	single event		X		
	Violation Base Penalty				\$4,000
Events Notes	Four events (one for each tank) are recommended for based upon the record review conducted on September 27, 2002.				

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount (\$)	<input type="text" value="\$2,730"/>
Violation Final Penalty total	<input type="text" value="\$4,280"/>
This Violation Final Assessed Penalty (adjusted for limits)	<input type="text" value="\$4,280"/>

Economic Benefit Worksheet

Respondent: Sammy's Groceries, Inc. dba Sammy's Groceries No. 1
 ID Number(s): 145911
 Media (Statute): Petroleum Storage Tank
 Violation Number: 0

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or \$)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs

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

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equip				0.0	\$0	\$0	\$0
Financial Assurance [2]	\$2,600	27-Sep-2001	27-Sep-2002	1.0	\$130	\$2,600	\$2,730
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 the petroleum USTs for the 12 months preceding the date of the record review

Approx Cost of Compliance **\$2,600**

TOTAL \$2,730

Customer/Respondent/Owner-Operator:	CN601477466	SAMMYS GROCERIES INC	Classification: AVERAGE	Rating: 11.27
Regulated Entity:	RN101736866	SAMMY GROCERIES 1	Classification: AVERAGE	Site Rating: 1.50
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	45487
Location:	13110 CROSBY LYNCHBURG RD, CROSBY, TX, 77532		Rating Date: 9/1/03 Repeat Violator: NO	
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	October 02, 2003			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	September 30, 1998 to September 30, 2003			

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

Name: Sherry Smith Phone: (512) 239-0572

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 dates of investigations.

- 1 05/05/2003
- 2 03/20/2003
- 3 01/14/1999
- 4 04/15/1999
- 5 09/27/2002

E. Written notices of violations (NOV).

Date: 09/27/2002

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: Failed to demonstrate FA beginning 8/9/02.

Date: 03/20/2003

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(5)
 Description: Failure to have test results available for review.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)
 Description: Failure to complete annual testing.

Self Report? NO

Classification: Minor

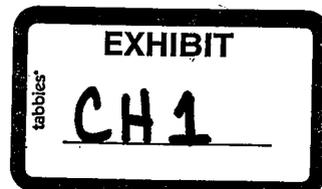
Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(J)
 Description: Failure to replace defective pressure/vacuum relief valve and Stage I dry break adaptor.

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.222(1)
 Description: Failure to replace defective drop tubes.

F. Environmental audits.



Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(C)[G]
Description: FAILURE TO COMPLY
Classification: Moderate

Self Report? NO
Citation: 30 TAC Chapter 115, SubChapter C 115.244(3)
Description: FAILURE TO COMPLY
Classification: Moderate

Self Report? NO
Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)
Description: FAILURE TO COMPLY
Classification: Minor

Self Report? NO
Citation: 30 TAC Chapter 115, SubChapter C 115.245(3)
Description: FAILURE TO COMPLY
Classification: Minor

Self Report? NO
Citation: 30 TAC Chapter 115, SubChapter C 115.246(5)
Description: FAILURE TO COMPLY
Classification: Minor

Date: 01/31/2003
Self Report? NO
Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(5)
Description: Failure to maintain a record of the results of testing conducted at the facility according to 115.245 (Testing Requirements).
Classification: Minor

Self Report? NO
Citation: 30 TAC Chapter 115, SubChapter C 115.245(3)[G]
Description: Failure to conduct five year Stage II testing to verify proper operation of the system. The testing shall include all functional tests that were required for the initial system test.
Classification: Minor

Self Report? NO
Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(A)
Description: Failure to provide and maintain the Stage II Vapor Recovery system in proper operating condition
Classification: Minor

Self Report? NO
Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)[G]
Description: Failure to maintain all components of the Stage II Vapor Recovery system in proper operating condition.

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

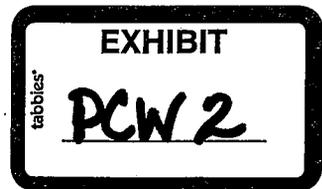
N/A

Penalty Calculation Worksheet (PCW) PCW Revision 6/12/2003

DATES:		PCW 30-Sep-2003	Screening 30-Sep-2003	Priority Due 28-Jan-2004	EPA Due
RESPONDENT INFORMATION					
Respondent	Sammy's Groceries, Inc. dba Sammy's Groceries No. 2				
Respondent/Site ID No(s)	PST Facility ID No. 31931, RN101382919				
Facility/Site Region	12 Houston	Major/Minor Source			Minor
CASE INFORMATION					
Enf./Case ID No(s)	145911	Docket No.		2003-1120-PST-E	No. Violations
Case Priority	3	Order Type		660 without deferral	
Enf. Coordinator	Sherry Smith	EC's Team		Enforcement Team 5	
Media Program(s)	Petroleum Storage Tank				
Admin. Penalty \$ Limit	Minimum \$0	Maximum		\$10,000	

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)		Subtotal 1	\$4,000
ADJUSTMENTS (+/-) TO SUBTOTAL 1			
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.			
Compliance History	9% Enhancement	Subtotal 2, 3 & 7	\$360
Notes	Respondent was issued one NOV for same or similar violations and two NOVs with unrelated violations within the past five years.		+
Culpability	0% Enhancement	Subtotal 4	\$0
Notes	Respondent does not meet any of the culpability criteria.		+
Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
Extraordinary	Before NOV	NOV to EDPRP/Settlement Offer	
Ordinary			
None of the above	<input checked="" type="checkbox"/>	(mark with small x)	+
Notes	Respondent has not returned to compliance		
Economic Benefit	0% Enhancement	Subtotal 6	\$0
	\$2,730 Total EB Amounts	*Capped at the Total EB \$ Amount	
	\$2,600 Approx. Cost of Compliance	=	
SUM OF SUBTOTALS 1-7		Final Subtotal	\$4,360
OTHER FACTORS AS JUSTICE MAY REQUIRE			
Reduces or enhances the Final Subtotal by the indicated percentage. (enter number only; e.g. -30 for -30%)			
Notes		Final Penalty Amount	\$4,360
STATUTORY LIMIT ADJUSTMENT		Final Assessed Penalty	\$4,360
DEFERRAL			
Reduces the Final Assessed Penalty by the indicated percentage. (enter number only; e.g. 20 for 20% reduction)			
Notes	Respondent received an NOV for same or similar violations within the past five years.		=
PAYABLE PENALTY			\$4,360



Screening Date:	30-Sep-2003	Docket Number:	2003-1120-PST-E	PCW
Respondent:	Sammy's Groceries, Inc. dba Sammy's Groceries No. 2		Policy Revision 2 (09/02)	
Case ID No.:	145911		PCW Revision 6/12/2003	
Respondent/Site ID No.:	PST Facility ID No. 31931, RN101382919			
Media (Statute):	Petroleum Storage Tank			
Env. Coordinator:	Sherry Smith			
Site Address:	2810 Market Street, Baytown, Harris County			

Compliance History Worksheet

Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	2	4%
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	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) 9%

Compliance History Repeat Violator (Subtotal 3)

No Yes 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: Respondent was issued one NOV for same or similar violations and two NOVs with unrelated violations within the past five years.

Total Adjustment Percentage (Subtotals 2, 3 & 7) 9%

Screening Date 30-Sep-03 **Docket Number** 2003-1120-PST-E **PCW**
Respondent Sammy's Groceries, Inc. dba Sammy's Groceries No. 2 **Policy Revision 2 (09/02)**
Case ID No. 145911 **PCW Revision** 6/12/2003
Respondent/Site ID No. PST Facility ID No. 31931, RN101382919
Media (Statute) Petroleum Storage Tank
Env. Coordinator Sherry Smith

Violation Number [Redacted]
Primary Rule Cite 30 Tex. Admin. Code §37.815(a) and (b)
Secondary Cite(s) [Redacted]
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 UST's

Base Penalty \$10,000

Environmental, Property and Human Health Matrix

		Harm			
Release		Major	Moderate	Minor	
OR	Actual				Percent [Redacted]
	Potential				

Programmatic Matrix

		Major	Moderate	Minor	
OR	Falsification	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 4

mark only one; use small x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$4,000

Events Notes Four events (one for each tank) are recommended for based upon the record review conducted on May 29, 2002

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount (\$) \$2,730 **Violation Final Penalty total** \$4,360

This Violation Final Assessed Penalty (adjusted for limits) \$4,360

Economic Benefit Worksheet

Respondent: Sammy's Groceries, Inc. dba Sammy's Groceries No. 2
 ID Number(s): 145911
 Media/Statute: Petroleum Storage Tank
 Violation Number: 0

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs

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

Notes for DELAYED costs

Avoided Costs

ANNUALIZE 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]	\$2,600	29-May-2001	29-May-2002	1.0	\$130	\$2,600	\$2,730
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 the petroleum USTs for the 12 months preceding the date of the record review

Approx Cost of Compliance

TOTAL

Compliance History

Customer/Respondent/Owner-Operator:	CN601477466 SAMMYS GROCERIES INC	Classification: AVERAGE	Rating: 11.27
Regulated Entity:	RN101382919 SAMMYS GROCERIES 2	Classification: AVERAGE	Site Rating: 1.29
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	31931
Location:	2810 MARKET ST, BAYTOWN, TX, 77520		Rating Date: 9/1/03 Repeat Violator: NO
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	October 02, 2003		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	September 30, 1998 to September 30, 2003		

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

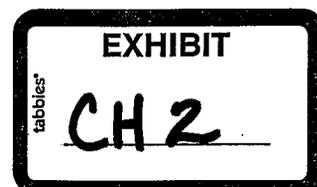
Name: Sherry Smith Phone: (512) 239-0572

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The dates of investigations.
- | | | |
|---|------------|--|
| 1 | 06/03/1999 | |
| 2 | 06/20/2002 | |
| 3 | 05/29/2002 | |
| 4 | 08/25/2000 | |
| 6 | 06/23/1999 | |
- E. Written notices of violations (NOV).
- | | |
|--|--------------------------|
| Date: 05/29/2002 | |
| 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 an acceptable financial assurance mechanism upon request of the ED and failure to demonstrate financial assurance. | |
| Date: 01/22/2001 | |
| Self Report? NO | Classification: Moderate |
| Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(J) | |
| Description: FAILURE TO COMPLY | |
| Date: 09/21/2000 | |
| Self Report? NO | Classification: Moderate |
| Citation: 30 TAC Chapter 115, SubChapter C 115.245(2) | |
| Description: FAILURE TO COMPLY | |
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMS).



N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

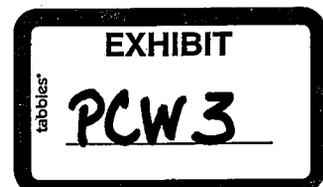
Sites Outside of Texas

N/A

 Policy Revision 2 (09/02)		<h2>Penalty Calculation Worksheet (PCW)</h2>		PCW Revision 6/12/2003	
DATES:					
PCW	30-Sep-2003	Screening	30-Sep-2003	Priority Due	28-Jan-2004
EPA Due					
RESPONDENT INFORMATION					
Respondent	Sammy's Groceries, Inc. dba Young's Drive In Grocery				
Respondent/Site ID No(s)	PST Facility ID No: 53751; RN: 101438837				
Facility/Site Region	12-Houston	Major/Minor Source		Minor	
CASE INFORMATION					
Enf./Case ID No(s)	16643/2		No. Violations		
Docket No.	2003-1120-PST-E		1660 without deferral		
Case Priority	3		Order Type		
Enf. Coordinator	Sherry Smith		EC's Team		
Media Program(s)	Petroleum Storage Tank		Enforcement Team 5		
Admin. Penalty \$ Limit	Minimum	\$0	Maximum	\$10,000	

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)		Subtotal 1	\$2,000
ADJUSTMENTS (+/-) TO SUBTOTAL			
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.			
Compliance History	34% Enhancement	Subtotal 2, 3 & 7	\$680
Notes	Respondent was issued one findings default order, one NOV for same or similar violations, and two NOVs with unrelated violations within the past five years.		+
Culpability	0% Enhancement	Subtotal 4	\$0
Notes	Respondent does not meet any of the culpability criteria		+
Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
Extraordinary	Before NOV	NOV to EDPRP/Settlement Offer	
Ordinary			
None of the above	X	(mark with small x)	+
Notes	Respondent has not returned to compliance		
Economic Benefit	0% Enhancement	Subtotal 6	\$0
	\$1,365	Total EB Amounts	*Capped at the Total EB \$ Amount
	\$1,300	Approx. Cost of Compliance	=
SUM OF SUBTOTALS 1-7		Final Subtotal	\$2,680
OTHER FACTORS AS JUSTICE MAY REQUIRE			
Reduces or enhances the Final Subtotal by the indicated percentage. (enter number only; e.g. -30 for -30%)			
Notes			=
Final Penalty Amount			\$2,680
STATUTORY LIMIT ADJUSTMENT		Final Assessed Penalty	\$2,680
DEFERRAL			
Reduces the Final Assessed Penalty by the indicated percentage. (enter number only; e.g. 20 for 20% reduction)			
Notes	Respondent received an NOV and a findings order for same or similar violations within the past five years		=
PAYABLE PENALTY			\$2,680



Screening Date	30-Sep-2003	Docket Number	2003-1120-PST-E	PCW
Respondent	Sammy's Groceries, Inc. dba Young's Drive In Grocery			Policy Revision 2 (09/02)
Case ID No	16643/2			PCW Revision 6/12/2003
Respondent Site ID No	PST.Facility ID No. 53751, RN101433837			
Media (Statute)	Petroleum Storage Tank			
Int. Coordinator	Sherry Smith			
Site Address	2105 North Pruett Baytown, Harris County			

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)	1	5%
	Other written NOV's	2	4%
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	1	25%
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 judgments 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	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) **34%**

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 Respondent was issued one findings default order, one NOV for same or similar violations, and two NOV's with unrelated violations within the past five years.

Total Adjustment Percentage (Subtotals 2, 3 & 7) 34%

Screening Date:	30-Sep-03	Docket Number: 2003-1120-PST-E	PCW	
Respondent:	Sammy's Groceries, Inc. dba Young's Drive In Grocery	Policy Revision 2 (09/02)		
Case ID No.:	16643/2	PCW Revision 6/12/2003		
Respondent Site ID No.:	PST Facility ID No. 53751, RN101433837			
Media (State):	Petroleum Storage Tank			
Ent. Coordinator:	Sherry Smith			
Violation Number:				
Primary Rule Cite:	30 Tex. Admin. Code §37.815(a) and (b)			
Secondary 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	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Potential	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
				Percent <input type="text"/>
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="2"/>		
<i>mark only one; use small x</i>	daily	<input type="checkbox"/>	<input type="checkbox"/>	
	monthly	<input type="checkbox"/>	<input type="checkbox"/>	
	quarterly	<input type="checkbox"/>	<input type="checkbox"/>	
	semiannual	<input type="checkbox"/>	<input type="checkbox"/>	
	annual	<input type="checkbox"/>	<input type="checkbox"/>	
	single event	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
				Violation Base Penalty <input type="text" value="\$2,000"/>
Events Notes:	two events (one for each tank) are recommended for based upon the record review conducted on May 29, 2002			
Economic Benefit (EB) for this violation				
	Estimated EB Amount (\$)	<input type="text" value="\$1,365"/>		
	Violation Final Penalty total	<input type="text" value="\$2,680"/>		
	This Violation Final Assessed Penalty (adjusted for limits)	<input type="text" value="\$2,680"/>		

Economic Benefit Worksheet

Respondent: Sammy's Groceries, Inc. dba Young's Drive In Grocery
 ID Number(s): 16643/2
 Media (Statute): Petroleum Storage Tank
 Violation Number: 0

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>(No. of transactions)</small>	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/equip				0.0	\$0	\$0	\$0
Financial Assurance [2]	\$1,300	29-May-2001	29-May-2002	1.0	\$65	\$1,300	\$1,365
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 the petroleum USTs for the 12 months preceeding the date of the record review							

Approx Cost of Compliance

TOTAL

Customer/Respondent/Owner-Operator:	CN601477466	SAMMYS GROCERIES INC	Classification: AVERAGE	Rating: 11.27
Regulated Entity:	RN101433837	YOUNGS DRIVE IN GROCERY	Classification: POOR	Site Rating: 67.50
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	53751
Location:	2105 N PRUETT ST, BAYTOWN, TX, 77520		Rating Date: 9/1/03 Repeat Violator: NO	
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	October 02, 2003			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	September 30, 1998 to September 30, 2003			

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

Name: Sherry Smith Phone: (512) 239-0572

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

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

Effective Date: 8/29/03

ADMINORDER 2001-1029-PST-E

Classification: Moderate

Citation: 2C TWC Chapter 20, SubChapter A 26.3475(d)
30 TAC Chapter 334, SubChapter C 334.49(a)[G]
Description: Failure to protect the UST system from corrosion.

Classification: Moderate

Citation: 30 TAC Chapter 37, SubChapter I 37.875(a)
Description: Failure to demonstrate the required financial responsibility 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.

Classification: Moderate

Citation: 2C TWC Chapter 20, SubChapter A 26.3475(a)
30 TAC Chapter 334, SubChapter C 334.50(b)(2)(A)(ii)(III)
Description: Failure to monitor the piping for releases at least once every month.

Classification: Moderate

Citation: 2C TWC Chapter 20, SubChapter A 26.3475(a)
30 TAC Chapter 334, SubChapter C 334.50(b)(2)(A)(i)(III)
Description: Failure to test a line leak detector at least once per year for performance and operational reliability.

Classification: Moderate

Citation: 2C TWC Chapter 20, SubChapter A 26.3475(c)(1)
30 TAC Chapter 334, SubChapter C 334.50(d)(4)(A)(i)
Description: Failure to conduct inventory control in combination with automatic tank gauging.

Classification: Moderate

Citation: 2C TWC Chapter 20, SubChapter A 26.3475(c)(1)
30 TAC Chapter 334, SubChapter C 334.50(d)(4)(A)(ii)(II)
Description: Failure to perform an automatic test for substance loss that can detect a release which equals or exceeds a rate of 0.2 gallons per hour from any portion of the tank which contains regulated substances.

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.48(c)
Description: Failure to conduct effective manual or automatic inventory control procedures for all UST system at retail services stations, regardless of which method of release detection is used.

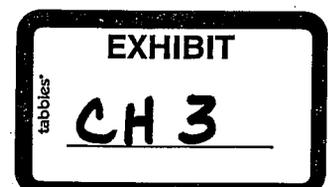
- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The dates of investigations.



- 1 06/20/2002
- 2 06/17/2003
- 3 02/26/2003
- 4 04/30/2001
- 5 05/29/2002
- 6 05/12/1999
- 7 12/10/2002

E. Written notices of violations (NOV).

Date: 05/29/2002

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 financial assurance mechanism of proof of assuance.

Date: 02/26/2001

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.48(c)
 Description: FAILURE TO COMPLY

Date: 12/10/2002

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(5)
 Description: Failure to maintain a record of the results of testing conducted at the facility according to 115.245 (Testing Requirements).

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.244(1)
 Description: Failure to conduct daily inspections for the Stage II Vapor Recovery system. These inspections shall include the applicable portions of Section 115.242(4) and Section 115.242(3)(A)-(F), (H)-(I).

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(J)
 Description: Failure to maintain all components of the Stage II Vapor Recovery system to an approved condition free of defects that would impair the effectiveness of the system -- pressure/vacuum relief valves, vapor check valves, or Stage I dry breaks that are inoperative or defective.

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.242(9)[G]
 Description: Failure to post operating instructions conspicuously on the front of each dispenser equipped with a Stage II system.

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(A)
 Description: Failure to maintain all components of the Stage II Vapor Recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s), and free of defects that would impair the effectiveness of the system.

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
SAMMY'S GROCERIES, INC. DBA
SAMMY'S GROCERIES NO. 1,
SAMMY'S GROCERIES NO. 2, and
YOUNG'S DRIVE IN GROCERY
RN101736866, RN101382919, and
RN101433837

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BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2003-1120-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 & 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 Sammy's Groceries, Inc. dba Sammy's Groceries No. 1, Sammy's Groceries No. 2, and Young's Drive In Grocery ("Sammy's").

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

FINDINGS OF FACT

1. Sammy's owned and operated a convenience store with retail sales of gasoline, Sammy's Groceries No. 1, located at 13110 Crosby Lynchburg Rd, Crosby, Harris County, Texas; Sammy's owns and operates a convenience store with retail sales of gasoline, Sammy's Groceries No. 2, located at 2810 Market Street, Baytown, Harris County, Texas; and Sammy's owned and operated a convenience store with retail sales of gasoline, Young's Drive In Grocery, located at 2105 N Pruet, Baytown, Harris County, Texas (collectively referred to as the "Facilities").
2. Sammy's underground storage tanks ("USTs") at the Facilities are, and were, not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Sammy's USTs contain, or contained, a regulated petroleum substance as defined in the rules of the Commission.

3. During a record review conducted on May 29, 2002, the TCEQ Financial Administration Division Staff documented that Sammy's failed to demonstrate acceptable financial assurance for taking corrective action and or compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation the petroleum USTs at Young's Drive In Grocery and Sammy's Groceries No. 2.
4. During a record review conducted on September 27, 2002, the TCEQ Financial Administration Division Staff documented that Sammy's failed to demonstrate acceptable financial assurance for taking corrective action and or compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation the petroleum USTs at Sammy's Groceries No. 1.
5. Sammy's received notice of the violations on or about June 6 and October 2, 2002.
6. The Executive Director recognizes that Sammy's sold Sammy's Grocery No. 1 and Young's Drive In Grocery on or about November 18, 2004.
7. 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 Sammy's Groceries, Inc. dba Sammy's Groceries No. 1, Sammy's Groceries No. 2, and Young's Drive In Grocery" (the "EDPRP") in the TCEQ Chief Clerk's office on April 2, 2004.
8. By letter dated April 2, 2004, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Sammy's with notice of the EDPRP. According to the return receipt "green card", Sammy's received notice of the EDPRP on April 5, 2004, as evidenced by the signature on the card.
9. More than 20 days have elapsed since Sammy's received notice of the EDPRP, provided by the Executive Director. Sammy's failed to file an answer to the EDPRP, 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, Sammy's is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 & 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Sammy's failed to demonstrate acceptable financial assurance for taking corrective action and or compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation the petroleum USTs at Young's Drive In Grocery and Sammy's Groceries No. 2. in violation of 30 TEX. ADMIN. CODE § 37.815 (a) and (b).
3. As evidenced by Finding of Fact No. 4., Sammy's failed to demonstrate acceptable financial assurance for taking corrective action and or compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation the petroleum USTs at Sammy's Groceries No. 1. in violation of 30 TEX. ADMIN. CODE § 37.815 (a) and (b).
4. As evidenced by Finding of Fact Nos. 7 and 8, the Executive Director has timely served Sammy's 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. 9 Sammy's 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 Sammy's and assess the penalty recommended by the Executive Director.
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Sammy's 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.
7. An administrative penalty in the amount of eleven thousand three hundred twenty dollars (\$11,320.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. 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.

9. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Sammy's UST delivery certificate if the Commission finds that good cause exists.
10. Good cause for revocation of Sammy's UST delivery certificate exists as justified by Findings of Fact Nos. 3-9 and Conclusions of Law Nos. 2-5.

ORDERING PROVISIONS

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

1. Sammy's is assessed an administrative penalty in the amount of eleven thousand three hundred twenty dollars (\$11,320.00) for violations of TEX. WATER CODE chs.7 and 26 and rules of the TCEQ. The payment of this administrative penalty and Sammy'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 effective date of this Order and shall be sent with the notation "Re: Sammy's Groceries, Inc. dba Sammy's Groceries No. 1, Sammy's Groceries No. 2, and Young's Drive In Grocery ("Sammy's"); Docket No. 2003-1120-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. Sammy's UST delivery certificate is revoked immediately upon the effective date of this Order. Sammy's may submit an application for a new delivery certificate only after Sammy's has complied with all of the requirements of this Order.
3. Within 10 days after the effective date of this Order, Sammy's 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. Sammy's shall undertake the following technical requirements:
- a. Within 30 days after the effective date of this Order, Sammy's shall obtain proof of acceptable financial assurance for taking corrective action and or compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation the petroleum USTs at Sammy's Groceries No. 2. (Sammy's no longer owns Sammy's Grocery No. 1 and Young's Drive In Grocery.)
 - b. Sammy's shall submit all certified 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

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

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

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is 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."

4. All relief not expressly granted in this Order is denied.

5. The provisions of this Order shall apply to and be binding upon Sammy's. Sammy's is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facilities operations referenced in this Order.
6. If Sammy's 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, Sammy's failure to comply is not a violation of this Order. Sammy's shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Sammy's shall notify the Executive Director within seven days after Sammy's becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
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 Sammy's shall be made in writing to the Executive Director. Extensions are not effective until Sammy's 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 Sammy's if the Executive Director determines that Sammy's 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.

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, 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 Sammy’s Groceries, Inc. dba Sammy’s Groceries No. 1, Sammy’s Groceries No. 2, and Young’s Drive In Grocery’ (‘the “EDPRP”’) was filed with the Office of the Chief Clerk on April 2, 2004.

The EDPRP was sent to Sammy’s at its last known address on April 2, 2004 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt ‘green card’, Sammy’s received notice of the EDPRP on April 5, 2004, as evidenced by the signature on the card

More than 20 days have elapsed since Sammy’s received notice of the EDPRP. Sammy’s failed to file an answer to the EDPRP, 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 1 day of August, 2007.



Margaret Jackson
Notary Signature