

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO. 2009-0980-PST-E TCEQ ID RN101866002 CASE NO. 37847

RESPONDENT NAME: AIEDEH HUSAINAT AND TAJRANGEZA KHAIL DBA BENNY'S 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 VIOLATIONS OCCURRED: 1304 Spurlock Road, Nederland, Jefferson County

TYPE OF OPERATION: Former 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. The Respondents owe \$9,326.59 in past-due penalties (2006-0169-PST-E).

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 May 10, 2010. 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) 239-3400
TCEQ Enforcement Coordinator: Mr. Thomas Greimel, Waste Enforcement Section, MC 128, (512) 239-5690
TCEQ Regional Contact: Mr. Derek Eades, Beaumont Regional Office, MC R-10, (409) 898-3838
Respondent: Mr. Aiedeh Husainat and Mr. Tajrangeza Khail, P.O. Box 5619, Port Arthur, Texas 77640-0619
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 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: April 9, 2009</p> <p>Date of NOE Relating to this Case: April 9, 2009</p> <p>Background Facts: The EDPRP was filed on November 6, 2009, and mailed to the Respondents via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondents received notice of the EDPRP on November 10, 2009. The Respondents failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: The USTs no longer contain any regulated substances, and Respondents submitted an updated UST registration form showing the USTs as temporarily out-of-service. The Respondents' delivery certificate expired January 2010.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with upgrade requirements [30 TEX. ADMIN. CODE § 334.47(a)(2)]. Failed to notify the agency of any change or additional information regarding the USTs within 30 days from the date of occurrence of the change [30 TEX. ADMIN. CODE § 334.7(d)(3)]. 	<p>Total Assessed: \$7,800</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: \$7,800</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification (Both Respondents): <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Action Taken:</p> <p>The Executive Director recognizes that the Respondents implemented the following corrective measures:</p> <ol style="list-style-type: none"> On or about January 15, 2006, the USTs were emptied of regulated substances; and On or about July 28, 2009, the Respondents submitted an updated registration reflecting the correct ownership information and current operational status of the UST system as temporarily out of service; and <p>Ordering Provisions:</p> <p>Respondents' UST fuel delivery certificate is revoked immediately. Respondents may submit an application for a new fuel delivery certificate only after they have complied with all of the requirements of this Order.</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Within 10 days, send the UST fuel delivery certificate to TCEQ. Within 30 days, permanently remove the UST system from service. Within 45 days, submit an amended registration to indicate the current operational status of the UST system as permanently out of service. Within 60 days, submit documentation certifying compliance with Ordering Provision Nos. 1, 2, and 3.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	1-Jun-2009			
	PCW	5-Feb-2010	Screening	5-Jun-2009	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	Aiedeh Husainat and Tajrangeza Khail dba Benny's Food Mart				
Reg. Ent. Ref. No.	RN101866002				
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	37847	No. of Violations	2		
Docket No.	2009-0980-PST-E	Order Type	1660		
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Thomas Greimel		
		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	\$6,000
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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	30.0% Enhancement	Subtotals 2, 3, & 7	\$1,800
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Notes: Enhancement for one previous NOV with a same or similar violation and one default order.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondents do not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$7,506
 Approx. Cost of Compliance: \$13,600
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$7,800
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$7,800**

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$7,800
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DEFERRAL	0.0% 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	\$7,800
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Screening Date 5-Jun-2009

Docket No. 2009-0980-PST-E

PCW

Respondent Aiedeh Husainat and Tajrangeza Khail dba Benny's Food

Policy Revision 2 (September 2002)

Case ID No. 37847

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101866002

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

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 submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 30%

>> 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 previous NOV with a same or similar violation and one default order.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 30%

Screening Date 5-Jun-2009 **Docket No.** 2009-0980-PST-E **PCW**
Respondent Aiedeh Husainat and Tajrangeza Khail dba Benny's Food Mart *Policy Revision 2 (September 2002)*
Case ID No. 37847 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN101866002
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Thomas Greimel

Violation Number 1
Rule Cite(s) 30 Tex. Admin. Code § 334.47(a)(2)
Violation Description Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.
Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

>>Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

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
 \$2,500

Violation Events

Number of Violation Events **2** **57** Number of violation days
 mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$5,000

Two monthly events are recommended from the April 9, 2009 investigation date to the June 5, 2009 screening date.

Good Faith Efforts to Comply **0.0%** Reduction **\$0**

Before NOV NOV to EDPRP/Settlement Offer
 Extraordinary
 Ordinary
 N/A (mark with x)
Notes The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$5,000

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$7,505 **Violation Final Penalty Total** \$6,500

This violation Final Assessed Penalty (adjusted for limits) \$6,500

Economic Benefit Worksheet

Respondent Aiedeh Husainat and Tajrangeza Khail dba Benny's Food Mart
Case ID No. 37847
Reg. Ent. Reference No. RN101866002
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
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$13,500	22-Dec-1998	31-Jan-2010	11.12	\$7,505	n/a	\$7,505

Notes for DELAYED costs

Estimated cost to permanently remove from service three USTs with a combined capacity of 18,000 gallons at \$0.75 per gallon. Date Required is the date when the Respondent was required to upgrade the UST system. Final Date is the date the Respondent is projected to come into compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$13,500

TOTAL

\$7,505

Screening Date 5-Jun-2009 **Docket No.** 2009-0980-PST-E **PCW**
Respondent Aiedeh Husainat and Tajrangeza Khail dba Benny's Food Mart *Policy Revision 2 (September 2002)*
Case ID No. 37847 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN101866002
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Thomas Greimel

Violation Number
Rule Cite(s)
Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

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

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="text" value="x"/>

Violation Base Penalty

Good Faith Efforts to Comply

	0.0% Reduction	
	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	(mark with x)

Notes

Violation Subtotal

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 Aiedeh Husainat and Tajrangeza Khail dba Benny's Food Mart
Case ID No. 37847
Reg. Ent. Reference No. RN101866002
Media 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
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	9-Apr-2009	28-Jul-2009	0.30	\$2	n/a	\$2

Notes for DELAYED costs

Estimated cost to update the UST registration. Date Required is the date of the investigation. Final Date is the date the Respondents came into compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$2

Compliance History Report

CH 1

Customer/Respondent/Owner-Operator:
Regulated Entity:
ID Number(s):

CN602989410 Husainat, Aiedeh
RN101866002 Benny's Food Mart

Classification: AVERAGE Rating: 3.00
Classification: AVERAGE Site Rating: 3.00

PETROLEUM STORAGE TANK REGISTRATION 12207
REGISTRATION

Location: 1304 SPURLOCK RD, NEDERLAND, TX, 77627
TCEQ Region: REGION 10 - BEAUMONT
Date Compliance History Prepared: June 29, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: June 29, 2004 to June 29, 2009
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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2008 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
Effective Date: 03/14/2009 ADMINORDER 2006-0169-PST-E
Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)
30 TAC Chapter 334, SubChapter C 334.54(b)
30 TAC Chapter 334, SubChapter C 334.54(d)(2)
Description: Failure to permanently remove from service UST components that are not in compliance with 30 TAC 334.55. Specifically, the Facility had been abandoned and the tanks contained 7 inches of products and 1 inch of water. Additionally, the tanks were not secured against tampering and vandalism.
Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)
Description: Failure to amend, update, or change registration information.
- 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 | 11/10/2004 | (337918) |
| 2 | 02/09/2006 | (450556) |
| 3 | 05/26/2009 | (736306) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | |
|--------------|--|--------------------------|
| Date: | 11/10/2004 | (337918) |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 334, SubChapter C 334.47(a)(2)
30 TAC Chapter 334, SubChapter C 334.54(b)
30 TAC Chapter 334, SubChapter C 334.54(d)(2) | |
| Description: | Failure to permanently remove from service UST components that are not in compliance with 30 TAC 334.55. Specifically, the Facility had been abandoned and the tanks contained 7 inches of products and 1 inch of water. Additionally, the tanks were not secured against tampering and vandalism. | |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 334, SubChapter C 334.54(b) | |
| Description: | Failure to assure that all PST equipment shall be capped, plugged, locked, and/or otherwise secured to prevent access, tampering, or vandalism by unauthorized persons. | |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 334, SubChapter A 334.7(d)(3) | |
| Description: | Failure to amend, update, or change registration information. | |
- 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
AIEDEH HUSAINAT AND
TAJRANGEZA KHAIL DBA
BENNY'S FOOD MART;
RN101866002**

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§
§
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§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

**DEFAULT ORDER
DOCKET NO. 2009-0980-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 Respondents and revocation of the Respondents' fuel delivery certificate. The Respondents made the subject of this Order are Aideh Husainat and Tajrangeza Khail dba Benny's Food Mart ("the Respondents").

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

FINDINGS OF FACT

1. The Respondents own three underground storage tanks ("USTs") and a former convenience store located at 1304 Spurlock Road in Nederland, Jefferson County, Texas (the "Facility").
2. The Respondents' three USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. The Respondents' USTs contain a regulated petroleum substance as defined in the rules of the Commission.
3. During an investigation conducted on April 9, 2009, a TCEQ Beaumont Regional Office investigator documented that the Respondents:
 - a. Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and

- b. Failed to notify the agency of any change or additional information regarding the USTs within 30 days from the date of occurrence of the change. Specifically, the registration was not updated to reflect the correct ownership information and current operational status for the UST system.
4. The Respondents received notice of the violations on or about April 14, 2009.
5. The Executive Director recognizes that:
 - a. On or about January 15, 2006, the USTs were emptied of regulated substances; and
 - b. On or about July 28, 2009, the Respondents submitted an updated registration reflecting the correct ownership information and current operational status of the UST system as temporarily out of service.
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 Aiedeh Husainat and Tajrangeza Khail dba Benny's Food Mart" (the "EDPRP") in the TCEQ Chief Clerk's office on November 6, 2009.
7. By letter dated November 6, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served the Respondents with notice of the EDPRP. According to the return receipt "green card," the Respondents received notice of the EDPRP on November 10, 2009, as evidenced by the signature on the card.
8. More than 20 days have elapsed since the Respondents received notice of the EDPRP, provided by the Executive Director. The Respondents 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, the Respondents 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., the Respondents failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, in violation of 30 TEX. ADMIN. CODE § 334.47(a)(2).
3. As evidenced by Finding of Fact No. 3.b., the Respondents failed to notify the agency of any change or additional information regarding the USTs within 30 days from the date of occurrence of the change, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3).

4. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director timely served the Respondents with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
5. As evidenced by Finding of Fact No. 8, the Respondents 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 the Respondents and assess the penalty recommended by the Executive Director.
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondents 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.
7. An administrative penalty in the amount of seven thousand eight hundred dollars (\$7,800.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.
9. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke the Respondents' UST fuel delivery certificate if the Commission finds that good cause exists.
10. Good cause for revocation of the Respondents' UST fuel delivery certificate exists as justified by Findings of Fact Nos. 3, 4, and 6 through 8, and Conclusions of Law Nos. 2 through 5.

ORDERING PROVISIONS

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

1. The Respondents are assessed an administrative penalty in the amount of seven thousand eight hundred dollars (\$7,800.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and the Respondents' 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: Aiedeh Husainat and Tajrangeza Khail dba Benny's Food Mart; Docket No. 2009-0980-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. The Respondents' UST fuel delivery certificate is revoked immediately upon the effective date of this Order. The Respondents may submit an application for a new delivery certificate only after the Respondents have complied with all of the requirements of this Order.
3. Within 10 days after the effective date of this Order, the Respondents shall send their 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. The Respondents shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Commission Order, the Respondents shall permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55.
 - b. Within 45 days after the effective date of this Commission Order, the Respondents shall submit an amended registration to indicate the current operational status of the UST system as permanently out of service, in accordance with 30 TEX. ADMIN. CODE § 334.7, to:

Registration and Reporting Section
Permitting & Remediation Support Division, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- c. Within 60 days after the effective date of this Commission Order, the Respondents 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. 3, 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

with a copy to:

Mr. Derek Eades, Waste Section Manager
Texas Commission on Environmental Quality
Beaumont Regional Office
3870 Eastex Freeway
Beaumont, Texas 77703-1892

5. All relief not expressly granted in this Order is denied.
6. The provisions of this Order shall apply to and be binding upon the Respondents. The Respondents are 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 the Respondents fail 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, the Respondents' failure to comply is not a violation of this Order. The Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondents shall notify the Executive Director within seven days after the Respondents become 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 the Respondents shall be made in

writing to the Executive Director. Extensions are not effective until the Respondents receive 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 the Respondents if the Executive Director determines that the Respondents have 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.

Aiedeh Husainat and Tajrangeza Khail dba Benny's Food Mart
Docket No. 2009-0980-PST-E
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S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF KARI L. GILBRETH

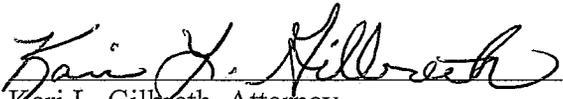
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“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 Aiedeh Husainat and Tajrangeza Khail dba Benny’s Food Mart” (the “EDPRP”) was filed with the Office of the Chief Clerk on November 6, 2009.

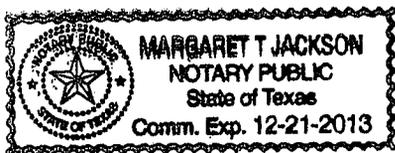
The EDPRP was mailed to Mr. Husainat and Mr. Khail at their last known address on November 6, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Husainat and Mr. Khail received notice of the EDPRP on November 10, 2009 as evidenced by the signature on the card.

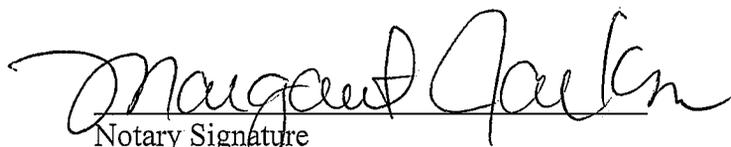
More than 20 days have elapsed since Mr. Husainat and Mr. Khail received notice of the EDPRP. Mr. Husainat and Mr. Khail failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”


Kari L. Gilbreth, Attorney
Office of Legal Services, Litigation Division
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 15th day of March, A.D., 2010.




Notary Signature