

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 47686
David Sommer d/b/a Goat Hill Country Store
RN101447084
Docket No. 2013-1794-PST-E

Order Type:

Default Order

Media:

Petroleum Storage Tank

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

22781 FM 357, Groveton, Trinity County

Type of Operation:

inactive underground storage tank ("UST") system

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: June 6, 2014

Comments Received: None

Penalty Information

Total Penalty Assessed: \$5,250

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$5,250

Compliance History Classifications:

Person/CN – Satisfactory
Site/RN – Satisfactory

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2011

Investigation Information

Complaint Date(s): N/A

Date(s) of Investigation: March 21, 2013; August 20, 2013

Date(s) of NOV(s): May 16, 2013

Date(s) of NOE(s): September 6, 2013

Violation Information

1. Failed to notify the Commission of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition [30 TEX. ADMIN. CODE §§ 334.7(d)(3) and 334.54(e)(2)].
2. Failed to assure that the out of service UST system is maintained in compliance with corrosion protection requirements [TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE §§ 334.49(a)(1) and 334.54(c)(1)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Within 30 days, either:
 - a. Permanently remove the UST system from service; or
 - b. Properly temporarily remove the UST system from service, which includes the following actions:
 - i. Empty the UST system; and
 - ii. Provide corrosion protection for the UST system.
2. Within 30 days, submit an amended UST registration to reflect the current operational status of the UST system.
3. Within 45 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: December 10, 2013; February 21, 2014
Date Green Card(s) Signed: Unclaimed; Unclaimed
Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Jess Robinson, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Aaron Tucker, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Steven Van Landingham, Enforcement Division, (512) 239-5717

TCEQ Regional Contact: Marilyn Gates, Beaumont Regional Office, (409) 898-3838

Respondent: David Sommer, 2015 Alabama Street, Houston, Texas 77004

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	9-Sep-2013		
	PCW	28-Apr-2014	Screening	18-Sep-2013
			EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	David Sommer dba Goat Hill Country Store		
Reg. Ent. Ref. No.	RN101447084		
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	47686	No. of Violations	2
Docket No.	2013-1794-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Steven Van Landingham
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

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 for one NOV with same/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	\$532	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$16,100	

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 18-Sep-2013

Docket No. 2013-1794-PST-E

PCW

Respondent David Sommer dba Goat Hill Country Store

Policy Revision 3 (September 2011)

Case ID No. 47686

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101447084

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Van Landingham

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("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 judgments 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 for one NOV with same/similar violations.

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

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100%

Screening Date 18-Sep-2013 **Docket No.** 2013-1794-PST-E **PCW**
Respondent David Sommer dba Goat Hill Country Store *Policy Revision 3 (September 2011)*
Case ID No. 47686 *PCW Revision August 3, 2011*
Reg. Ent. Reference No. RN101447084
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Steven Van Landingham

Violation Number

Rule Cite(s)

30 Tex. Admin. Code §§ 334.7(d)(3) and 334.54(e)(2)

Violation Description

Failed to notify the agency of any change or additional information regarding the underground storage tanks ("USTs") within 30 days of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current operational status of the UST system.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR

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

Percent

>> Programmatic Matrix

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

Percent

Matrix Notes

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

Violation Base Penalty

One single event is recommended.

Good Faith Efforts to Comply Reduction

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

Notes The Respondent does not meet the good faith criteria for this violation.

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 David Sommer dba Goat Hill Country Store
Case ID No. 47686
Reg. Ent. Reference No. RN101447084
Media Violation No. 1
Media Petroleum Storage Tank

Percent Interest	Years of Depreciation
5.0	15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description 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	20-Aug-2013	18-Apr-2014	0.66	\$3	n/a	\$3

Notes for DELAYED costs

Estimated cost to accurately prepare and submit an updated UST registration. 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

Screening Date 18-Sep-2013

Docket No. 2013-1794-PST-E

PCW

Respondent David Sommer dba Goat Hill Country Store

Policy Revision 3 (September 2011)

Case ID No. 47686

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101447084

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Van Landingham

Violation Number 2

Rule Cite(s) 30 Tex. Admin Code §§ 334.49(a)(1) and 334.54(c)(1), and Tex. Water Code § 26.3475(d)

Violation Description Failed to assure that the out of service UST system is maintained in compliance with corrosion protection requirements.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (15.0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (0.0%).

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 \$21,250

\$3,750

Violation Events

Number of Violation Events 1 Number of violation days 29

Table for frequency selection: daily, weekly, monthly (marked with x), quarterly, semiannual, annual, single event.

Violation Base Penalty \$3,750

One monthly event is recommended from the August 20, 2013 record review to the September 18, 2013 screening date.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (marked with x).

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$528

Violation Final Penalty Total \$3,938

This violation Final Assessed Penalty (adjusted for limits) \$3,938

Economic Benefit Worksheet

Respondent David Sommer dba Goat Hill Country Store
Case ID No. 47686
Reg. Ent. Reference No. RN101447084
Media Violation No. Petroleum Storage Tank
 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)	\$16,000	20-Aug-2013	18-Apr-2014	0.66	\$528	n/a	\$528

Notes for DELAYED costs
 Estimated cost to permanently remove two USTs from service with a combined capacity of 16,000 gallons at \$1.00 per gallon. 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 \$16,000

TOTAL \$528

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



Compliance History Report

PENDING Compliance History Report for CN602711905, RN101447084, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN602711905, David Sommer

Classification: SATISFACTORY

Rating: 9.00

Regulated Entity: RN101447084, Goat Hill Country Store

Classification: SATISFACTORY

Rating: 9.00

Complexity Points: 0

Repeat Violator: NO

CH Group: 14 - Other

Location: 22781 FM 357 GROVETON, TX 75845-3220, TRINITY COUNTY

TCEQ Region: REGION 10 - BEAUMONT

ID Number(s): **PETROLEUM STORAGE TANK REGISTRATION** REGISTRATION 40282

Compliance History Period: September 01, 2008 to August 31, 2013

Rating Year: 2013

Rating Date: 09/01/2013

Date Compliance History Report Prepared: September 18, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: September 18, 2008 to September 18, 2013

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Troy Warden

Phone: (512) 239-1050

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? NO
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If YES for #2, who is the current owner/operator? N/A
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If YES, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

Item 1 August 22, 2012 (1023587)

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

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

1 Date: 05/16/2013 (1088620) CN602711905

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)

30 TAC Chapter 334, SubChapter A 334.7(e)(2)

Description: Failure to amend/update the petroleum storage tank (PST) registration to reflect the current status and owner information.

Self Report? NO Classification: Major

Citation: 30 TAC Chapter 334, SubChapter C 334.50(a)

30 TAC Chapter 334, SubChapter C 334.54(c)(2)

30 TAC Chapter 334, SubChapter C 334.54(d)(2)

Description: Failure to perform the temporary removal of a UST in compliance with release detection requirements.

Self Report? NO Classification: Major

Citation: 30 TAC Chapter 334, SubChapter C 334.49(c)(4)(C)

30 TAC Chapter 334, SubChapter C 334.54(c)(1)

Description: Failure to ensure the underground storage tank (UST) system is protected from corrosion.

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
DAVID SOMMER DBA
GOAT HILL COUNTRY STORE;
RN101447084**

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2013-1794-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 and corrective action of the respondent. The respondent made the subject of this Order is David Sommer d/b/a Goat Hill Country Store ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns and operated, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), an inactive underground storage tank ("UST") system located at 22781 FM 357 in Groveton, Trinity County, Texas (Facility ID No. 40282) (the "Facility"). The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the TCEQ's rules, and contain a regulated petroleum substance as defined in the TCEQ's rules.
2. During an investigation conducted on March 21, 2013, and a record review conducted on August 20, 2013, a TCEQ Beaumont Regional Office investigator documented that Respondent:
 - a. Failed to notify the Commission of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current operational status of the UST system; and
 - b. Failed to assure that the out of service UST system is maintained in compliance with corrosion protection requirements.
3. Respondent received notice of the violations on or about May 21, 2013, and on or about September 11, 2013.
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 David Sommer d/b/a Goat Hill Country Store" (the "EDPRP") in the TCEQ Chief Clerk's office on December 10, 2013.
5. The EDPRP was mailed to Respondent's last known address on December 10, 2013, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed."

6. The Executive Director re-filed the EDPRP in the TCEQ Chief Clerk's office on February 21, 2014.
7. By letter dated February 21, 2014, 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. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.
8. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

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 TCEQ.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to notify the Commission of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE §§ 334.7(d)(3) and 334.54(e)(2).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to assure that the out of service UST system is maintained in compliance with corrosion protection requirements, in violation of TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE §§ 334.49(a)(1) and 334.54(c)(1).
4. As evidenced by Findings of Fact Nos. 4 through 7, 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(c)(2).
5. As evidenced by Finding of Fact No. 8, 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.
6. 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 TCEQ'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 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.
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. 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: David Sommer d/b/a Goat Hill Country Store; Docket No. 2013-1794-PST-E" to:

Financial Administration Division, Revenues Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

3. Respondent shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Order, Respondent shall either:
 - i. Permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55; or
 - ii. Properly temporarily remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.54, which includes the following actions:
 - A. Empty the UST system in accordance with 30 TEX. ADMIN. CODE § 334.54(d); and
 - B. Provide corrosion protection for the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.54(c)(1).
- b. Within 30 days after the effective date of this Order, Respondent shall submit an amended UST registration to reflect the current operational status of the UST system, as chosen by Respondent in response to Ordering Provision No. 3.a., in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

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

- c. Within 45 days after the effective date of this Order, Respondent shall submit written certification to demonstrate compliance with Ordering Provision Nos. 3.a. and 3.b. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall 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 certifications and supporting documentation necessary to demonstrate compliance with these Ordering Provisions to:

Order Compliance Team
Texas Commission on Environmental Quality
Enforcement Division, MC 149A
P.O. Box 13087
Austin, Texas 78711-3087

and:

Marilyn Gates, Waste Section Manager
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1830

4. All relief not expressly granted in this Order is denied.
5. 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.
6. 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.
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 Respondent 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.
8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas 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.
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.

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF JESS ROBINSON

STATE OF TEXAS

§

COUNTY OF TRAVIS

§

§

"My name is Jess Robinson. 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 David Sommer d/b/a Goat Hill Country Store" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on December 10, 2013.

The EDPRP was mailed to Respondent's last known address on December 10, 2013 via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed."

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the EDPRP was re-filed in the TCEQ Chief Clerk's office on February 21, 2014.

The EDPRP was mailed to Respondent's last known address on February 21, 2014 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 "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

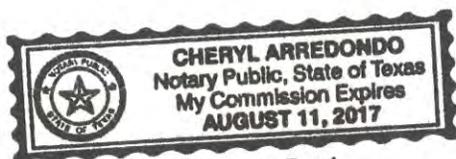
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."

Jess Robinson

Jess Robinson, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jess Robinson, 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 15th day of May, A.D. 2014.



Notary without Bond

Cheryl Arredondo

Notary Signature