

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-0123-PST-E TCEQ ID: RN102447844 CASE NO.: 35270
RESPONDENT NAME: SHOBHANA PATEL DBA BEAR FOOD MART

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL 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: 1200 La Salle Avenue, Waco, McLennan 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.

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 on March 23, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Benjamin Thompson, Litigation Division, MC 175, (512) 239-1297
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Mr. Rajesh Acharya, Waste Enforcement Section, MC 128, (512) 239-0577

TCEQ Regional Contact: Mr. Frank Bureson, Waco Regional Office, MC R-9, (254) 761-3001

Respondent: Ms. Shobhana Patel, Bear Food Mart, 1200 La Salle Avenue, Waco, Texas 76708

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 type="checkbox"/> Routine <input checked="" type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: November 27, 2007</p> <p>Date of NOE Relating to this Case: December 28, 2007</p> <p>Background Facts: The EDPRP was filed on September 16, 2008 and 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 September 18, 2008, as evidenced by the signature on the card. The Respondent has failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: The Respondent submitted the required records on January 14, 2008. Respondent's delivery certificate expired in April 2009.</p> <p>PST: Failed to maintain the UST records and make them immediately available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b)].</p>	<p>Total Assessed: \$1,600</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: \$1,600</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 Action Taken: The Executive Director recognizes that the Respondent submitted the required UST records on January 14, 2008.</p> <p>Ordering Provisions:</p> <p>The Respondent's UST delivery certificate is revoked immediately upon the effective date of this Order. The Respondent may apply for a new delivery certificate only after the Respondent complies with the terms of this Order.</p> <p>The Respondent shall undertake the following technical requirements:</p> <p>Within 10 days, the Respondent shall send her UST delivery certificate to the TCEQ.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 6, 2007

DATES	Assigned	14-Jan-2008	Screening	17-Jan-2008	EPA Due	
	PCW	15-Jul-2008				

RESPONDENT/FACILITY INFORMATION			
Respondent	Shobhana Patel dba Bear Food Mart		
Reg. Ent. Ref. No.	RN102447844		
Facility/Site Region	9-Waco	Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	35270	No. of Violations	1	
Docket No.	2008-0123-PST-E	Order Type	1660	
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Rajesh Acharya	
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	\$1,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	60% Enhancement	Subtotals 2, 3, & 7	\$600
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Notes: Enhancement for one NOV with a same or similar violation, one prior enforcement order containing a denial of liability, repeat violator and a poor performer classification.

Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	X	(mark with x)

n/A: The Respondent does not meet the good faith criteria.

Total EB Amounts	\$3	0% Enhancement*	Subtotal 6	\$0
Approx. Cost of Compliance	\$500	<i>*Capped at the Total EB \$ Amount</i>		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,600
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$1,600**

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$1,600
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DEFERRAL	0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$1,600
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Screening Date 17-Jan-2008

Docket No. 2008-0123-PST-E

PCW

Respondent Shobhana Patel dba Bear Food Mart

Policy Revision 2 (September 2002)

Case ID No. 35270

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN102447844

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

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	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

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) 25%

>> Repeat Violator (Subtotal 3)

Yes

Adjustment Percentage (Subtotal 3) 25%

>> Compliance History Person Classification (Subtotal 7)

Poor Performer

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with a same or similar violation, one prior enforcement order containing a denial of liability, repeat violator and a poor performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 60%

Screening Date 17-Jan-2008	Docket No. 2008-0123-PST-E	PCW		
Respondent Shobhana Patel dba Bear Food Mart	<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 35270	<i>PCW Revision November 6, 2007</i>			
Reg. Ent. Reference No. RN102447844				
Media [Statute] Petroleum Storage Tank				
Enf. Coordinator Rajesh Acharya				
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 334.10(b)			
Violation Description	Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel.			
Base Penalty		\$10,000		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
				Percent <input type="text" value="0%"/>
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>
				Percent <input type="text" value="10%"/>
Matrix Notes	100% of the rule requirement was not met.			
			Adjustment	\$9,000
				\$1,000
Violation Events				
Number of Violation Events		<input type="text" value="1"/>	Number of violation days	
		<input type="text" value="51"/>		
<i>mark only one with an x</i>	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$1,000"/>	
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input checked="" type="checkbox"/>		
One single event is recommended based on documentation of the violation during the November 27, 2007 investigation.				
Economic Benefit (EB) for this violation			Statutory Limit Test	
Estimated EB Amount		<input type="text" value="\$3"/>	Violation Final Penalty Total <input type="text" value="\$1,600"/>	
			This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,600"/>	

Economic Benefit Worksheet

Respondent Shobhana Patel dba Bear Food Mart
 Case ID No. 35270
 Reg. Ent. Reference No. RN102447844
 Media 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
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No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$500	27-Nov-2007	14-Jan-2008	0.1	\$3	n/a	\$3
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 maintain the required records. Date Required is the investigation date. Final Date is the 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

\$3

Compliance History

Customer/Respondent/Owner-Operator:	CN602903205 PATEL, SHOBHANA	Classification: POOR	Rating: 325.50
Regulated Entity:	RN102447844 BEAR FOOD MART	Classification: POOR	Site Rating: 325.50
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		69641
Location:	1200 LA SALLE AVE, WACO, TX, 76706	Rating Date: September 01 07	Repeat Violator: YES
TCEQ Region:	REGION 09 - WACO		
Date Compliance History Prepared:	January 08, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	January 08, 2003 to January 08, 2008		

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

Name: Rajesh Acharya Phone: (512) 239-0577

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? Patel, Shobhana
4. If Yes, who was/were the prior owner(s)? Heart of Texas Investments, Inc.
5. When did the change(s) in ownership occur? 08/29/2005

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: 10/19/2006 ADMINORDER 2006-0358-PST-E
- Classification: Major
 Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)
 30 TAC Chapter 334, SubChapter C 334.50(a)(1)(A)
 Description: Failure to have a release detection method capable of detecting a release from any portion of the UST system which contains regulated substances including the tanks, piping and other ancillary equipment.
- Classification: Minor
 Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)
 Description: Failure to have all records available for the investigation.
- Classification: Moderate
 Citation: 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(C)
 Description: Failure to number all tanks according to the registration/self-certification form.

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.)

- N/A 1 06/17/2007 (563227)
 2 12/28/2007 (611637)

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

- Date: 06/13/2007 (563227)
- Self Report? NO Classification: Major
- Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)
 30 TAC Chapter 334, SubChapter C 334.50(a)(1)(A)
- Description: Failure to have a release detection method capable of detecting a release from any portion of the UST system which contains regulated substances including the tanks, piping and other ancillary equipment.
- Self Report? NO Classification: Minor
- Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)
- Description: Failure to have all records available for the investigation.
- Self Report? NO Classification: Major

Citation: 2A TWC Chapter 7, SubChapter A 7.101
Rqmt Prov: ORDER Ordering Provisions 2.a. and 2.b.i.
Description: Failure to comply with Ordering Provisions of Agreed Order.

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
SHOBHANA PATEL DBA BEAR
FOOD MART,
RN102447844**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER
DOCKET NO. 2008-0123-PST-E**

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 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 respondent made the subject of this Order is Shobhana Patel dba Bear Food Mart ("Ms. Patel").

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

FINDINGS OF FACT

1. Ms. Patel owns and operates a convenience store with retail sales of gasoline located at 1200 La Salle Avenue in Waco, McLennan County, Texas (the "Facility").
2. Ms. Patel's two underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Ms. Patel's USTs contain a regulated substance as defined in the rules of the Commission.
3. During an inspection on November 27, 2007, a TCEQ Waco Regional Office investigator documented that Ms. Patel failed to maintain UST records and make them immediately available for inspection upon request by agency personnel.
4. Ms. Patel received notice of the violation on or about January 2, 2008.
5. The Executive Director recognizes that Ms. Patel submitted the required UST records on January 14, 2008.
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 Shobhana Patel dba Bear Food Mart" (the "EDPRP") in the TCEQ Chief Clerk's office on September 16, 2008.

7. By letter dated September 16, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Ms. Patel with notice of the EDPRP. According to the return receipt "green card," Ms. Patel received notice of the EDPRP on September 18, 2008, as evidenced by the signature on the card.
8. More than 20 days have elapsed since Ms. Patel received notice of the EDPRP, provided by the Executive Director. Ms. Patel 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, Ms. Patel is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Ms. Patel failed to maintain UST records and make them immediately available for inspection upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE §334.10(b).
3. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director has timely served Ms. Patel with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 8, Ms. Patel has failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Ms. Patel and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Ms. Patel for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of one thousand six hundred dollars (\$1,600.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.
8. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Ms. Patel's UST delivery certificate if the Commission finds that good cause exists.
9. Good cause for revocation of Ms. Patel's UST delivery certificate exists as justified by Findings of Fact Nos. 3, 6, 7, and 8, and Conclusions of Law Nos. 2, 3, and 4.

ORDERING PROVISIONS

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

1. Ms. Patel is assessed an administrative penalty in the amount of one thousand six hundred dollars (\$1,600.00) for violations of TEX. WATER CODE ch. 26 and rules of the TCEQ. The imposition of this administrative penalty and Ms. Patel'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: Shobhana Patel dba Bear Food Mart; Docket No. 2008-0123-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. Ms. Patel's UST delivery certificate is revoked immediately upon the effective date of this Order. Ms. Patel may submit an application for a new delivery certificate only after Ms. Patel has complied with all of the requirements of this Order.
3. Within 10 days after the effective date of this Order, Ms. Patel shall send her UST delivery certificate to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality

P. O. Box 13087
Austin, Texas 78711-3087

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Ms. Patel. Ms. Patel is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Ms. Patel shall be made in writing to the Executive Director. Extensions are not effective until Ms. Patel receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Ms. Patel if the Executive Director determines that Ms. Patel has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Shobhana Patel dba Bear Food Mart
DOCKET NO. 2008-0123-PST-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF BENJAMIN O. THOMPSON

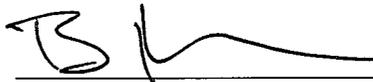
STATE OF TEXAS §
§
COUNTY OF TRAVIS §

"My name is Benjamin O. Thompson. 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 Shobhana Patel dba Bear Food Mart" (the "EDPRP") was filed with the Office of the Chief Clerk on September 16, 2008.

The EDPRP was sent to Ms. Patel at her last known address on September 16, 2008 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Ms. Patel received notice of the EDPRP on September 18, 2008, as evidenced by the signature on the card.

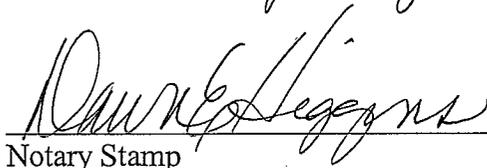
More than 20 days have elapsed since Ms. Patel received notice of the EDPRP. Ms. Patel failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference."



Benjamin O. Thompson
Attorney
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 29th day of January, A.D., 2009.


Notary Stamp