

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

**DOCKET NO.: 2006-0490-PST-E TCEQ ID: RN100737493 CASE NO.: 29278
RESPONDENT NAME: BOUNTHEUNG NOYMANY DBA BOAT CLUB GROCERY**

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input checked="" 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 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: 5300 Boat Club Road, Fort Worth, Tarrant County

TYPE OF OPERATION: convenience store with retail sales of gasoline

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location. This Respondent owes an outstanding administrative penalty of \$6,750 from a default order issued by the Commission on October 8, 2008.

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 9, 2009. No comments were received.

CONTACTS AND MAILING LIST:

- TCEQ Attorney:** Ms. Rebecca M. Combs, Litigation Division, MC 175, (512) 239-6939
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019
- TCEQ Enforcement Coordinator:** Ms. Judy Kluge, Waste Enforcement Section, MC R-4, (817) 588-5825
- TCEQ Regional Contact:** Mr. Sam Barrett, DFW Regional Office, MC R-4, (817) 588-5903
- Respondent:** Mr. Bountheung Noymany, Owner, Boat Club Grocery, 5300 Boat Club Road, Fort Worth, Texas 76135
- Respondent's Attorney:** Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: N/A</p> <p>Date of Investigation Relating to this Case: March 21, 2006</p> <p>Dates of NOEs Relating to this Case: May 1, 2006 and June 2, 2006</p> <p>Background Facts: The EDPRP was filed on October 30, 2007. According to the return receipt "green card," the Respondent received notice of the EDPRP on November 3, 2007, as evidenced by the signature on the card. The EDFARP was filed on April 7, 2008. According to the return receipt "green card," the Respondent received notice of the EDFARP on April 9, 2008, as evidenced by the signature on the card. The Respondent has failed to answer either the EDPRP or the EDFARP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: The Respondent is not yet in compliance.</p> <p>PST:</p> <p>1. Failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years [TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(c)(4)].</p> <p>2. Failed to ensure that all tanks are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring) [TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A)].</p> <p>3. Failed to conduct proper release detection for the product piping associated with the UST system [TEX. WATER CODE § 26.3475(a) and 30 TEX. ADMIN. CODE § 334.50(b)(2)].</p> <p>4. Failed to test the line leak detectors at least once per year for performance and operational reliability [TEX. WATER CODE § 26.3475(a) and 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III)].</p>	<p>Total Assessed: \$21,000</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$21,000</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this proposed Order.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken: The Executive Director recognizes that on June 1, 2006, the Respondent corrected violation nos. 1, 3, and 4 for cathodic protection and release detection for piping and line leak detectors.</p> <p>Ordering Provisions:</p> <p>1. The Respondent's UST delivery certificate is revoked immediately. Respondent may submit an application for a new delivery certificate only after Respondent has complied with all of the requirements set forth in these Ordering Provisions.</p> <p>2. Immediately, the Respondent shall:</p> <p>a. cease dispensing fuel from the USTs; b. cease receiving deliveries of regulated substances into the USTs; c. padlock the dispensers; d. empty the USTs of all regulated substances; and e. temporarily remove the USTs from service.</p> <p>3. Within 10 days, the Respondent shall send its UST delivery certificate to TCEQ.</p> <p>4. Within 15 days, the Respondent shall submit to the Executive Director a detailed written report, documenting the steps taken to comply with the Ordering Provisions above.</p> <p>5. If Respondent elects to permanently remove the USTs from service, Respondent shall submit a report documenting compliance with permanent removal within 15 days.</p> <p>6. Prior to resuming retail sales of gasoline, ensure that all tanks are monitored in a manner which will detect releases at a frequency of at least once every month.</p> <p>7. Prior to receiving gasoline deliveries Respondent shall:</p> <p>a. begin conducting effective manual or automatic inventory control procedures for all USTs; b. submit amended registration information to indicate current operational status of the UST system; c. Submit written certification demonstrating current financial assurance; and d. obtain a new delivery certificate from TCEQ and make it available to common carriers before accepting deliveries of fuel.</p>

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>5. Failed to conduct inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel each operating day [30 TEX. ADMIN. CODE § 334.48(c)].</p> <p>6. Failed to provide an amended UST registration to the Commission for any change or additional information regarding USTs within 30 days from the date of the occurrence of change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)].</p> <p>7. Failed to renew a delivery certificate by timely and proper submission of a new UST registration and self-certification form to the agency at least 30 days before the expiration date of the delivery certificate [30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)].</p> <p>8. 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>9. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs [TEX. WATER CODE § 26.3467(a) and 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i)].</p>		<p>8. Within 10 days of resuming sales of gasoline, submit written certification to demonstrate compliance with Ordering Provision Nos. 6 and 7.a. through 7.d. above.</p> <p>9. Upon obtaining a new delivery certificate, post the delivery certificate in a location where the document is clearly visible at all times.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 19, 2005

DATES	Assigned	01-May-2006	Screening	02-May-2006	EPA Due	
	PCW	01-Aug-2006				

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

CASE INFORMATION			
Enf./Case ID No.	29278	No. of Violations	7
Docket No.	2006-0490-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Judy Kluge
Multi-Media		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 40% Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability 0% Enhancement **Subtotal 4**

Notes

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

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

Notes

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

Total EB Amounts	\$3,947	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$6,100	

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

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

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL 0% Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 02-May-2006

Docket No. 2006-0490-PST-E

PCW

Respondent Bountheung Noymany dba Boat Club Grocery

Policy Revision 2 (September 2002)

Case ID No. 29278

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN100737493

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action <i>(number of NOVs meeting criteria)</i>	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	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 <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 disclosed)</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%
Other	<i>Please Enter Yes or No</i>		
	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) 30%

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

No <

Adjustment Percentage (Subtotal 3) 0%

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

Poor Performer <

Adjustment Percentage (Subtotal 7) 10%

>> **Compliance History Summary**

Compliance History Notes Enhancement for one prior NOV with same or similar violations, one default order against the prior order, and poor performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 40%

Screening Date 02-May-2006

Docket No. 2006-0490-PST-E

PCW

Respondent Bountheung Noymany dba Boat Club Grocery

Policy Revision 2 (September 2002)

Case ID No. 29278

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN100737493

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

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" value="25%"/>
Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

>> 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 checked="" type="checkbox"/>	

Violation Base Penalty

Economic Benefit (EB) for this violation

Estimated EB Amount

Statutory Limit Test

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Bountheung Noymany dba Boat Club Grocery
 Case ID No. 29278
 Reg. Ent. Reference No. RN100737493
 Media [Statute] Petroleum Storage Tank
 Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment/Gasket				0.0	\$0	\$0	\$0
Healy Monitor Paper				0.0	\$0	\$0	\$0
Vapor Guard				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)	\$1,000	21-Mar-2003	21-Mar-2006	3.0	\$150	\$1,000	\$1,150

Notes for AVOIDED costs

Avoided cost for completing the triennial test. The date required is three years before the investigation date and the final date is the investigation date.

Approx. Cost of Compliance \$1,000

TOTAL \$1,150

Screening Date 02-May-2006

Docket No. 2006-0490-PST-E

PCW

Respondent Bountheung Noymany dba Boat Club Grocery

Policy Revision 2 (September 2002)

Case ID No. 29278

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN100737493

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Failed to ensure that all USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring). Specifically, the USTs were not being monitored for releases on a monthly basis. Failed to conduct proper release detection for the product piping associated with the UST system. Specifically, the respondent did not conduct monthly monitoring or annual piping tightness test. Failed to test the line leak detectors at least once per year for performance and operational reliability. Specifically, the line leak detectors had not been performance tested annually.

Base Penalty

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

		Harm			
Release		Major	Moderate	Minor	
OR	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="25%"/>
	Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

>> **Programmatic Matrix**

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

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

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

Violation Base Penalty

One quarterly event is recommended based on documentation of the violation during the March 21, 2006 investigation to the May 2, 2006 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Bountheung Noymany dba Boat Club Grocery
 Case ID No. 29278
 Reg. Ent. Reference No. RN100737493
 Media [Statute] Petroleum Storage Tank
 Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$1,200	21-Mar-2006	01-Jun-2006	0.2	\$1	\$16	\$17
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)	\$500	21-Mar-2006	26-Dec-2006	0.8	\$19	n/a	\$19

Notes for DELAYED costs

Estimated cost to conduct monthly monitoring for the USTs. The date required is the investigation date and the final date is the estimated date of compliance. Estimated cost to conduct piping tightness and annual line leak detector tests. The date required is the investigation date and the final date is the actual date compliance documentation was submitted to the TCEQ regional office.

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

Screening Date 02-May-2006

Docket No. 2006-0490-PST-E

PCW

Respondent Bountheung Noymany dba Boat Club Grocery

Policy Revision 2 (September 2002)

Case ID No. 29278

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN100737493

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

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" value="25%"/>
Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

>> Programmatic Matrix

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

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

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 checked="" type="checkbox"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

One quarterly event is recommended from the date of the investigation, March 21, 2006 to the May 2, 2006 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Bountheung Noymany dba Boat Club Grocery
Case ID No. 29278
Reg. Ent. Reference No. RN100737493
Media [Statute] Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$500	21-Mar-2006	26-Dec-2006	0.8	\$19	n/a	\$19
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs Estimated cost to conduct inventory control for all USTs involved in the retail sale of petroleum substances used as motor fuel. The date required is the date of the investigation and the final date is the estimated date of compliance.

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 \$500

TOTAL \$19

Screening Date 02-May-2006

Docket No. 2006-0490-PST-E

PCW

Respondent Bountheung Noymany dba Boat Club Grocery

Policy Revision 2 (September 2002)

Case ID No. 29278

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN100737493

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 4

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.7(d)(3)

Secondary Rule Cite(s)

Violation Description

Failed to provide an amended UST registration to the Agency for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition. At the time of the investigation, the Facility's registration did not reflect the correct cathodic protection, release detection, or spill and overfill protection for the Facility.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	X			10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

Violation Events

Number of Violation Events 1

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

Violation Base Penalty \$1,000

One single event is recommended based on the March 21, 2006 investigation date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4

Violation Final Penalty Total \$1,400

This violation Final Assessed Penalty (adjusted for limits) \$1,400

Economic Benefit Worksheet

Respondent Bountheung Noymany dba Boat Club Grocery
Case ID No. 29278
Reg. Ent. Reference No. RN100737493
Media [Statute] Petroleum Storage Tank
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$100	21-Mar-2006	26-Dec-2006	0.8	\$4	n/a	\$4

Notes for DELAYED costs: Estimated cost to submit an amended UST registration form to the TCEQ. The date required is the investigation date and the final date is the estimated date of compliance.

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 \$100
TOTAL \$4

Screening Date 02-May-2006

Docket No. 2006-0490-PST-E

PCW

Respondent Bountheung Noymany dba Boat Club Grocery

Policy Revision 2 (September 2002)

Case ID No. 29278

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN100737493

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 5

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)

Secondary Rule Cite(s)

Violation Description Failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date. Specifically, the delivery certificate expired on September 30, 2005.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

		Harm			Percent
Release		Major	Moderate	Minor	
OR	Actual				
	Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	X			

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

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

Violation Base Penalty \$1,000

One single event is recommended based on the March 21, 2006 investigation date.

Economic Benefit (EB) for this violation

Estimated EB Amount \$7

Statutory Limit Test

Violation Final Penalty Total \$1,400

This violation Final Assessed Penalty (adjusted for limits) \$1,400

Economic Benefit Worksheet

Respondent Bountheung Noymany dba Boat Club Grocery
 Case ID No. 29278
 Reg. Ent. Reference No. RN100737493
 Media [Statute] Petroleum Storage Tank
 Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$100	31-Aug-2005	26-Dec-2006	1.3	\$7	n/a	\$7

Notes for DELAYED costs: This is an estimated cost to complete and submit a UST registration and self-certification form. The date required is 30 days prior to the expiration date of the previous delivery certificate and the final date is the estimated date of compliance.

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 \$100

TOTAL \$7

Screening Date 02-May-2006 **Docket No.** 2006-0490-PST-E **PCW**
Respondent Bountheung Noymany dba Boat Club Grocery *Policy Revision 2 (September 2002)*
Case ID No. 29278 *PCW Revision May 19, 2005*
Reg. Ent. Reference No. RN100737493
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Judy Kluge
Violation Number 6
Primary Rule Cite(s) 30 Tex. Admin. Code § 37.815(a) and (b)
Secondary Rule Cite(s)
Violation Description 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.

Base Penalty \$10,000

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

		Harm			
Release		Major	Moderate	Minor	
OR	Actual				Percent
	Potential				

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
	x			10%

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

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

Violation Events

Number of Violation Events 4

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

Violation Base Penalty \$4,000

Four single events are recommended for the four USTs at the Facility.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2,730

Violation Final Penalty Total \$5,600

This violation Final Assessed Penalty (adjusted for limits) \$5,600

Economic Benefit Worksheet

Respondent Bountheung Noymany dba Boat Club Grocery
 Case ID No. 29278
 Reg. Ent. Reference No. RN100737493
 Media [Statute] Petroleum Storage Tank
 Violation No. 6

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]	\$2,600	21-Mar-2005	21-Mar-2006	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 (at \$650 per tank) for the twelve month period preceding the date of the investigation.

Approx. Cost of Compliance \$2,600

TOTAL \$2,730

Screening Date 02-May-2006

Docket No. 2006-0490-PST-E

PCW

Respondent Bountheung Noymany dba Boat Club Grocery

Policy Revision 2 (September 2002)

Case ID No. 29278

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN100737493

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 7

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(A)(i)

Secondary Rule Cite(s) Tex. Water Code 26.3467(a)

Violation Description Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, the Facility received three deliveries of a regulated substance without having a current delivery certificate.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

		Harm			
Release		Major	Moderate	Minor	
OR	Actual				Percent 5%
	Potential			X	

>> Programmatic Matrix

		Major	Moderate	Minor	
	Falsification				Percent

Matrix Notes Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment -\$9,500

Base Penalty Subtotal \$500

Violation Events

Number of Violation Events 3

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

Violation Base Penalty \$1,500

Three single events are recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$2,100

This violation Final Assessed Penalty (adjusted for limits) \$2,100

Economic Benefit Worksheet

Respondent Bountheung Noymany dba Boat Club Grocery
 Case ID No. 29278
 Reg. Ent. Reference No. RN100737493
 Media [Statute] Petroleum Storage Tank
 Violation No. 7

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	\$100	10-Jan-2006	08-Apr-2006	0.2	\$1	n/a	\$1

Notes for DELAYED costs: This is an estimated cost to ensure that a valid, current TCEQ delivery certificate is presented to a common carrier before delivery of a regulated substance into the UST can be accepted. The date required and the final date are the dates of the first and last fuel deliveries that the respondent accepted without a current delivery certificate.

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 \$100 TOTAL \$1

Compliance History

Customer/Respondent/Owner-Operator:	CN601260854 NOYMANY, BOUNTHEUNG	Classification: POOR	Rating: 50.60
Regulated Entity:	RN100737493 BOAT CLUB GROCERY	Classification: POOR	Site Rating: 50.60
	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	66667
ID Number(s):			
Location:	5300 BOAT CLUB RD, FORT WORTH, TX, 76135	Rating Date: September 01 06	Repeat Violator: NO
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	May 17, 2006		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	May 17, 2001 to May 17, 2006		

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

Name: Judy Kluge Phone: 817-588-5825

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 | Effective Date: 07/23/2001 | ADMINORDER 2000-0046-PST-E |
| | Classification: Moderate | |
| | Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(C)(iii) | |
| | Description: Requires the respondent to maintain the Stage II vapor recovery system in proper operating condition, free of defects. | |
| | Classification: Moderate | |
| | Citation: 30 TAC Chapter 115, SubChapter C 115.245(2) | |
| | Description: Failed to conduct pressure decay testing annually. | |
| | Classification: Minor | |
| | Citation: 30 TAC Chapter 115, SubChapter C 115.246(6) | |
| | Description: Failed to keep a record of the daily inspections conducted at the Station. | |
| | Classification: Moderate | |
| | Citation: 5C THC Chapter 382, SubChapter A 382.085[G] | |
| | Description: Unauthorized emissions. | |
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- | | | |
|---|------------|----------|
| 1 | 04/27/2006 | (460066) |
| 2 | 07/09/2004 | (279913) |
| 3 | 10/07/2004 | (284324) |
| 4 | 04/27/2006 | (463951) |
| 5 | 12/09/2004 | (343197) |
| 6 | 09/27/2002 | (275185) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | |
|--------------|---|--------------------------|
| Date: | 09/27/2002 | (275185) |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 37, SubChapter I 37.815(a)[G] | |
| | 30 TAC Chapter 37, SubChapter I 37.815(b)[G] | |
| Description: | Failure to provide acceptable financial assurance | |

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN	§	BEFORE THE
ENFORCEMENT ACTON	§	
CONCERNING	§	TEXAS COMMISSION ON
BOUNTHEUNG NOYMAN Y DBA	§	
BOAT CLUB GROCERY; RN100737493	§	ENVIRONMENTAL QUALITY

DEFAULT AND SHUT DOWN ORDER
DOCKET NO. 2006-0490-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 imposition of an administrative penalty, corrective action of the respondent, and revocation of the respondent's fuel delivery certificate. The Commission also considered the Executive Director's Motion requesting entry of an Order requiring the respondent, Bounthueng Noymany dba Boat Club Grocery, ("Noymany") to shutdown or remove from service the Underground Storage Tanks ("USTs") at the Boat Club Grocery facility, PST Facility I.D. 66667, located at 5300 Boat Club Road, Tarrant County, Fort Worth, Texas.

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

FINDINGS OF FACT

1. Noymany owns and operates a convenience store with retail sales of gasoline, located at 5300 Boat Club Road, Fort Worth, Tarrant County, Texas (the "Facility").
2. The USTs at the Facility contain regulated substances as defined in the Commission's rules. The USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. On March 21, 2006, an investigator from the TCEQ Dallas/Fort Worth Regional Office documented that Noymany:
 - a. Failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; specifically, Noymany did not conduct the triennial test;

- b. Failed to ensure that all tanks are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring); specifically, the USTs were not being monitored for releases on a monthly basis;
 - c. Failed to conduct proper release detection for the product piping associated with the UST system; specifically, Noymany did not conduct monthly monitoring or an annual piping tightness test;
 - d. Failed to test the line leak detectors at least once per year for performance and operational reliability; specifically, the line leak detectors had not been performance tested annually;
 - e. Failed to conduct inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel each operating day;
 - f. Failed to provide an amended UST registration to the Commission for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition. At the time of the investigation, the Facility's registration did not reflect the correct cathodic protection, release detection, or spill and overfill protection for the Facility;
 - g. Failed to renew a delivery certificate by timely and proper submission of a new UST registration and self-certification form to the agency at least 30 days before the expiration date of the delivery certificate; specifically, the delivery certificate expired on September 30, 2005;
 - h. 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; and
 - i. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; specifically, review of the Facility's fuel delivery manifest indicated that the Facility had received three deliveries of regulated substance without a delivery certificate.
4. By letter dated May 1, 2006 the TCEQ Dallas/Fort Worth Regional Office provided Noymany with notice of the violations and the TCEQ's authority to shut down and remove from service USTs not in compliance with the release detection, spill and/or overfill prevention, and corrosion protection regulations if the violations were not corrected.

5. Noymany received notice of the violations on or about May 6, 2006 and June 7, 2006.
6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality enter an Enforcement Order Assessing an Administrative penalty Against and Requiring Certain Actions of Bountheung Noymany dba Boat Club Grocery" (the "EDPRP") in the TCEQ Chief Clerk's Office on October 30, 2007.
7. By letter dated October 30, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Noymany with notice of the EDPRP. According to the return receipt "green card," Noymany received notice of the EDPRP on November 3, 2007, as evidenced by the signature on the card.
8. More than 20 days have elapsed since Noymany received notice of the EDPRP, provided by the Executive Director. Noymany failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.
9. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality enter an Enforcement Order Assessing an Administrative penalty Against and Requiring Certain Actions of Bountheung Noymany dba Boat Club Grocery" (the "EDFARP") in the TCEQ Chief Clerk's Office on April 7, 2008.
10. By letter dated April 7, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Noymany with notice of the EDFARP. According to the return receipt "green card," Noymany received notice of the EDFARP on April 9, 2008, as evidenced by the signature on the card.
11. More than 20 days have elapsed since Noymany received notice of the EDFARP, provided by the Executive Director. Noymany failed to file an answer to the EDFARP, failed to request a hearing, and failed to schedule a settlement conference.
12. By letters dated May 20, 2008 and December 17, 2008, TCEQ provided Noymany with notice of TCEQ's intent to order the USTs at the Facility shut down and removed from service if Noymany failed to correct the release detection and corrosion protection violations within 30 days after Noymany's receipt of notice.
13. The Executive Director of the TCEQ recognizes that on June 1, 2006 Noymany corrected the cathodic protection system violation and the release detection for piping and line leak detector violations. As of the date of entry of this Order, Noymany has not corrected the remaining violations noted during the March 21, 2006 investigation.

14. The USTs at the Facility do not have an adequate tank release detection system as required by 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1) and may be releasing petroleum products to the environment without the knowledge of the tank owner or operator. Therefore, conditions at the Facility constitute an imminent peril to public health, safety, and welfare.

CONCLUSIONS OF LAW

1. As Evidenced by Finding of Fact Nos. 1 and 2, Noymany's USTs are subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs.7 and 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Noymany violated TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(c)(4) by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of a least once every three years; specifically; Noymany did not conduct the triennial test.
3. As evidenced by Finding of Fact No. 3.b., Noymany violated TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A), by failing to ensure that all tanks are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring); specifically, the USTs were not being monitored for releases on a monthly basis.
4. As evidenced by Finding of Fact No. 3.c., Noymany violated TEX. WATER CODE § 26.3475(a) and 30 TEX. ADMIN. CODE § 334.50(b)(2), by failing to conduct proper release detection for the product piping associated with the UST system; specifically Noymany did not conduct monthly monitoring or an annual piping tightness test.
5. As evidenced by Finding of Fact No. 3.d., Noymany violated TEX. WATER CODE § 26.3475(a) and 30 TEX. ADMIN. CODE §§ 334.50(b)(2)(A)(i)(III), by failing to test the line leak detectors at least once per year for performance and operational reliability; specifically the line leak detectors had not been performance tested annually.
6. As evidenced by Finding of Fact No. 3.e., Noymany violated 30 TEX. ADMIN. CODE § 334.48(c), by failing to conduct inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel each operating day.

7. As evidenced by Finding of Fact No. 3.f., Noymany violated 30 TEX. ADMIN. CODE § 334.7(d)(3), by failing to provide an amended UST registration to the Commission for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition. At the time of the investigation, the Facility's registration did not reflect the correct cathodic protection, release detection, or spill and overfill protection for the Facility.
8. As evidenced by Finding of Fact No. 3.g., Noymany violated 30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii), by failing to renew a delivery certificate by timely and proper submission of a new UST registration and self-certification form to the agency at least 30 days before the expiration date of the delivery certificate; specifically, the delivery certificate expired on September 30, 2005.
9. As evidenced by Finding of Fact No. 3.h., Noymany violated 30 TEX. ADMIN. CODE § 37.815(a) and (b) by failing 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.
10. As evidenced by Finding of Fact No. 3.i., Noymany violated TEX. WATER CODE § 26.3467(a) and 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; specifically review of the Facility's fuel delivery manifest indicated that the Facility had received three deliveries of regulated substance without a delivery certificate.
11. As evidenced by Finding of Fact No. 6 and 7., the Executive Director has timely served Noymany with proper notice of the EDPRP, as required by TEX. WATER CODE §7.055 and 30 TEX. ADMIN. CODE §70.104(a)
12. As evidenced by Finding of Fact Nos. 9 and 10, the Executive Director has timely served Noymany with proper notice of the EDFARP, as required by TEX. WATER CODE §7.055 and 30 TEX. ADMIN. CODE §70.104(a)
13. As evidence by Finding of Fact Nos. 8 and 11, Noymany has failed to file a timely answer to either the EDPRP or the EDFARP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Noymany and assess the penalty recommended by the Executive Director.

14. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Noymany for violations of the Texas Water Code within the Commission's jurisdiction, for violation of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
15. An administrative penalty in the amount of twenty-one thousand dollars (\$21,000.00) is justified by the facts in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
16. As evidenced by Finding of Fact No. 13 Noymany failed to correct documented violations of Commission requirements within 30 days after Noymany received notice of the violations and notice of the Executive Director's intent to shut down the Facility.
17. TEX. WATER CODE §§ 26.3475(e) and 26.352(i) authorize the Commission to order a UST owner or operator to shut down a UST system, if within 30 days after receiving notice of the violations, the owner or operator fails to correct violations of Commission regulatory requirements relating to release detection for tanks and/or piping, spill and overflow protection for tanks, corrosion protection for tanks and piping, and/or lack of acceptable financial assurance.
18. 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 with its jurisdiction.
19. Pursuant to TEX. ADMIN. CODE § 334.8(c)(6), the Commission has the authority to revoke Noymany's UST delivery certificate if the Commission finds good cause exists.
20. Good cause for revocation of Noymany's UST delivery certificate exists as justified by Finding of Fact Nos. 3.a.through 13 and Conclusion of Law Nos. 2 through 13, and 16.
21. As evidenced by Finding of Fact No. 14, current conditions at the Facility constitute an imminent peril to public health, safety and welfare. Therefore, pursuant to the Administrative Procedures Act, TEX. GOV'T. CODE § 2001.144(a)(3), this Order is final and effective on the date rendered.

ORDERING PROVISIONS

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. Immediately upon the effective date of this Order, Noymany shall take the following steps to shut down operations of all USTs at the Facility:
 - a. Cease dispensing fuel from the USTs;
 - b. Cease receiving deliveries of regulated substances into the USTs;
 - c. Padlock the dispensers;
 - d. Empty the USTs of all regulated substances in accordance with 30 TEX. ADMIN. CODE § 334.54(d); and
 - e. Temporarily remove the USTs from service in accordance with 30 TEX. ADMIN. CODE § 334.54.
2. Noymany's UST delivery certificate is revoked immediately upon the effective date of this Order. Noymany may submit an application for a new delivery certificate only after Noymany has complied with all of the requirements set forth in these Ordering Provisions.
3. Within 10 days of after the effective date of this Order, Noymany shall send its UST delivery certificate to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
4. Within 15 days after the effective date of this Order, Noymany shall submit to the Executive Director a detailed written report, documenting the steps it has taken to comply with Ordering Provision Nos. 1.a through 1.e and 3. Noymany shall submit the report to:

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

and

Sam Barrett, Waste Section Manager
TCEQ Dallas/Fort Worth Regional Office
2309 Gravel Dr.
Fort Worth, Texas 76118

5. If Noymany elects to permanently remove from service any USTs at the Facility, Noymany shall immediately and permanently remove the UST system in accordance with 30 TEX. ADMIN. CODE § 334.55. If Noymany permanently removes any portion of the UST system from service, Noymany shall, within 15 days after the effective date of this Order, submit to the Commission a written report documenting compliance with 30 TEX. ADMIN. CODE § 334.55. Noymany shall submit the written report to:

Petroleum Storage Tank Registration Team, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

6. Noymany is assessed an administrative penalty in the amount of twenty-one thousand dollars (\$21,000.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Noymany's compliance with all the terms and conditions set forth in this Order completely resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Bountheung Noymany dba Boat Club Grocery; Docket No. 2006-0490-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

7. Noymany's USTs shall remain out of service, pursuant to TEX. WATER CODE § 26.3475 and as directed by Ordering Provision Nos. 1.a through 1.e, until such time as Noymany demonstrates to the satisfaction of the Executive Director that he corrected the violation noted in Finding of Fact No. 3.b., and Conclusion of Law No. 3.

8. Prior to resuming retail sales of gasoline, Noymany shall implement a tank release detection system that will ensure that all tanks are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring); in accordance with TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A).
9. Prior to receiving deliveries of gasoline, Noymany shall:
 - a. Begin conducting effective manual or automatic inventory control procedures for all USTs each operating day, in accordance with 30 TEX. ADMIN. CODE § 334.48(c).
 - b. Submit amended UST registration information to indicate current operational status of the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.7(d)(3).
 - c. Submit written certification demonstrating current financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in accordance with 30 TEX. ADMIN. CODE § 37.815(a) and (b) to:

Mr. Rob Norris, Senior Financial Analyst
Financial Assurance, MC 184
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
 - d. Make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; in accordance with TEX. WATER CODE § 26.3467(a) and 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i).
 - e. Obtain a new delivery certificate from the TCEQ.
10. Within 10 days of resuming retail sales of gasoline, Noymany shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 8 and 9.a. through 9.e. The written 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:

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

and

Sam Barrett, Waste Section Manager
TCEQ Dallas/Fort Worth Regional Office
2309 Gravel Dr.
Fort Worth, Texas 76118

11. Upon obtaining a new delivery certificate, Noymany shall post the delivery certificate in a location where the document is clearly visible at all times, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii).
12. All relief not expressly granted in this Order is denied.
13. The provisions of this Order shall apply to and be binding upon Noymany. Noymany is ordered to give notice of this Order to personnel who maintain day to day control of the USTs at the Facility.
14. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Noymany if the Executive Director determines that Noymany is noncompliant with or in violation of any of the terms and conditions set forth in this Order.

15. This Order shall terminate five years from its effective date or when Noymany demonstrates to the satisfaction of the Executive Director that it has corrected all of the violations noted herein.
16. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order is the date this decision was rendered, pursuant to the Administrative Procedure Act, TEX. GOV'T CODE § 2001.144(a)(3).

Bountheung Noymany dba Boat Club Grocery
Docket No. 2006-0490-PST-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF REBECCA M. COMBS

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Rebecca M. Combs. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

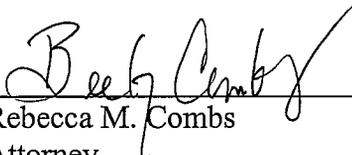
On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the ‘Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Bountheung Noymany dba Boat Club Grocery’ (the ‘EDPRP’) with the Office of the Chief Clerk on October 30, 2007.

I sent the EDPRP to Noymany at its his last known address on October 30, 2007 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt ‘green card’, Noymany received notice of the EDPRP on November 3, 2007, as evidenced by the signature on the card.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the ‘Executive Director’s First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Bountheung Noymany dba Boat Club Grocery’ (the ‘EDFARP’) with the Office of the Chief Clerk on April 7, 2008.

I sent the EDFARP to Noymany at its his last known address on April 7, 2008 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt ‘green card’, Noymany received notice of the EDFARP on April 9, 2008, as evidenced by the signature on the card.

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



Rebecca M. Combs
Attorney
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 18 day of December, 2008.



Margaret Jackson
Notary Signature