

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO. 2009-1525-PST-E RN102314036 CASE NO. 38431

RESPONDENT NAME: BEECHNUT FOOD STORES INC., DBA SUNSHINE 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: 12800 Northborough Drive, Houston, Harris 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 Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired September 6, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Rudy Calderon, Litigation Division, MC 175, (512) 239-0204
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Mr. Mike Pace, Enforcement Section, MC R-4 (817) 588-5933

TCEQ Regional Contact: Ms. Nicole Bealle, Waste Section, Houston Regional Office, MC R-12 (713) 767-3623

Respondent: Mr. Karim Lakhani, Director, Beechnut Food Stores, Inc., 1106 Tuam St., Houston, Texas 77004-2710

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

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: August 14, 2009</p> <p>Date of NOE Relating to this Case: August 17, 2009</p> <p>Background Facts: The EDPRP was filed on March 4, 2010, and mailed to Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on March 8, 2010. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: No outstanding technical requirements. Respondent's delivery certificate expires May 31, 2011, but will be revoked upon the effective date of this order.</p> <p>PST: Failed to verify proper operation of the Stage II equipment at least once every 12 months [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)]</p>	<p>Total Assessed: \$3,119</p> <p>Total Deferred: \$0 <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: \$3,119</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>Corrective Actions Taken: The Executive Director recognizes that Respondent successfully conducted the required annual testing of the Stage II equipment on August 29, 2009.</p> <p>Ordering Provision: Respondent's UST fuel delivery certificate is revoked immediately upon the effective date of the Order. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements of the Order.</p> <p>Within 10 days, Respondent shall submit its delivery certificate to the TCEQ.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	31-Aug-2009			
	PCW	2-Nov-2009	Screening	14-Sep-2009	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	Beechnut Food Stores Inc., d-b-a Sunshine Food Mart				
Reg. Ent. Ref. No.	RN102314036				
Facility/Site Region	12-Houston	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	38431	No. of Violations	1		
Docket No.	2009-1525-PST-E	Order Type	1660		
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Mike Pace		
		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	\$2,500
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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	5.0% Enhancement	Subtotals 2, 3, & 7	\$125
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Notes	Enhancement for one NOV 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	\$494	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$450	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,625
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OTHER FACTORS AS JUSTICE MAY REQUIRE	18.8%	Adjustment	\$494
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Recommended enhancement to capture the avoided cost of compliance associated with the violation.
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Final Penalty Amount	\$3,119
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,119
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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	\$3,119
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Screening Date 14-Sep-2009

Docket No. 2009-1525-PST-E

PCW

Respondent Beechnut Food Stores Inc., d-b-a Sunshine Food Mart

Policy Revision 2 (September 2002)

Case ID No. 38431

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102314036

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Mike Pace

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)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were 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%
<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) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date	14-Sep-2009	Docket No.	2009-1525-PST-E	PCW
Respondent	Beechnut Food Stores Inc., d-b-a Sunshine Food Mart			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	38431			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN102314036			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Mike Pace			
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 115.245(2) and Tex. Health & Safety Code § 382.085(b)			
Violation Description	Failed to verify proper operation of Stage II equipment at least once every 12 months. Specifically, the Stage II annual system compliance testing had not been conducted.			
		Base Penalty	\$10,000	

>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual				
	Potential	x			Percent 25%

>> 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: 1 365 Number of violation days

<i>mark only one with an x</i>	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	x
	single event	

Violation Base Penalty \$2,500

One annual event is recommended for the 12-month period preceding the August 14, 2009 investigation.

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

		Before NOV	NOV to EDPRP/Settlement
Extraordinary			
Ordinary			
N/A	x	(mark with x)	
Notes	The Respondent came into compliance on August 29, 2009. However, no Good Faith Reduction is offered when a Default Order is recommended.		
	Violation Subtotal	\$2,500	

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

Estimated EB Amount	\$494	Violation Final Penalty Total	\$3,119
This violation Final Assessed Penalty (adjusted for limits)		\$3,119	

Economic Benefit Worksheet

Respondent Beechnut Food Stores Inc., d-b-a Sunshine Food Mart
Case ID No. 38431
Reg. Ent. Reference No. RN102314036
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.00	\$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]	\$450	14-Aug-2008	29-Aug-2009	1.96	\$44	\$450	\$494
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Actual avoided cost to conduct the required testing per invoice submitted. The Date Required is one year prior to the investigation date. The Final Date is the compliance date.

Approx. Cost of Compliance

\$450

TOTAL

\$494

Compliance History Report

Customer/Respondent/Owner-Operator:	CN602710196 Beechnut Food Stores Inc.,	Classification: AVERAGE	Rating: 1.50
Regulated Entity:	RN102314036 SUNSHINE FOOD MART	Classification: AVERAGE	Site Rating: 1.50
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		72686
Location:	12800 NORTHBOROUGH Drive, HOUSTON, TX, 77067		
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	September 14, 2009		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	September 14, 2004 to September 14, 2009		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	<u>Ross Fife</u>	Phone:	<u>512-239-2541</u>

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? OWN Beechnut Food Stores, Inc.
4. If Yes, who was/were the prior owner(s)/operator(s)? Northborough Investments, Inc.
BDH, Inc.
5. When did the change(s) in owner or operator occur? 05/13/2005
12/21/2005
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	03/23/2007	(554197)
2	03/26/2007	(554803)
3	08/17/2009	(766094)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	03/23/2007 (554197)	CN602710196	
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 115, SubChapter C 115.245(2)		
Description: Tex. Admin. Code Section 115.245 (2)- Failure to verify proper operation of the Stage II equipment at least once every twelve months or upon major system replacement or modification, whichever occurs first. The verification shall include all functional tests that were required for the initial system test.			
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 115, SubChapter C 115.242(3)		
Description:	30 Tex. Admin. Code Section 115.242 (3)(G) - Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s), and free of defects that would impair the effectiveness of the system.		
- 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
BEECHNUT FOOD STORES
INC., DBA SUNSHINE FOOD
MART;
RN102314036**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

**DEFAULT ORDER
DOCKET NO. 2009-1525-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, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and revocation of the respondent's fuel delivery certificate. The respondent made the subject of this Order is Beechnut Food Stores Inc., d/b/a Sunshine Food Mart ("Beechnut").

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

FINDINGS OF FACT

1. Beechnut owns and operates two underground storage tanks ("USTs") and a convenience store with retail sales of gasoline located at 12800 Northborough Drive, Houston, Harris County, Texas (the "Station").
2. The USTs at the Station are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contain a regulated substance as defined in the rules of the Commission. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. During an investigation conducted on August 14, 2009, a TCEQ Houston Regional Office investigator documented that Beechnut failed to verify proper operation of the Stage II equipment at least once every 12 months. Specifically, annual testing of the Stage II equipment had not been conducted.
4. Beechnut received notice of the violation on or about August 22, 2009.
5. The Executive Director recognizes that Beechnut successfully conducted the required annual testing of the Stage II equipment on August 29, 2009.

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 Beechnut Food Stores Inc., d/b/a Sunshine Food Mart” (the “EDPRP”) in the TCEQ Chief Clerk’s office on March 4, 2010.
7. By letter dated March 4, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Beechnut with notice of the EDPRP. According to the return receipt “green card,” Beechnut received notice of the EDPRP on March 8, 2010, as evidenced by the signature on the card.
8. More than 20 days have elapsed since Beechnut received notice of the EDPRP, provided by the Executive Director. Beechnut 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, Beechnut is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Beechnut failed to verify proper operation of the Stage II equipment at least once every 12 months, in violation of 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b).
3. As evidenced by Findings of Fact Nos. 6 and 7, the Executive Director timely served Beechnut 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, Beechnut 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 Beechnut 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 Beechnut 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 three thousand one hundred nineteen dollars (\$3,119.00) 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 Beechnut's UST fuel delivery certificate if the Commission finds that good cause exists.
9. Good cause for revocation of Beechnut's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 3 and 6 through 8, and Conclusions of Law Nos. 2 through 4.

ORDERING PROVISIONS

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

1. Beechnut is assessed an administrative penalty in the amount of three thousand one hundred nineteen dollars (\$3,119.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Beechnut'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: Beechnut Food Stores Inc., dba Sunshine Food Mart; Docket No. 2009-1525-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. Beechnut's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Beechnut may submit an application for a new fuel delivery certificate only after Beechnut has complied with all of the requirements of this Order.
3. Within 10 days after the effective date of this Order, Beechnut shall send its delivery certificate to:

Petroleum Storage Tank Registration Team, MC 138
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 Beechnut. Beechnut is ordered to give notice of this Order to personnel who maintain day-to-day control over the Station operations referenced in this Order.
6. If Beechnut 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, Beechnut's failure to comply is not a violation of this Order. Beechnut shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Beechnut shall notify the Executive Director within seven days after Beechnut becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. 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 Beechnut shall be made in writing to the Executive Director. Extensions are not effective until Beechnut receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
8. 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 Beechnut if the Executive Director determines that Beechnut has not complied with one or more of the terms or conditions in this Order.
9. 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.
10. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF RUDY CALDERON

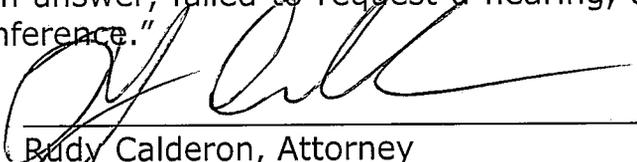
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

"My name is Rudy Calderon. 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 Beechnut Food Stores Inc., d/b/a Sunshine Food Mart" (the "EDPRP") was filed with the Office of the Chief Clerk on March 4, 2010.

The EDPRP was mailed to Beechnut at its last known address on March 4, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Beechnut received notice of the EDPRP on March 8, 2010, as evidenced by the signature on the card.

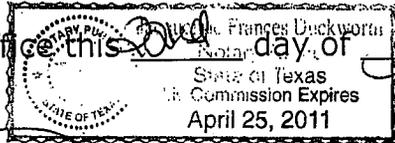
More than 20 days have elapsed since Beechnut received notice of the EDPRP. Beechnut failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference."



Rudy Calderon, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Rudy Calderon, 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 20th day of July, A.D., 2010.





Notary Signature