

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2005-1241-PST-E TCEQ ID NO.: RN100925064 CASE NO.: 26186**

**RESPONDENT NAME: MOHAMED AHMED AL BATAINEH DBA HARVEST FOOD STORE**

<b>ORDER TYPE:</b>		
<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	

<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

**SITE WHERE VIOLATION(S) OCCURRED:** 4626 Yale Street, Houston, Harris County

**TYPE OF OPERATION:** Convenience store with retail sales of gasoline

**SMALL BUSINESS:**  Yes  No

**OTHER SIGNIFICANT MATTERS:** There are no complaints. There are no other pending enforcement actions regarding this facility.

**INTERESTED PARTIES:** No one other than the ED and the Respondent has expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired on February 25, 2008. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Mr. Gary K. Shiu, Litigation Division, MC R-12, (713) 422-8916

**TCEQ Enforcement Coordinator:** Mr. Terry Murphy, Air Enforcement Section, MC 149, (512) 239-5025

**TCEQ Regional Contact:** Ms. Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623

**Respondent:** Mr. Mohamed Ahmed Al Bataineh, Owner, Harvest Food Store, 11842 Stone Bridge,  
Houston, Texas 77064

**Respondent's Attorney:** Not represented by counsel.

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Dates of Complaints Relating to this Case:</b> None</p> <p><b>Dates of Investigations Relating to this Case:</b> October 20, 2003, June 9, 2005 and July 12, 2005</p> <p><b>Dates of NOVs/NOEs Relating to this Case:</b> October 20, 2003 (NOV) July 1, 2005 (NOE)</p> <p><b>Background Facts:</b></p> <p>On March 28, 2006, the Executive Director filed the original EDPRP against the Respondent. By letter dated March 28, 2006, sent via certified mail, return receipt requested, and via first class mail, the Executive Director served the Respondent 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 the Respondent received notice of the EDPRP.</p> <p>More than 20 days have elapsed since the Respondent received notice of the EDPRP. The Respondent failed to file an Answer to the EDPRP, failed to request a hearing, and failed to schedule 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><b>PST</b></p> <p>1) Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].</p> <p>2) Failed to pay outstanding UST Registration late fees for TCEQ Financial Administration Account No. 0057887U [30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702].</p>	<p><b>Total Assessed:</b> \$1,050</p> <p><b>Total Deferred:</b> \$0</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Due to General Revenue:</b> \$1,050</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><b>Site Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions</b></p> <p>The Respondent's UST delivery certificate is revoked immediately upon the effective date of this Order. The Respondent may submit an application for a new delivery certificate only after the Respondent has complied with all of the requirements of this Order.</p> <p>The Respondent shall undertake the following technical requirements:</p> <p>1) Within 10 days, send in his UST delivery certificate to the TCEQ.</p> <p>2) Within 30 days:</p> <p>a. Submit payment for all outstanding fees, including any associate penalties and interest ; and</p> <p>b. Submit written, notarized certification, and include detailed supporting documentation that demonstrates acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.</p>



Policy Revision 2 (September 2002)

# Penalty Calculation Worksheet (PCW)

PCW Revision May 19, 2005

<b>DATES</b>	Assigned	05-Jul-2005	Screening	14-Jul-2005	EPA Due	
	PCW	26-Sep-2005				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	Mohamed Ahmed Al Bataineh dba Harvest Food Store
Reg. Ent. Ref. No.	RN100925064
Facility/Site Region	12-Houston
Major/Minor Source	Minor Source

<b>CASE INFORMATION</b>			
Enf./Case ID No.	26186	No. of Violations	2
Docket No.	2005-1241-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	David Flores
Multi-Media		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

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

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History** 5% Enhancement Subtotals 2, 3, & 7 \$50

Notes: The respondent received one NOV, dated 10/20/2003, for the same violation.

**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 EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with a small x)

Notes: The respondent has not achieved compliance.

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

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

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

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

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

Notes:

**Final Penalty Amount** \$1,050

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty \$1,050

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

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

Notes: No deferral recommended due to failure to settle in a timely manner.

**PAYABLE PENALTY** \$1,050

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**Screening Date** 14-Jul-2005 **Docket No.** 2005-1241-PST-E **PCW**  
**Respondent** Mohamed Ahmed Al Bataineh dba Harvest Food Store *Policy Revision 2 (September 2002)*  
**Case ID No.** 26186 *PCW Revision May 19, 2005*  
**Reg. Ent. Reference No.** RN100925064  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** David Flores

**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 ( <i>number of NOV's meeting criteria</i> )	1	5%
	Other written NOV's	0	0%
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)** 5%

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

No <

**Adjustment Percentage (Subtotal 3)** 0%

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

Average Performer <

**Adjustment Percentage (Subtotal 7)** 0%

>> **Compliance History Summary**

**Compliance History Notes** The respondent received one NOV, dated 10/20/2003, for the same violation.

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

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Screening Date 14-Jul-2005

Docket No. 2005-1241-PST-E

PCW

Respondent Mohamed Ahmed Al Bataineh dba Harvest Food Store

Policy Revision 2 (September 2002)

Case ID No. 26186

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN100925064

Media [Statute] Petroleum Storage Tank

Enf. Coordinator David Flores

Violation Number

Primary Rule Cite(s)

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 underground storage tanks.

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

		Falsification	Major	Moderate	Minor	Percent <input type="text" value="10%"/>
		<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>	

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

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

Violation Base Penalty

One single event is recommended for the one tank at the facility based upon a record review conducted on 06/09/2005.

Economic Benefit (EB) for this violation      Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

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### Economic Benefit Worksheet

**Respondent** Mohamed Ahmed Al Bataineh dba Harvest Food Store  
**Case ID No.** 26186  
**Reg. Ent. Reference No.** RN100925064  
**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
<b>Delayed Costs</b>							
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	Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Avoided Costs</b>							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]	\$650	04-Aug-2002	04-Aug-2003	1.0	\$33	\$650	\$683
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided costs include the estimated cost to provide financial assurance for one underground storage tank. Date required (08/04/2002) is one year prior to the initial request to submit proof of financial assurance on 08/04/2003.

Approx. Cost of Compliance **\$650**

**TOTAL \$683**

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Screening Date 14-Jul-2005

Docket No. 2005-1241-PST-E

PCW

Respondent Mohamed Ahmed Al Bataineh dba Harvest Food Store

Policy Revision 2 (September 2002)

Case ID No. 26186

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN100925064

Media [Statute] Petroleum Storage Tank

Enf. Coordinator David Flores

Violation Number

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.22(a)

Secondary Rule Cite(s) Texas Water Code § 5.702

Violation Description

Failed to pay outstanding Underground Storage Tank Registration late fee for TCEQ Financial Administration Account No. 0057887U as documented during a record review conducted on July 12, 2005.

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

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

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

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

Violation Base Penalty

No additional administrative penalty was calculated for this violation as penalties and interest will be assessed during the next billing cycle.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

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### Economic Benefit Worksheet

Respondent Mohamed Ahmed Al Bataineh dba Harvest Food Store  
 Case ID No. 26186  
 Reg. Ent. Reference No. RN100925064  
 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
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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: No economic benefit associated with this violation.

**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: CN602301624 BATAINEH, MOHAMED AHMED AL Classification: AVERAGE Rating: 0.750  
Regulated Entity: RN100925064 HARVEST FOOD STORE Classification: AVERAGE Site Rating: 0.75

ID Number(s):  
PETROLEUM STORAGE TANK STAGE II REGISTRATION 56836  
AIR NEW SOURCE PERMITS ACCOUNT NUMBER HG47210  
PETROLEUM STORAGE TANK REGISTRATION 56836  
REGISTRATION

Location: 4626 YALE ST, HOUSTON, TX, 77018 Rating Date: 9/1/04. Repeat Violator: NO

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: July 27, 2005

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: July 12, 2000 to July 12, 2005

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Cari Bing Phone: (512) 239-1445

## 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
6. Comments:

## 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 08/05/2003 (147797)
- 2 07/01/2005 (395539)
- 3 10/20/2003 (280540)
- 4 10/02/2003 (250582)
- 5 06/18/2005 (381077)

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

Date: 10/20/2003 (280540)

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  
MOHAMED AHMED AL  
BATAINEH DBA HARVEST FOOD  
STORE,  
RN100925064**

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**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER  
DOCKET NO. 2005-1241-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. 5, 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 Mohamed Ahmed Al Bataineh dba Harvest Food Store (“Mr. Bataineh”).

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

**FINDINGS OF FACT**

1. Mr. Bataineh owns and/or operates a convenience store with retail sales of gasoline at 4626 Yale Street in Houston, Harris County, Texas (the “Facility”).
2. Mr. Bataineh’s underground storage tanks (“USTs”) are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Bataineh’s USTs contain a regulated substance as defined in the rules of the Commission.
3. During a records review conducted on June 9, 2005, a TCEQ Houston Regional Office investigator documented that Mr. Bataineh 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 underground storage tanks.

4. During a records review conducted on July 12, 2005, a TCEQ Houston Regional Office investigator documented that Mr. Bataineh failed to pay outstanding Underground Storage Tank Registration late fees for TCEQ Financial Administration Account No. 0057887U.
5. Mr. Bataineh received notice of the violations on or about July 6, 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 Mohamed Ahmed Al Bataineh dba Harvest Food Store" (the "EDPRP") in the TCEQ Chief Clerk's office on March 28, 2006.
7. By letter dated March 28, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Bataineh 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. Bataineh received notice of the EDPRP.
8. More than 20 days have elapsed since Mr. Bataineh received notice of the EDPRP, provided by the Executive Director. Mr. Bataineh 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, Mr. Bataineh is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 5, 7, and 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Bataineh 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 underground storage tanks, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b).
3. As evidenced by Finding of Fact No. 4, Mr. Bataineh failed to pay outstanding Underground Storage Tank Registration late fees for TCEQ Financial Administration Account No. 0057887U, 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 Mr. Bataineh with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
5. As evidenced by Finding of Fact No. 8, Mr. Bataineh 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 Mr. Bataineh 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 Mr. Bataineh 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 one thousand fifty dollars (\$1,050.00) 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 Mr. Bataineh's UST delivery certificate if the Commission finds that good cause exists.
10. Good cause for revocation of Mr. Bataineh's UST delivery certificate exists as justified by Findings of Fact Nos. 3, 4, 5, 6, 7, and 8 and Conclusions of Law Nos. 2, 3, 4, and 5.

### **ORDERING PROVISIONS**

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

1. Mr. Bataineh is assessed an administrative penalty in the amount of one thousand fifty dollars (\$1,050.00) for violations of TEX. WATER CODE chs. 5, 7, and 26 and rules of the TCEQ. The payment of this administrative penalty and Mr. Bataineh'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: Mohamed Ahmed Al Bataineh dba Harvest Food Store; Docket No. 2005-1241-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. Bataineh's UST delivery certificate is revoked immediately upon the effective date of this Order. Mr. Bataineh may submit an application for a new delivery certificate only after Mr. Bataineh has complied with all of the requirements of this Order.
3. Within 10 days after the effective date of this Order, Mr. Bataineh 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. Mr. Bataineh shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order, Mr. Bataineh shall:
    - i. submit payment for all outstanding fees, including any associated penalties and interest and with the notation, "Mohamed Ahmed Al Bataineh, PST Facility Identification No., 56836," 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

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- ii. submit written certification as described below, and include detailed supporting documentation that demonstrates 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 underground storage tanks in accordance with 30 TEX. ADMIN. CODE § 37.815(a) and (b).

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.”

The certification shall be submitted to:

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

with a copy to:

Work Leader  
Team 5, Section III  
Enforcement Division, MC 149  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

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

7. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Bataineh shall be made in writing to the Executive Director. Extensions are not effective until Mr. Bataineh receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Bataineh if the Executive Director determines that Mr. Bataineh 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.

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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF GARY K. SHIU**

STATE OF TEXAS       §  
                                  §  
COUNTY OF TRAVIS   §

“My name is Gary K. Shiu. 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 Mohamed Ahmed Al Bataineh dba Harvest Food Store” (the “EDPRP”) was filed with the Office of the Chief Clerk on March 28, 2006.

The EDPRP was sent to Mr. Bataineh at his last known address on March 28, 2006 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).

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



\_\_\_\_\_  
Gary K. Shiu  
Attorney  
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 9<sup>th</sup> day of JANUARY, A.D., 2008.

Mehgan Taack  
\_\_\_\_\_  
Notary Signature

Notary Stamp

