EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2006-0798-PST-E TCEQ ID: RN101543494 CASE NO.: 20844
RESPONDENT NAME: MOHAMMAD RAFIUL HABIB DBA SOUTH BUCKNER FOOD MART

ORDER TYPE:		
__1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
_X_FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	_X_PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 521 South Buckner Boulevard, Dallas, Dallas County

TYPE OF OPERATION: Convenience store with retail sales of gasoline

SMALL BUSINESS: _X_ Yes ___ No

OTHER SIGNIFICANT MATTERS: A complaint was received January 30, 2006, alleging that the Facility was not maintaining PST records and Stage II records. There is no record of additional pending enforcement actions regarding this facility location.

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

COMMENTS RECEIVED: The *Texas Register* comment period expired June 1, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Mr. Thomas Greimel, Waste Enforcement Section, MC 128, (512) 239-5690

TCEQ Regional Contact: Mr. Sam Barrett, DFW Regional Office, MC R-4, (817) 588-5903

Respondent: Mr. Mohammad Rafiul Habib, Owner, South Buckner Food Mart, 2009 Meadowbrook Dr., Mesquite, Texas 75149

Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION

Type of Investigation:

_X_ Complaint
___ Routine
___ Enforcement Follow-up
_X_ Records Review

Date of Complaint Relating to this Case:
January 30, 2006

Dates of Investigation Relating to this Case:
February 22, 2006 (investigation)
June 5, 2006, June 21, 2006, and December 16, 2008 (record reviews)

Dates of NOEs Relating to this Case:
June 16, 2006
February 9, 2009

Background Facts:
The EDPRP was filed December 22, 2008, and re-filed for service February 12, 2009. The EDPRPs were mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on February 14, 2009. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

Current Compliance Status:
On March 26, 2009, a TCEQ DFW Regional Office investigator documented that the facility was vacant and the store shut down. The dispensers were dismantled, and the tanks contained 10 to 13 inches of product. The Respondent owes $1,141.30 in past-due administrative penalties and $204.32 in past-due fees.

PST:

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 from the operation of petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].

2. Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel [30 TEX. ADMIN. CODE § 334.48(c)].

3. Failed to pay outstanding UST fees and associated fees for TCEQ Financial Account No. 0060105U for fiscal years 2004, 2005, 2006 and 2007 [30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702].

PENALTY CONSIDERATIONS

Total Assessed: $3,885

Total Deferred: $0
___ Expedited Order
___ Financial Inability to Pay
___ SEP Conditional Offset

Total Due to General Revenue: $3,885

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.

Site Compliance History Classification
__ High _X_ Average __ Poor

Person Compliance History Classification
__ High _X_ Average __ Poor

Major Source: ___ Yes _X_ No

Applicable Penalty Policy: September 2002

CORRECTIVE ACTIONS TAKEN/REQUIRED

Ordering Provisions:

The Respondent's UST delivery certificate is immediately revoked. 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.

The Respondent shall undertake the following technical requirements:

1. Within 10 days:
   a. Surrender his UST fuel delivery certificate to the TCEQ; and
   b. Submit payment of all outstanding fees, including any associated penalties and interest for TCEQ Financial Assurance Account No. 0060105U.
2. Within 30 days:
   a. Begin conducting inventory control procedures for all USTs at the Facility; and
   b. Submit documentation to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs.
3. Within 45 days, submit written certification to demonstrate compliance with Ordering Provision Nos. 1 and 2.

Penalty Calculation Worksheet (PCW)

TCEQ

Policy Revision 2 (September 2002) — *PCW Revision May 19, 2005*

DATES — Assigned: 20-Jun-2006 — PCW: 17-Apr-2009 — Screening: 23-Jun-2006 — EPA Due:

RESPONDENT/FACILITY INFORMATION

Respondent: Mohammad Rafiul Habib dba South Buckner Food Mart
Reg. Ent. Ref. No.: RN101543494
Facility/Site Region: 4-Dallas/Fort Worth — Major/Minor Source: Minor Source

CASE INFORMATION

Enf./Case ID No.: 20844 — No. of Violations: 3
Docket No.: 2006-0798-PST-E — Order Type: 1660
Media Program(s): Petroleum Storage Tank — Enf. Coordinator: Thomas Greimel
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*: $3,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 11% Enhancement — *Subtotals 2, 3, & 7*: $385

Notes: Enhancement for one NOV with same or similar violations and three NOVs without same or similar violations.

Culpability: No — 0% Enhancement — *Subtotal 4*: $0

Notes: The respondent does not meet the culpability criteria.

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

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

Notes: The respondent does not meet the good faith criteria.

Economic Benefit — 0% Enhancement* — *Subtotal 6*: $0

**Capped at the Total EB $ Amount*

Total EB Amounts	$699
Approx. Cost of Compliance	$1,150

SUM OF SUBTOTALS 1-7 — Final Subtotal: $3,885

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: $3,885

STATUTORY LIMIT ADJUSTMENT — Final Assessed Penalty: $3,885

DEFERRAL — Reduction — Adjustment: $0

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

Notes: This is not an expedited case.

PAYABLE PENALTY: $3,885

Screening Date 23-Jun-2006 Docket No. 2006-0798-PST-E

Respondent Mohammad Rafiul Habib dba South Buckner Food Mart

Case ID No. 20844

Reg. Ent. Reference No. RN101543494

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

PCW

Policy Revision 2 (September 2002)

PCW Revision May 19, 2005

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action *(number of NOVs meeting criteria)*	1	5%
	Other written NOVs	3	6%
Orders	Any agreed final enforcement orders containing a denial of liability *(number of orders meeting criteria)*	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government *(number of judgements or consent decrees meeting criteria)*	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government *(number of counts)*	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which notices were*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which violations were disclosed)*	0	0%
		Please Enter Yes or No	
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) 11%

>> **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: Enhancement for one NOV with same or similar violations and three NOVs without same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 11%

Screening Date 23-Jun-2006 Docket No. 2006-0798-PST-E PCW

Respondent Mohammad Rafiul Habib dba South Buckner Food Mart

Policy Revision 2 (September 2002)

Case ID No. 20844

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101543494

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

Violation Number	1
Primary Rule Cite(s)	30 Tex. Admin. Code § 37.815(a) and (b)
Secondary Rule Cite(s)	
Violation Description	Failure to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.

Base Penalty $10,000

Environmental, Property and Human Health Matrix

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

OR

Percent

Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

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

Adjustment -$9,000

Base Penalty Subtotal $1,000

Violation Events

Number of Violation Events 1

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

Violation Base Penalty $1,000

One single event (one per tank) is recommended based on the June 5, 2006 investigation.

Economic Benefit (EB) for this violation

Estimated EB Amount $683

Statutory Limit Test

Violation Final Penalty Total $1,110

This violation Final Assessed Penalty (adjusted for limits) $1,110

Respondent: Mohammad Rafiul Habib dba South Buckner Food Mart
Case ID No.: 20844
Reg. Ent. Reference No.: RN101543494
Media [Statute]: Petroleum Storage Tank
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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]	$650	05-Jun-2005	05-Jun-2006	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 estimated cost ($650 per tank) to provide financial assurance for one petroleum UST. The date required is one year prior to the investigation date. The Final Date is the investigation date.						

Approx. Cost of Compliance: $650

TOTAL: $683

Screening Date 23-Jun-2006 Docket No. 2006-0798-PST-E PCW

Respondent Mohammad Rafiul Habib dba South Buckner Food Mart *Policy Revision 2 (September 2002)*

Case ID No. 20844 *PCW Revision May 19, 2005*

Reg. Ent. Reference No. RN101543494

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

Violation Number	2
Primary Rule Cite(s)	30 Tex. Admin. Code § 334.48(c)
Secondary Rule Cite(s)	
Violation Description	Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent

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 -$7,500

Base Penalty Subtotal $2,500

Violation Events

Number of Violation Events 1

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

Violation Base Penalty $2,500

One quarterly event is recommended from the June 5, 2006 investigation date to the June 23, 2006 screening date.

Economic Benefit (EB) for this violation

Estimated EB Amount $17

Statutory Limit Test

Violation Final Penalty Total $2,775

This violation Final Assessed Penalty (adjusted for limits) $2,775

Economic Benefit Worksheet

Respondent: Mohammad Rafiul Habib dba South Buckner Food Mart
Case ID No.: 20844
Reg. Ent. Reference No.: RN101543494
Media [Statute]: Petroleum Storage Tank
Violation No.: 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	$500	05-Jun-2006	07-Feb-2007	0.7	$17	n/a	$17
Notes for DELAYED costs	Estimated cost to conduct inventory control for all USTs. Date Required is the investigation date; 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: $17

Screening Date 23-Jun-2006 **Docket No.** 2006-0798-PST-E **PCW**

Respondent Mohammad Rafiul Habib dba South Buckner Food Mart *Policy Revision 2 (September 2002)*

Case ID No. 20844 *PCW Revision May 19, 2005*

Reg. Ent. Reference No. RN101543494

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

Violation Number	3
Primary Rule Cite(s)	30 Tex. Admin. Code § 334.22(a)
Secondary Rule Cite(s)	Tex. Water Code § 5.702
Violation Description	Failed to pay outstanding UST fees and associated late fees for TCEQ Financial Assurance Account No. 0060105U for fiscal years 2004, 2005, 2006, and 2007.

Base Penalty $10,000

Environmental, Property and Human Health Matrix

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

OR

Percent

Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent

Matrix Notes

Adjustment -$10,000

Base Penalty Subtotal $0

Violation Events

Number of Violation Events

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

Violation Base Penalty $0

No penalty is recommended because penalty and interest will be assessed at the next billing.

Economic Benefit (EB) for this violation

Estimated EB Amount $0

Statutory Limit Test

Violation Final Penalty Total $0

This violation Final Assessed Penalty (adjusted for limits) $0

Economic Benefit Worksheet

Respondent: Mohammad Rafiul Habib dba South Buckner Food Mart
Case ID No.: 20844
Reg. Ent. Reference No.: RN101543494
Media [Statute]: Petroleum Storage Tank
Violation No.: 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	n/a						
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	n/a						

Approx. Cost of Compliance: $0

TOTAL: $0

Compliance History

Customer/Respondent/Owner-Operator: CN601581887 HABIB, MOHAMMAD RAFIUL Classification: AVERAGE Rating: 1.25

Regulated Entity: RN101543494 SOUTH BUCKNER FOOD MART Classification: AVERAGE Site Rating: 1.25

ID Number(s): PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 72365

Location: 521 S BUCKNER BLVD, DALLAS, TX, 75217 Rating Date: 9/1/2005 Repeat Violator: NO

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: June 26, 2006

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 26, 2001 to June 26, 2006

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

Name: Thomas Greimel Phone: (512) 239-5690

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? Yes

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

Components (Multimedia) for the Site :

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

N/A

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

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 08/30/2002 (9599)
2 12/30/2002 (13723)
3 06/24/2003 (276673)
4 08/11/2003 (148444)
5 10/01/2004 (290339)
6 03/09/2006 (456931)
7 04/12/2006 (459940)
8 06/15/2006 (481461)

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

Date: 08/30/2002 (9599)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.246(7)(A)
Description: At the time of the investigation the Stage II records were not available for review.

Date: 06/24/2003 (276673)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)
30 TAC Chapter 37, SubChapter I 37.815(b)
Description: Failure to provide acceptable financial assurance

Date: 08/12/2003 (148444)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.246(7)(A)
Description: Failure to make Stage II records available for review at the site for authorized representatives.

Date: 04/12/2006 (459940)

Self Report? NO Classification Moderate

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

Description: Failure to maintain records on-site at facilities normally manned during business hours, and made immediately available for review upon request.

Self Report? NO Classification Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(A)

Description: Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer. Specifically, vapor swivel adaptor.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN ENFORCEMENT ACTION CONCERNING MOHAMMAD RAFIUL HABIB DBA SOUTH BUCKNER FOOD MART; RN101543494	§ § § § § § §	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

DEFAULT ORDER
DOCKET NO. 2006-0798-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 imposition of an administrative penalty and corrective action of the respondent and revocation of the respondent's fuel delivery certificate. The respondent made the subject of this Order is Mohammad Rafiul Habib dba South Buckner Food Mart ("Mr. Habib").

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

FINDINGS OF FACT

1. Mr. Habib owns and operated a convenience store with retail sales of gasoline, located at 521 South Buckner Boulevard, Dallas, Dallas County, Texas (the "Facility").

2. Mr. Habib's one underground storage tank ("UST") is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Habib's UST contains a regulated substance as defined in the rules of the Commission.

3. During an inspection on February 22, 2006 and a record review conducted on June 5, 2006, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Mr. Habib:

   a. 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.

b. Failed to conduct effective manual or automatic inventory control procedures for all UST's involved in the retail sale of petroleum substances used as motor fuel.

4. During record reviews conducted on June 21, 2006 and December 16, 2008, Central Office employees documented that Mr. Habib failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0060105U for fiscal years 2004, 2005, 2006 and 2007.

5. Mr. Habib received notice of the violations in paragraph 3 on or about June 21, 2006.

6. Mr. Habib received notice of the violations in paragraph 6 on or about February 14, 2009.

7. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Mohammad Rafiul Habib dba South Buckner Food Mart" (the "EDPRP") in the TCEQ Chief Clerk's office on February 12, 2009.

8. By letter dated February 12, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Habib with notice of EDPRP. According to the return receipt "green card," Mr. Habib received notice of the EDPRP on February 14, 2009, as evidenced by the signature on the card. The first class mail has not been returned, indicating that Mr. Habib received notice of the EDPRP.

9. More than 20 days have elapsed since Mr. Habib received notice of the EDPRP, provided by the Executive Director. Mr. Habib 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. Habib 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.a., Mr. Habib failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b).

3. As evidenced by Finding of Fact No. 3.b., Mr. Habib failed to conduct effective manual or automatic inventory control procedures for all UST's involved in the retail sale of petroleum substances used as motor fuel in violation of 30 TEX. ADMIN. CODE § 334.48(c).

4. As evidenced by Finding of Fact No. 4, Mr. Habib failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0060105U for fiscal years 2004, 2005, 2006 and 2007 in violation of 30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702.

5. As evidenced by Finding of Fact Nos. 7 and 8, the Executive Director timely served Mr. Habib with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).

6. As evidenced by Finding of Fact No. 9, Mr. Habib failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Habib and assess the penalty recommended by the Executive Director.

7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Habib for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

8. An administrative penalty in the amount of three thousand eight hundred eighty-five dollars ($3,885.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

9. 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.

10. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Mr. Habib's UST fuel delivery certificate if the Commission finds that good cause exists.

11. Good cause for revocation of Mr. Habib's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 3, 4, 7, 8, and 9 and Conclusions of Law Nos. 2 through 6.

ORDERING PROVISIONS

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

1. Mr. Habib is assessed an administrative penalty in the amount of three thousand eight hundred eighty-five dollars ($3,885.00) for violations of state statutes and TCEQ rules. The payment of this administrative penalty and Mr. Habib's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Mohammad Rafiul Habib dba South Buckner Food Mart; Docket No. 2006-0798-PST-E" to:

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

2. Mr. Habib's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Mr. Habib may submit an application for a new delivery certificate only after Mr. Habib has complied with all of the requirements of this Order.

3. Within 10 days after the effective date of this Order, Mr. Habib shall send his UST fuel 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. Habib shall undertake the following technical requirements:

   a. Within 10 days after the effective date of this Order, Mr. Habib shall submit payment of all outstanding fees, including any associated penalties and interest and with the

notation "Mohammad Rafiul Habib dba South Buckner Food Mart, TCEQ Financial Assurance Account No. 0060105U" to:

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

b. Within 30 days after the effective date of this Order, Mr. Habib shall:

i. Begin conducting inventory control procedures for all USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.48; and

ii. Submit 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 the petroleum UST, in accordance with 30 TEX. ADMIN. CODE § 37.815 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

c. Within 45 days after the effective date of this Order, Mr. Habib shall submit written certification as described below, and including detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions Nos. 4.a. and 4.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:

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
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Road
Fort Worth, Texas 76118-6951

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. Habib. Mr. Habib ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.

7. If Mr. Habib fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Habib's failure to comply is not a violation of this Order. Mr. Habib shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Habib shall notify the Executive Director within seven days after Mr. Habib becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

8. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Habib shall be made in writing to the Executive Director. Extensions are not effective until Mr. Habib receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

9. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Habib if

the Executive Director determines that Mr. Habib has not complied with one or more of the terms or conditions in this Order.

10. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.

11. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____

For the Commission

AFFIDAVIT OF KARI L. GILBRETH

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

"My name is Kari L. Gilbreth. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Mohammad Rafiul Habib dba South Buckner Food Mart" (the "EDPRP") was filed with the Office of the Chief Clerk on February 12, 2009.

I sent the EDPRP to Mr. Habib at his last known address on February 12, 2009 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card", Mr. Habib received notice of the EDPRP on February 14, 2009, as evidenced by the signature on the card.

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

Kari L. Gilbreth
Attorney
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 13th day of April, A.D., 2009.

Notary Stamp

Notary Signature

Dawn Elizabeth Higgins
Notary Public
State of Texas
My Commission Expires
December 02, 2012

NOTARY WITHOUT BOND