

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2003-0922-PST-E TCEQ ID NO.: RN102432440 CASE NO.: 9118**  
**RESPONDENT NAME: TUFTSUN, INC.**

<b>ORDER TYPE:</b>		
<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	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND 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:** 208 South Hickory Street, Abbott, Hill 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.

**INTERESTED PARTIES:** No one other than the ED and the Respondent has expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired on September 24, 2007. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Mr. Jim Sallans, Litigation Division, MC 175, (512) 239-2053

Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873

**TCEQ Enforcement Coordinator:** Ms. Elvia Maske, Waste Enforcement Section, MC 128, (512) 239-0789

**TCEQ Regional Contact:** Mr. Frank Burlison, Waco Regional Office, MC R-9, (254) 761-3007

**Respondent:** Mr. Robert L. Tufts, President and Registered Agent, Tuftsun, Inc., 212 South Hickory Street, Abbott, Texas 76621

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

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Dates of Complaints Relating to this Case:</b>                      None</p> <p><b>Dates of Investigations Relating to this Case:</b>                      May 29, 2002</p> <p><b>Dates of NOV/NOEs Relating to this Case:</b>                      May 29, 2002 (NOV) and February 11, 2004 (NOE)</p> <p><b>Background Facts:</b></p> <p>This case started as a Financial Assurance Compliance Evaluation for a PST. The Respondent failed to respond and an inspection was conducted on May 29, 2002. The Respondent failed to respond to requests from staff for the proper documentation of financial assurance. A petition was filed, mailed, and served and the Respondent failed to answer.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p><b>PST:</b></p> <p>Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental release arising from the operation of the USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].</p>	<p><b>Total Assessed:</b> \$4,200</p> <p><b>Total Deferred:</b> \$0</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Due to General Revenue:</b> \$4,200</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p><b>Site Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions</b></p> <p>There are no technical requirements required because the Respondent no longer owns or operates this Facility.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (09/02)

PCW Revision 6/12/2003

<b>DATES</b>	
PCW	12-Sep-2003
Screening	11-Sep-2003
Priority Due	9-Jan-2004
EPA Due	
<b>RESPONDENT INFORMATION</b>	
Respondent	Tuftsun, Inc.
Respondent/Site ID No(s)	Petroleum Storage Tank Facility ID No. 12081; Regulated Entity Reference No. RN102432440
Facility/Site Region	11 - Austin
Major/Minor Source	Minor
<b>CASE INFORMATION</b>	
Enf./Case ID No(s)	CCEDS Case No. 9118
Docket No.	2003-0922-PST-E
No. Violations	1
Case Priority	3
Order Type	1660 without deferral
Enf. Coordinator	Elvia Maske
EC's Team	Order Compliance Team
Media Program(s)	Petroleum Storage Tank
Admin. Penalty \$ Limit	Minimum \$0 Maximum \$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY</b> (Sum of violation base penalties)	Subtotal 1	\$4,000													
<b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>															
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.															
<b>Compliance History</b>	5% Enhancement	Subtotals 2, 3 & 7 \$200													
Notes	Respondent received one NOV with same or similar violation.	+													
<b>Culpability</b>	0% Enhancement	Subtotal 4 \$0													
Notes	Respondent does not meet the culpability criteria.	+													
<b>Good Faith Effort to Comply</b>	0% Reduction	Subtotal 5 \$0													
Notes	Respondent does not meet the good faith criteria.	+													
<b>Economic Benefit</b>	0% Enhancement*	Subtotal 6 \$0													
<table border="1"> <tr> <td>Extraordinary</td> <td>Before NOV</td> <td>NOV to EDRP/Settlement Offer</td> </tr> <tr> <td>Ordinary</td> <td></td> <td></td> </tr> <tr> <td>None of the above</td> <td>X</td> <td>(mark with small x)</td> </tr> </table>	Extraordinary	Before NOV	NOV to EDRP/Settlement Offer	Ordinary			None of the above	X	(mark with small x)	<table border="1"> <tr> <td>\$2,730</td> <td>Total EB Amounts</td> </tr> <tr> <td>\$2,600</td> <td>Approx. Cost of Compliance</td> </tr> </table>	\$2,730	Total EB Amounts	\$2,600	Approx. Cost of Compliance	*Capped at the Total EB \$ Amount =
Extraordinary	Before NOV	NOV to EDRP/Settlement Offer													
Ordinary															
None of the above	X	(mark with small x)													
\$2,730	Total EB Amounts														
\$2,600	Approx. Cost of Compliance														
<b>SUM OF SUBTOTALS 1-7</b>	Final Subtotal	\$4,200													
<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	Adjustment	\$0													
Notes		=													
<b>STATUTORY LIMIT ADJUSTMENT</b>	Final Assessed Penalty	\$4,200													
<b>DEFERRAL</b>	Deferral 0% Reduction	Adjustment \$0													
Notes	Respondent received previous NOV for the same or similar violations on May 29, 2002.	=													
<b>PAYABLE PENALTY</b>		\$4,200													

Screening Date 11-Sep-2003

Docket Number 2003-0922-PST-E

PCW

Respondent Tuftsun, Inc.

Policy Revision 2 (09/02)

Case ID No. CCEDS Case No. 9118

PCW Revision 6/12/2003

Respondent/Site ID No. Petroleum Storage Tank Facility ID No. 12081; Regulated Entity Reference No. RN102432440

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Site Address 208 S. Hickory Street, Abbott, Hill County

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%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)		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%
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%
	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%
Convictions	Any criminal convictions of this state or the federal government (number of counts)		0%
Emissions	Chronic excessive emissions events (number of events)		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%
	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%

Please enter Yes or No

Other	Environmental management systems in place for one year or more		0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program		0%
	Participation in a voluntary pollution reduction program		0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements		0%

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No  Select Yes/No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer  Select High, Average or Poor

Adjustment Percentage (Subtotal 7) 0%

Compliance History Summary

Compliance History Notes

Respondent received one NOV with same or similar violation.

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

**Screening Date** 11-Sep-03      **Docket Number** 2003-0922-PST-E      **PCW**  
**Respondent** Tuftsun, Inc.      **Policy Revision 2 (09/02)**  
**Case ID No.** CCEDS Case No. 9118      **PCW Revision 6/12/2003**  
**Respondent/Site ID No.** Petroleum Storage Tank Facility ID No. 12081; Regulated Entity Reference No. RN102432440  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Elvia Maske  
**Violation Number**   
**Primary Rule Cite**   
**Secondary Cite(s)**   
**Violation Description**

**Base Penalty**

» **Environmental, Property and Human Health Matrix**

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

» **Programmatic Matrix**

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

**Matrix Notes**

**Adjustment**   
**Base Penalty Subtotal**

**Violation Events**

**Number of Violation Events**

*mark only one; use small x*

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

**Violation Base Penalty**

**Events Notes**

**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** Tuftsun, Inc.  
**ID Number(s)** CCEDS Case No. 9118  
**Media [Statute]** Petroleum Storage Tank  
**Violation Number** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (As needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (As Needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

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**Avoided Costs**

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equip				0.0	\$0	\$0	\$0
Financial Assurance [2]	\$2,600	4-Mar-2002	3-May-2002	1.0	\$130	\$2,600	\$2,730
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to provide financial assurance for four petroleum USTs for the 12 month period prior to the initial record review date.
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Approx Cost of Compliance

**TOTAL**

## COMPLIANCE HISTORY

Customer/Respondent/Owner-Operator:	Tuftsun, Inc.	Site Classification: Average
Regulated Entity/ID Nos.:	Abbott Quick Stop, RN102432440, Petroleum Storage Tank Facility ID No. 12081	Site Rating: 1.0
Location [physical address or description of location (street, highway, FM, etc.) including city or nearest city, and county]:	208 S. Hickory Street, Abbott, Hill County	Repeat Violator: (y/n) n
TCEQ Region No.:	9	
Date Compliance History Prepared:	09/11/03	

Agency Decision Requiring Compliance History (mark one):

- |                                     |   |
|-------------------------------------|---|
| <input type="checkbox"/>            | the issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit |
| <input checked="" type="checkbox"/> | enforcement   |
| <input type="checkbox"/>            | the use of announced investigations (Field Ops)   |
| <input type="checkbox"/>            | participation in innovative programs  |

Compliance Period: 09/11/98 to 09/11/2003

TCEQ staff person to contact for additional information regarding this compliance history:

Name: Gilbert Angelle Phone: (512) 239-4489

### Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period?  Yes  No  Unk
2. Has there been a (known) change in ownership of the site during the compliance period?  Yes  No  Unk
3. If Yes, who is the current owner? \_\_\_\_\_
4. If Yes, who was/were the prior owner(s)? \_\_\_\_\_
5. When did the change(s) in ownership occur? \_\_\_\_\_

Components (multimedia) for the Site:

A. Final enforcement orders, court judgments, and consent decrees of the state of Texas and the federal government

- |                        |      |                 |  |
|------------------------|------|-----------------|--|
| 1. Effective Date:     | None | Type of Action: |  |
| Violation Citation 1:  |      | Classification: |  |
| Violation Description: |      |                 |  |

B. Any criminal convictions of the state of Texas and the federal government.

Conviction Date: None  
Count 1:

C. Chronic excessive emissions events: None

D. The dates of investigations.

1. May 29, 2002      2. June 26, 2002

E. Written notices of violation (NOV)

1. Date: May 29, 2002 Self-reported?  Yes  No  
Violation Citation 1: 30 TAC § 37.815(a) and (b) Classification: Moderate  
Violation Description: Failed to demonstrate acceptable financial assurance.

F. Environmental audits.

1. Notice of Intent Date: None  
Disclosure Date: None  
Violation Citation 1: Classification:  
Violation Description:

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

State: None

Site Name:

Location:

Type of Action:

Effective Date:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
TUFTSUN, INC.,  
RN102432440

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**DEFAULT ORDER**  
**DOCKET NO. 2003-0922-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 Tuftsun, Inc. ("Tuftsun").

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

**FINDINGS OF FACT**

1. Tuftsun owned and operated a convenience store with retail sales of gasoline located at 208 South Hickory Street, Abbott, Hill County, Texas (the "Facility").
2. Tuftsun's underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Tuftsun's USTs contain a regulated substance as defined in the rules of the Commission.
3. During a record review on May 29, 2002, a TCEQ Central Office investigator documented that Tuftsun failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental release arising from the operation of the USTs.
4. Tuftsun received notice of the violation on or about June 3, 2002 and February 11, 2004.
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 Tuftsun, Inc." (the "EDPRP") in the TCEQ Chief Clerk's office on February 9, 2004.

6. By letter dated February 9, 2004, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Tuftsun with notice of the EDPRP. According to the return receipt "green card", Tuftsun received notice of the EDPRP on February 11, 2004, as evidenced by the signature on the card.
7. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Tuftsun, Inc." (the "EDFARP") in the TCEQ Chief Clerk's office on April 3, 2007.
8. By letter dated April 3, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Tuftsun with notice of the EDFARP. According to the return receipt "green card", Tuftsun received notice of the EDFARP on April 12, 2007, as evidenced by the signature on the card.
9. More than 20 days have elapsed since Tuftsun received notice of the EDPRP and the EDFARP provided by the Executive Director. Tuftsun failed to file an answer to either the EDPRP or the EDFARP, failed to request a hearing, and failed to schedule a settlement conference.

### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Tuftsun 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, Tuftsun failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental release arising from the operation of the USTs, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b).
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director has timely served Tuftsun 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 Nos. 7 and 8, the Executive Director has timely served Tuftsun with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
5. As evidenced by Finding of Fact No. 9, Tuftsun has failed to file a timely answer to the EDPRP or the EDFARP, 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 Tuftsun 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 Tuftsun 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.
7. An administrative penalty in the amount of four thousand two hundred dollars (\$4,200.00) 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. Tuftsun is assessed an administrative penalty in the amount of four thousand two hundred dollars (\$4,200.00) for violations of TEX. WATER CODE chs. 7 and 26 and rules of the TCEQ. The payment of this administrative penalty and Tuftsun'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: Tuftsun, Inc.; Docket No. 2003-0922-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. All relief not expressly granted in this Order is denied.

3. The provisions of this Order shall apply to and be binding upon Tuftsun.
4. If Tuftsun 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, Tuftsun's failure to comply is not a violation of this Order. Tuftsun shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Tuftsun shall notify the Executive Director within seven days after Tuftsun becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. 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 Tuftsun shall be made in writing to the Executive Director. Extensions are not effective until Tuftsun receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. 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 Tuftsun if the Executive Director determines that Tuftsun has not complied with one or more of the terms or conditions in this Order.
7. 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.
8. 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

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For the Commission

**AFFIDAVIT OF JIM SALLANS**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Jim Sallans. 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.

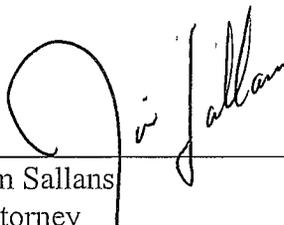
On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Tuftsun, Inc.” (the “EDPRP”) with the Office of the Chief Clerk on February 9, 2004.

I sent the EDPRP to Tuftsun at its last known address on February 9, 2004 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card”, Tuftsun received notice of the EDPRP on February 11, 2004, as evidenced by the signature on the card.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the “Executive Director’s First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Tuftsun, Inc.” (the “EDFARP”) with the Office of the Chief Clerk on April 3, 2007.

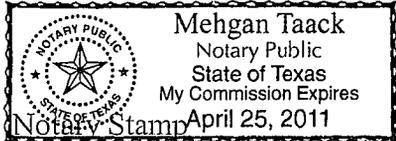
I sent the EDFARP to Tuftsun at its last known address on April 3, 2007 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card”, Tuftsun received notice of the EDFARP on April 12, 2007, as evidenced by the signature on the card.

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

  
\_\_\_\_\_  
Jim Sallans  
Attorney  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jim Sallans, 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 10<sup>th</sup> day of JULY, A.D., 2007.



Mehgan Taack  
Notary Signature