

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2004-1655-PST-E TCEQ ID: RN101543494 CASE NO.: 35687

RESPONDENT NAME: MOHAMMAD RAFIUL HABIB DBA SOUTH BUCKNER FOOD MART

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: 521 South Buckner Boulevard, Dallas, Dallas 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 one additional pending enforcement action (Docket No. 2006-0798-PST-E).</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 June 9, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p>TCEQ Attorney: Ms. Kari L. Gilbreth , Litigation Division, MC 175, (512) 239-1320 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873</p> <p>TCEQ Enforcement Coordinator: Mr. Thomas Greimel, Waste Enforcement Section, MC 128, (512) 239-5690</p> <p>TCEQ Regional Contact: Mr. Sam Barrett, Waste Section Manager, MC R-4, (817) 588-5903</p> <p>Respondent: Mr. Mohammad Rafiul Habib, Owner, South Buckner Food Mart, 2009 Meadowbrook Dr., Mesquite, Texas 75149</p> <p>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: None</p> <p>Dates of Investigation Relating to this Case: August 16, 2004</p> <p>Date of NOE Relating to this Case: September 30, 2004</p> <p>Background Facts:</p> <p>The EDP RP was filed April 25, 2005. The EDFARP was filed August 7, 2008. The Respondent received notice of the EDFARP on or before August 11, 2006, which is the date the return receipt "green card" was returned to the Office of Legal Services.</p> <p>PST:</p> <p>Failed to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily and property damage caused by accidental releases from the operation of petroleum [30 TEX. ADMIN. CODE § 37.815(a) and (b)].</p>	<p>Total Assessed: \$1,130</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$0</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 proposed Order.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Action Taken:</p> <p>The Executive Director recognizes that the Respondent provided proof of financial assurance for the underground storage tanks to the TCEQ indicating coverage from May 28, 2004 through May 28, 2005.</p> <p>Ordering Provisions: 1) Immediately, upon the effective date of the Order, Mr. Habib's delivery certificate is revoked.</p> <p>2) Within ten days of the effective date of the Order, Mr. Habib shall send his delivery certificate to the Order Compliance Team.</p>



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 17, 2004

DATES

PCW 23-Jul-2008 Screening 12-Oct-2004 Priority Due 10-Jan-2005 EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent Mohammad Rafiul Habib dba South Buckner Food Mart
 Reg. Ent. Ref. No. RN101543494
 Additional ID No(s) Petroleum Storage Tank Facility ID No. 0072365
 Facility/Site Region 4-Dallas/Fort Worth Major/Minor Source Minor Source

CASE INFORMATION

Enf./Case ID No. 35687 No. of Violations 1
 Docket No. 2004-1655-PST-E Order Type 1660 without deferral
 Case Priority 3 Enf. Coordinator Thomas Greimel
 Media Program(s) Petroleum Storage Tank EC's Team Enforcement Team 6
 Multi-Media N/A
 Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

Penalty Calculation Section

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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 13% Enhancement Subtotals 2, 3, & 7 \$130

Notes The respondent has received one NOV for a similar violation and four NOVs for dissimilar violations.

Culpability No 0% Enhancement Subtotal 4 \$0

Notes The respondent does not meet the culpability criteria.

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

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

Notes No good faith in default situations.

Economic Benefit 0% Enhancement* Subtotal 6 \$0

Total EB Amounts	\$1,365	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,300	

SUM OF SUBTOTALS 1-7 Final Subtotal \$1,130

OTHER FACTORS AS JUSTICE MAY REQUIRE 0% Adjustment \$0

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

Notes N/A

Final Penalty Amount \$1,130

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$1,130

DEFERRAL 0% Reduction Adjustment \$0

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

Notes This is not an expedited case.

PAYABLE PENALTY \$1,130

Screening Date	12-Oct-2004	Docket No.	2004-1655-PST-E	PCW
Respondent	Mohammad Rafiul Habib dba South Buckner Food Mart	<i>Policy Revision 2 (September 2002)</i>		
Case ID No.	35687	<i>PCW Revision May 17, 2004</i>		
Reg. Ent. Reference No.	RN101543494			
Additional ID No(s)	Petroleum Storage Tank Facility ID No. 0072365			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Thomas Greimel			
Site Address	521 South Buckner Blvd., Dallas, Dallas County			

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	<i>Enter Number Here</i>	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	4	8%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government <i>(number of judgements or consent decrees meeting criteria)</i>	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which notices were)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 13%

>> Repeat Violator (Subtotal 3)

No	Adjustment Percentage (Subtotal 3) 0%
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>> Compliance History Person Classification (Subtotal 7)

Average Performer	Adjustment Percentage (Subtotal 7) 0%
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>> Compliance History Summary

Compliance History Notes	The respondent has received one NOV for a similar violation and four NOVs for dissimilar violations.
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Total Adjustment Percentage (Subtotals 2, 3, & 7) 13%

Screening Date	12-Oct-2004	Docket No.	2004-1655-PST-E	PCW
Respondent	Mohammad Rafiul Habib dba South Buckner Food Mart			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	35687			<i>PCW Revision May 17, 2004</i>
Reg. Ent. Reference No.	RN101543494			
Additional ID No(s).	Petroleum Storage Tank Facility ID No. 0072365			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Thomas Greimel			
Violation Number	1			
Primary Rule Cite(s)	30 Tex. Admin. Code § 37.815(a) and (b)			
Secondary Rule Cite(s)				
Violation Description	Failure to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.			
		Base Penalty	\$10,000	

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

		Harm			
Release		Major	Moderate	Minor	
Actual					Percent
Potential					

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
		X			Percent 10%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

Violation Events

Number of Violation Events: 1

<i>mark only one use a small x</i>	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	X

Violation Base Penalty \$1,000

One single event for one tank is recommended for the 12 month period prior to the date of the record review conducted on August 16, 2004.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount \$1,365	Violation Final Penalty Total \$1,130
This violation Final Assessed Penalty (adjusted for limits) \$1,130	

Economic Benefit Worksheet

Respondent: Mohammad Rafiul Habib dba South Buckner Food Mart
Case ID No.: 35687
Reg. Ent. Reference No.: RN101543494
Additional ID No(s): Petroleum Storage Tank Facility ID No. 0072365
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
No commas or \$							

Delayed Costs

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

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item. (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]	\$1,300	02-Apr-2002	02-Apr-2003	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. Date required is one year prior to the record review date. Final date is one year later as this is an annual requirement.

Approx. Cost of Compliance \$1,300

TOTAL \$1,365

Compliance History

Customer/Respondent/Owner-Operator: CN601581887 HABIB, MOHAMMAD RAFIUL Classification: AVERAGE Rating: 1.50
Regulated Entity: RN101543494 SOUTH BUCKNER FOOD MART Classification: AVERAGE Site Rating: 1.50
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 72365
REGISTRATION
Location: 521 S BUCKNER BLVD, DALLAS, TX, 75217 Rating Date: September 01 05 Repeat Violator: NO
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: April 29, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: October 11, 1999 to October 11, 2004
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Thomas Greimel Phone: (512) 239-5690

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? Yes
3. If Yes, who is the current owner? Mohammad Rafiul Habib
4. If Yes, who was/were the prior owner(s)? Haque Ashrafil
5. When did the change(s) in ownership occur? 7/28/2003

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- | | | |
|---|------------|----------|
| 1 | 07/14/2000 | (117392) |
| 2 | 08/30/2002 | (9599) |
| 3 | 12/30/2002 | (13723) |
| 4 | 06/24/2003 | (276673) |
| 5 | 08/11/2003 | (148444) |
| 6 | 10/01/2004 | (290339) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | | |
|--------------|----------------------------------------------------------------------------------------|----------|-----------------|----------|
| Date: | 07/14/2000 | (116766) | | |
| Self Report? | NO | | Classification: | Minor |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.246(7)(A) | | | |
| Description: | FAILURE TO COMPLY | | | |
| Date: | 07/14/2000 | (117391) | | |
| Self Report? | NO | | Classification: | Minor |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.246(7)(A) | | | |
| Description: | FAILURE TO COMPLY | | | |
| Date: | 08/30/2002 | (9599) | | |
| Self Report? | NO | | Classification: | Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.246(7)(A) | | | |
| Description: | At the time of the investigation the Stage II records were not available for review. | | | |
| Date: | 06/24/2003 | (276673) | | |
| Self Report? | NO | | Classification: | Moderate |
| Citation: | 30 TAC Chapter 37, SubChapter I 37.815(a)
30 TAC Chapter 37, SubChapter I 37.815(b) | | | |

Description: Failure to provide acceptable financial assurance

Date 08/12/2003 (148444)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.246(7)(A)

Description: Failure to make Stage II records available for review at the site for authorized representatives.

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
MOHAMMAD RAFIUL HABIB
DBA SOUTH BUCKNER FOOD
MART; RN101543494**

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§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER
DOCKET NO. 2004-1655-PST-E**

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's First Amended Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, and the rules of the TCEQ, which requests appropriate relief, including the revocation of the respondent's underground storage tank delivery certificate, the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Mohammad Rafiul Habib dba South Buckner Food Mart ("Mr. Habib").

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

FINDINGS OF FACT

1. Mr. Habib owns and operates a convenience store with retail sales of gasoline located at 521 South Buckner Blvd., Dallas, Dallas County, Texas (the "Facility").
2. Mr. Habib's one underground storage tank ("UST") is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Habib's UST contains a regulated substance as defined in the rules of the Commission.
3. During a record review conducted on August 16, 2004, a TCEQ Austin Regional Office investigator documented that Mr. Habib failed to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs.
4. Mr. Habib received notice of the violation on or October 5, 2004.

5. The Executive Director recognizes that Mr. Habib provided proof of financial assurance for the underground storage tanks to the TCEQ indicating coverage from May 28, 2004 through May 28, 2005.
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 Mohammad Rafiul Habib dba South Buckner Food Mart" (the "EDPRP") in the TCEQ Chief Clerk's office on April 25, 2005.
7. By letter dated April 25, 2005, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Habib with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Mr. Habib received notice of the EDPRP.
8. 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 Mohammad Rafiul Habib dba South Buckner Food Mart" (the "EDFARP") in the TCEQ Chief Clerk's office on August 7, 2006.
9. By letter dated August 7, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Habib with notice of the EDPRP. According to the return receipt signed "green card," Mr. Habib received notice of the EDFARP on or before August 11, 2006 (the date which the Office of Legal Services received the green card).
10. More than 20 days have elapsed since Mr. Habib received notice of the EDPRP and EDFARP, provided by the Executive Director. Mr. Habib failed to file an answer to either the EDPRP or EDFARP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Habib is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Habib failed to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and

property damage caused by accidental releases from the operation of petroleum USTs, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b).

3. As evidenced by Finding of Fact Nos. 6 through 9, the Executive Director has timely served Mr. Habib with proper notice of the EDPRP and EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a) and (c)(2).
4. As evidenced by Finding of Fact No. 10, Mr. Habib has failed to file a timely answer to the EDPRP or EDFARP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Habib and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Habib 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.
6. An administrative penalty in the amount of one thousand one hundred thirty dollars (\$1,130.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. 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.
8. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Mr. Habib's UST delivery certificate if the Commission finds that good cause exists.
9. Good cause for revocation of Mr. Habib's UST delivery certificate exists as justified by Findings of Fact Nos. 3 and 6 through 10 and Conclusions of Law Nos. 2 through 4.

ORDERING PROVISIONS

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

1. Mr. Habib is assessed an administrative penalty in the amount of one thousand one hundred thirty dollars (\$1,130.00) for violations of TEX. WATER CODE ch. 26 and rules of the TCEQ. The payment of this administrative penalty and Mr. Habib'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: Mohammad Rafiul Habib dba South Buckner Food Mart; Docket No. 2004-1655-PST-E" to:

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

2. Mr. Habib's UST delivery certificate is revoked immediately upon the effective date of this Order. Mr. Habib may submit an application for a new delivery certificate only after Mr. Habib has complied with all of the requirements of this Order.
3. Within 10 days after the effective date of this Order, Mr. Habib shall send his 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. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Mr. Habib. Mr. Habib is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
6. 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 Mr. Habib shall be made in writing to the Executive Director. Extensions are not effective until Mr. Habib receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Habib if the Executive Director determines that Mr. Habib has not complied with one or more of the terms or conditions in this Order.
8. 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.
9. 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.

Mohammad Rafiul Habib dba South Buckner Food Mart
Docket No. 2004-1655-PST-E
Page 6

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF KARI L. GILBRETH

STATE OF TEXAS §
 §
COUNTY OF WILLIAMSON §

“My name is Kari L. Gilbreth. 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 Mohammad Rafiul Habib dba South Buckner Food Mart” (the “EDPRP”) was filed with the Office of the Chief Clerk on April 25, 2005.

The EDPRP was sent to Mr. Habib at his last known address on April 25, 2005 via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating the respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

On behalf of the Executive Director of the Texas Commission on Environmental Quality, 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 Mohammad Rafiul Habib dba South Buckner Food Mart” (the “EDFARP”) was filed with the Office of the Chief Clerk on August 7, 2006.

The EDFARP was sent to Mr. Habib at his last known address on August 7, 2006 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt signed “green card,” Mr. Habib received notice of the EDFARP on or before August 11, 2006 (the date which the Office of Legal Services received the green card).

More than 20 days have elapsed since Mr. Habib received notice of the EDPRP and EDFARP. Mr. Habib failed to file an answer to the EDPRP or EDFARP, failed to request a hearing, and failed to schedule a settlement conference."



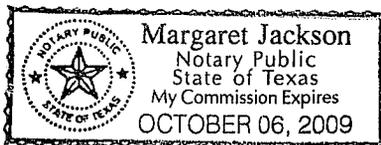
Kari L. Gilbreth

Attorney

Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Kari L. Gilbreth, 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 21st day of April, A.D., 2008.



Notary Stamp