

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO. 2010-1020-PST-E RN102277415 CASE NO. 39915
RESPONDENT NAME: ABDELRAHIM A. ZARDEH D/B/A TONEY'S FINA

ORDER TYPE:		
<input type="checkbox"/> 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 OCCURRED: 3319 East Belknap Street, Fort Worth, Tarrant County

TYPE OF OPERATION: former convenience store

SMALL BUSINESS: Yes No N/A

OTHER SIGNIFICANT MATTERS: There are no complaints related to this enforcement action. There is no record of additional pending enforcement action 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 January 10, 2011. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Marshall Coover, Litigation Division, MC 175, (512) 239-0620
 Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Jordan Jones, Waste Enforcement Section, MC 149, (512) 239-2569

TCEQ Regional Contact: Sam Barrett, Dallas/Fort Worth Regional Office, MC R-4 (817) 588-5903

Respondent: Abdelrahim A. Zardeh, 3319 East Belknap Street, Fort Worth, Texas 76111

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

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS 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: N/A</p> <p>Date of Investigation: May 12, 2010</p> <p>Date of NOE: May 19, 2010</p> <p>Background Facts: The EDRP was filed on September 23, 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 EDRP on September 25, 2010. Respondent failed to file an answer and failed to request a hearing.</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: 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)].</p>	<p>Total Assessed: \$5,250</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Due to General Revenue: \$5,250</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>Compliance History Classifications: Person/CN – Average Site/RN – Average</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's UST fuel delivery certificate is revoked immediately. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements of these Ordering Provisions.</p> <p>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Within 10 days, send his UST fuel delivery certificate to TCEQ. 1. Within 30 days, permanently remove the UST system from service. 2. Within 45 days, submit written certification demonstrating compliance.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	22-Jun-2010			
	PCW	17-Sep-2010	Screening	22-Jun-2010	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	Abdelrahim A. Zardeh d/b/a Toney's Fina				
Reg. Ent. Ref. No.	RN102277415				
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	39915	No. of Violations	1		
Docket No.	2010-1020-PST-E	Order Type	1660		
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Jordan Jones		
		EC's Team	Enforcement Team 3		
Admin. Penalty \$ Limit	Minimum	\$0	Maximum	\$10,000	

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$5,000
---	-------------------	---------

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	\$250
---------------------------	------------------	--------------------------------	-------

Notes	Enhancement due to one NOV with same or similar violations.
--------------	---

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
--------------------	----	------------------	-------------------	-----

Notes	The Respondent does not meet the culpability criteria.
--------------	--

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
--	-------------------	-----

Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
-------------------------	-------------------	-------------------	-----

Total EB Amounts	\$6,477	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$10,500	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$5,250
-----------------------------	-----------------------	---------

OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
---	------	-------------------	-----

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
--------------	--

Final Penalty Amount	\$5,250
-----------------------------	---------

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$5,250
-----------------------------------	-------------------------------	---------

DEFERRAL	0.0%	Reduction	Adjustment	\$0
-----------------	------	-----------	-------------------	-----

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	\$5,250
------------------------	---------

Screening Date 22-Jun-2010

Docket No. 2010-1020-PST-E

PCW

Respondent Abdelrahim A. Zardeh d/b/a Toney's Fina

Policy Revision 2 (September 2002)

Case ID No. 39915

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102277415

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jordan Jones

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	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)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

Enhancement due to one NOV with same or similar violations.

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

Screening Date 22-Jun-2010

Docket No. 2010-1020-PST-E

PCW

Respondent Abdelrahim A. Zardeh d/b/a Toney's Fina

Policy Revision 2 (September 2002)

Case ID No. 39915

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102277415

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jordan Jones

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), Percent (25%).

>> Programmatic Matrix

Table with columns: 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 Number of violation days 28

Table with columns: Frequency (daily, weekly, monthly, quarterly, semiannual, annual, single event), mark only one with an x.

Violation Base Penalty \$5,000

Two monthly events are recommended from the May 12, 2010 investigation date to the June 22, 2010 screening date.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table with columns: Extraordinary, Ordinary, N/A, 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 \$6,477

Violation Final Penalty Total \$5,250

This violation Final Assessed Penalty (adjusted for limits) \$5,250

Economic Benefit Worksheet

Respondent Abdelrahim A. Zardeh d/b/a Toney's Fina
Case ID No. 39915
Reg. Ent. Reference No. RN102277415
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)	\$10,500	22-Dec-1998	21-Apr-2011	12.34	\$6,477	n/a	\$6,477

Notes for DELAYED costs

Estimated cost to permanently remove from service three USTs with a capacity of 14,000 gallons at \$0.75 per gallon. The Date Required is the date when the Respondent was required to upgrade the UST system 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

2

Approx. Cost of Compliance	\$10,500	TOTAL	\$6,477
----------------------------	----------	--------------	---------

Compliance History Report

Customer/Respondent/Owner-Operator: CN603679978 ABDELRAHIM A. ZARDEH Classification: AVERAGE Rating: 3.01

Regulated Entity: RN102277415 TONEY'S FINA Classification: AVERAGE Site Rating: 3.01

ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 42125
REGISTRATION

Location: 3319 E BELKNAP ST, FORT WORTH, TARRANT COUNTY,
TEXAS, 76111

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: June 22, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 22, 2005 to June 22, 2010

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

Name: Jordan Jones Phone: 512-239-2569

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: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgments, 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 01/26/2010 (789515)
 - 2 05/18/2010 (802947)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	01/26/2010	(789515)	CN60367997
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 334, SubChapter C 334.47(a)(2)		
Description:	Failure to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.		
 - 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

THIS PAGE INTENTIONALLY LEFT BLANK

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN ENFORCEMENT ACTION CONCERNING ABDELRAHIM A. ZARDEH D/B/A TONEY'S FINA; RN102277415	§ § § § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
---	--	---

DEFAULT ORDER DOCKET NO. 2010-1020-PST-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty, corrective action of the respondent, and revocation of respondent's fuel delivery certificate. The respondent made the subject of this Order is Abdelrahim A. Zardeh d/b/a Toney's Fina ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), three underground storage tanks ("USTs") and a former convenience store with retail sales of gasoline located at 3319 East Belknap Street in Fort Worth, Tarrant County, Texas (the "Facility"). The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contain a regulated petroleum substance as defined in the rules of the TCEQ.
2. During a record review conducted on May 12, 2010 a TCEQ Dallas/Fort Worth Regional Office investigator documented that Respondent failed to permanently remove from service, no later than 60 days after the upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.
3. Respondent received notice of the violation on or about May 24, 2010.
4. 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 Abdelrahim A. Zardeh d/b/a Toney's Fina," (the "EDPRP") in the TCEQ Chief Clerk's office on September 23, 2010.
5. By letter dated September 23, 2010, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the

return receipt "green card," Respondent received notice of the EDPRP on September 25, 2010, as evidenced by the signature on the card.

6. More than 20 days have elapsed since Respondent received notice of the EDPRP, provided by the Executive Director. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2, Respondent failed to permanently remove from service, no less 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 Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondent 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. 6, Respondent 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 Respondent 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 Respondent for violations of state statutes 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 five thousand two hundred fifty dollars (\$5,250.00) 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 Respondent's UST fuel delivery certificate if the Commission finds that good cause exists.
9. Good cause for revocation of Respondent's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2 and 4 through 6, and Conclusions of Law Nos. 2 through 4.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of five thousand two hundred fifty dollars (\$5,250.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent'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.
2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Abdelrahim A. Zardeh d/b/a Toney's Fina; Docket No. 2010-1020-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

3. Respondent's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements of this Order.
4. Within 10 days after the effective date of this Order, Respondent shall send his UST fuel delivery certificate to:

Petroleum Storage Tank Registration Team, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

5. Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order, Respondent 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, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision Nos. 4 and 5.a. 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."

Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions 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:

Sam Barrett, Water Section Manager
Texas Commission on Environmental Quality
Dallas/Fort Worth Regional Office
2309 Gravel Drive
Fort Worth, Texas 76118-6951

6. All relief not expressly granted in this Order is denied.
7. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
8. If Respondent 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, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
9. 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 shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

10. 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 Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
11. 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.
12. 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.

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF MARSHALL COOVER

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

"My name is Marshall Coover. 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 Abdelrahim A. Zardeh d/b/a Toney's Fina," (the "EDPRP") was filed in the TCEQ Chief Clerk's office on September 23, 2010.

The EDPRP was mailed to Respondent's last known address on September 23, 2010 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 September 25, 2010, as evidenced by the signature on the card.

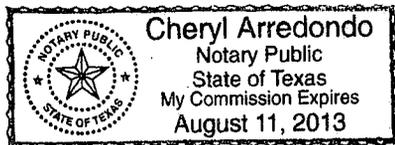
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference."



Marshall Coover, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Marshall Coover, 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 24th day of February, A.D. 2010.





Notary Signature