

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2010-0073-PST-E RN101829117 CASE NO. 38986
RESPONDENT NAME: RABINDRA NAUTH

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: 1601 Rev. Ransom Howard Street, Port Arthur, Jefferson County

TYPE OF OPERATION: former convenience store

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 July 26, 2010. No comments were received.

CONTACTS AND MAILING LIST:
TCEQ Attorney: Mr. Steven M. Fishburn, Litigation Division, MC 175, (512) 239-3400
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400
TCEQ Enforcement Coordinator: Ms. Elvia Maske, Waste Enforcement Section, MC 128, (512) 239-0789
TCEQ Regional Contact: Mr. Derek Eades, Beaumont Regional Office, MC R-10, (409) 898-3838
Respondent: Mr. Rabindra Nauth, 1815 Procter Street, Port Arthur, Texas 77640
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 type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: November 17, 2009</p> <p>Date of NOE Relating to this Case: December 8, 2009</p> <p>Background Facts: The EDPRP was filed on April 30, 2010, and mailed to Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "refused." The first class mail has not been returned. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Respondent has not yet submitted documentation to certify compliance with the technical requirements. Respondent does not have a delivery certificate.</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 the upgrade requirements [30 TEX. ADMIN. CODE § 334.47(a)(2)]. Failed to notify the agency of any change or additional information regarding the UST within 30 days of the occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)]. 	<p>Total Assessed: \$6,600</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: \$6,600</p> <p>This is a Default Order. 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: <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>Ordering Provisions:</p> <p>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Within 30 days, permanently remove the UST system from service. Within 45 days, submit an amended registration to reflect the owner's current contact information, date of ownership change, and status of the UST system. Within 60 days, submit written certification demonstrating compliance.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	14-Dec-2009			
	PCW	19-Apr-2010	Screening	12-Jan-2010	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	Rabindra Nauth
Reg. Ent. Ref. No.	RN101829117
Facility/Site Region	10-Beaumont
Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	38986	No. of Violations	2	
Docket No.	2010-0073-PST-E	Order Type	1660	
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No	
Multi-Media		Enf. Coordinator	Elvia Maske	
		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	\$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	10.0% Enhancement	Subtotals 2, 3, & 7	\$600
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Notes	Enhancement for two previous NOVs with same or similar violations.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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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	\$657	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$5,100	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$6,600
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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	
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Final Penalty Amount	\$6,600
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$6,600
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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.
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PAYABLE PENALTY	\$6,600
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Screening Date 12-Jan-2010

Docket No. 2010-0073-PST-E

PCW

Respondent Rabindra Nauth

Policy Revision 2 (September 2002)

Case ID No. 38986

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101829117

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

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>)	2	10%
	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	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were 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) 10%

>> 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 two previous NOVs with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 10%

Screening Date 12-Jan-2010

Docket No. 2010-0073-PST-E

PCW

Respondent Rabintra Nauth

Policy Revision 2 (September 2002)

Case ID No. 38986

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101829117

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

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

OR

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (25%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and 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 Number of violation days 56

Table with columns: Frequency (daily, weekly, monthly, quarterly, semiannual, annual, single event) and a checkbox column.

Violation Base Penalty \$5,000

Two monthly events are recommended based on documentation of the violation during the November 17, 2009 record review to the January 12, 2010 screening date.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table with columns: Effort (Extraordinary, Ordinary, N/A) and Reduction (Before NOV, NOV to EDPRP/Settlement).

Notes The Respondent does 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 \$654

Violation Final Penalty Total \$5,500

This violation Final Assessed Penalty (adjusted for limits) \$5,500

Economic Benefit Worksheet

Respondent Rabindra Nauth
Case ID No. 38986
Reg. Ent. Reference No. RN101829117
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)	\$5,000	19-Nov-2007	1-Jul-2010	2.62	\$654	n/a	\$654

Notes for DELAYED costs

Estimated minimum cost to permanently remove one UST from service. The date required is the date when the Respondent was required to upgrade the UST system and the final date is estimated date of 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

\$5,000

TOTAL

\$654

Screening Date 12-Jan-2010 **Docket No.** 2010-0073-PST-E **PCW**
Respondent Rabindra Nauth *Policy Revision 2 (September 2002)*
Case ID No. 38986 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN101829117
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Elvia Maske

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

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
		<input type="text"/>	<input type="text" value="x"/>	<input type="text"/>	
<input type="text" value="100% of the rule requirement was not met."/>					

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 type="text" value="x"/>

Violation Base Penalty

Good Faith Efforts to Comply 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 type="text" value="x"/>	<input type="text" value="(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 Rabindra Nauth
Case ID No. 38986
Reg. Ent. Reference No. RN101829117
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	17-Nov-2009	16-Jul-2010	0.66	\$3	n/a	\$3

Notes for DELAYED costs

Estimated cost to submit an amended UST registration form to the TCEQ. The date required is the record review date and the final date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.00	\$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

\$3

Compliance History Report

Customer/Respondent/Owner-Operator: CN603474719 Rabindra Nauth Classification: AVERAGE Rating: 3.01
Regulated Entity: RN101829117 Weldtest Classification: AVERAGE Site Rating: 3.01
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 9284
REGISTRATION

Location: 1601 REV. RANSOM HOWARD ST, PORT ARTHUR, TX,
77640

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: January 20, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: January 20, 2005 to January 20, 2010

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

Name: Elvia Maske Phone: (512) 239 - 0789

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? Yes
3. If Yes, who is the current owner/operator? Rabindra Nauth
4. If Yes, who was/were the prior owner(s)/operator(s) ? LEWIS ACRES SERVICE INC
5. When did the change(s) in owner or operator occur? November 19, 2007
6. Rating Date: 9/1/2009 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.
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. 05/22/2009 (743997)
2. 02/02/2007 (537783)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 05/22/2009 (743997)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)
Description: Failure to perform the permanent removal of a UST that has not met technical upgrade requirements.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)
Description: Failure to provide amended registration for any change or additional information regarding UST(s) within 30 days from date of the occurrence of the change or addition
Date: 02/02/2007 (537783)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)
Description: Failure to perform the permanent removal of a UST that has not met technical upgrade requirements.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)
Description: Failure to provide amended registration for any change or additional information regarding UST(s) within 30 days from date of the occurrence of the change or addition
- 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
RABINDRA NAUTH;
RN101829117**

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§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER
DOCKET NO. 2010-0073-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 and corrective action of the respondent. The respondent made the subject of this Order is Rabindra Nauth (“Mr. Nauth”).

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

FINDINGS OF FACT

1. Mr. Nauth owns a former convenience store with one (1) underground storage tank (“UST”) located at 1601 Rev. Ransom Howard Street, Port Arthur, Jefferson County, Texas (the “Facility”).
2. The UST at the Facility is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contains a regulated substance as defined in the rules of the Commission.
3. During a record review conducted on November 17, 2009, a TCEQ Beaumont Regional Office investigator documented that Mr. Nauth:
 - 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 UST within 30 days of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current contact information, date of ownership change, and current facility name.
4. Mr. Nauth received notice of the violations on or about December 13, 2009.

5. 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 Rabindra Nauth” (the “EDPRP”) in the TCEQ Chief Clerk’s office on April 30, 2010.
6. By letter dated April 30, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Nauth with notice of the EDPRP. The United States Postal Service returned the EDPRP sent by certified mail as “refused.”¹ The first class mail has not been returned, indicating that Mr. Nauth received notice of the EDPRP.
7. More than 20 days have elapsed since Mr. Nauth received notice of the EDPRP, provided by the Executive Director. Mr. Nauth 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 Findings of Fact Nos. 1 and 2, Mr. Nauth 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.a., Mr. Nauth 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., Mr. Nauth failed to notify the agency of any change or additional information regarding the UST within 30 days of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3).
4. As evidenced by Findings of Fact Nos. 5 and 6, the Executive Director timely served Mr. Nauth with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
5. As evidenced by Finding of Fact No. 7, Mr. Nauth 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. Nauth and assess the penalty recommended by the Executive Director.

¹ The U. S. Postal Service returned the EDPRP with the notation “refused” on the envelope. “When a letter is returned as “refused” or “unclaimed,” the notice is sufficient if it is apparent that the address was valid and could be located by the postal office.” Wright v. Wentzel, 749 S.W.2d 228, 232 (Tex. App.-- Houston [1st Dist.] Mar. 31, 1988, no pet.).

6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Nauth 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 six thousand six hundred dollars (\$6,600.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
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.

ORDERING PROVISIONS

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

1. Mr. Nauth is assessed an administrative penalty in the amount of six thousand six hundred dollars (\$6,600.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Mr. Nauth'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: Rabindra Nauth; Docket No. 2010-0073-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. Nauth shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order, Mr. Nauth shall permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55; and
 - b. Within 45 days after the effective date of this Order, Mr. Nauth shall submit an amended registration to reflect the owner's current contact information, date of

ownership change, and status of the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

Registration and Reporting Section
Permitting & Registration Support Division, MC 129
Texas Commission on Environmental Quality
P. O. Box 13087
Austin, Texas 78711-3087

- c. Within 60 days after the effective date of this Order, Mr. Nauth shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.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.”

Mr. Nauth shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. 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 Fwy.
Beaumont, TX 77703-1830

3. All relief not expressly granted in this Order is denied.

4. The provisions of this Order shall apply to and be binding upon Mr. Nauth. Mr. Nauth is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. If Mr. Nauth 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. Nauth's failure to comply is not a violation of this Order. Mr. Nauth shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Nauth shall notify the Executive Director within seven days after Mr. Nauth becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
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 Mr. Nauth shall be made in writing to the Executive Director. Extensions are not effective until Mr. Nauth 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 Mr. Nauth if the Executive Director determines that Mr. Nauth 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.

Rabindra Nauth
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF STEVEN M. FISHBURN

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Steven M. Fishburn. 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 Rabindra Nauth” (the “EDPRP”) was filed with the Office of the Chief Clerk on April 30, 2010.

The EDPRP was mailed to Mr. Nauth at his last known address on April 30, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as “refused.” The first class mail has not been returned, indicating that Mr. Nauth received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

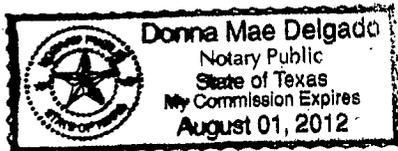
More than 20 days have elapsed since Mr. Nauth received notice of the EDPRP. Mr. Nauth failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.”



Steven M. Fishburn, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Steven M. Fishburn, 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 8th day of June, A.D., 2010.


Notary Signature