

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NUMBER: 2006-0216-PST-E TCEQ ID NO: RN101836518 ENF ID: 28448**  
**RESPONDENT NAME: J.C. CONOCO, INC.**

**ORDER TYPE:**

<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> SHUTDOWN ORDER	<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> EMERGENCY ORDER	

**CASE TYPE:**

<input type="checkbox"/> AGRICULTURE	<input type="checkbox"/> AIR	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE	<input type="checkbox"/> MUNICIPAL SOLID WASTE
<input type="checkbox"/> OCCUPATIONAL CERTIFICATION	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> RADIOACTIVE WASTE
<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL	<input type="checkbox"/> USED OIL
<input type="checkbox"/> USED OIL FILTER	<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> DRY CLEANER REGISTRATION	

**SITE WHERE VIOLATION(S) OCCURRED:** 4612 West Cedar Bayou Lynchburg Road, Baytown, Harris County

**TYPE OF OPERATION:** Convenience store with retail sales of gasoline

**SMALL BUSINESS:**  Yes  No

**OTHER SIGNIFICANT MATTERS:** There are no previous 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 April 9, 2007. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019; Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873

**TCEQ Enforcement Coordinator:** Ms. Deanna Holland, Enforcement Division, Section IV, MC 219, (512) 239-2504

**TCEQ Regional Contact:** Mr. Stephen Smith, Houston Regional Office, MC R-12, (713) 767-3581

**Respondent:** Mr. Jong M. Choe, President, J.C. Conoco, Inc., 7901 Long Point Drive, Houston, Texas 77055

**Respondent's Attorney:** Not represented by counsel.

**RESPONDENT'S NAME: J.C. CONOCO, INC.  
DOCKET NO.: 2006-0126-PST-E**

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input checked="" type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date(s) of Investigation(s) Relating to this Case: July 25, October 24, and November 11, 2005, and February 7, 2006</p> <p>Date(s) of NOV(s)/NOE(s) Relating to this Case: February 15, 2006 (NOE); August 23, 2005; November 1, 2005; December 16, 2005 (NOVs)</p> <p><b>Background Facts:</b></p> <p>The EDPRP was filed on August 1, 2006. The Respondent received notice of the EDPRP on August 3, 2006, as evidenced by the signature on the return receipt "green card." The Respondent failed to respond to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</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>(1) Failed to verify the proper operation of the Stage II equipment at least once every 36 months [30 TEX. ADMIN. CODE § 115.245(2) AND TEX. HEALTH &amp; SAFETY § 382.085(b)].</p> <p>(2) Failed 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), failing to keep the system free of defects that would impair the effectiveness of the system, and failing to post operating instructions conspicuously on the front of each dispenser equipped with a Stage II system [30 TEX. ADMIN. CODE § 115.242(3) AND (9) AND TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$4,095</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>Total Due to General Revenue: \$4,095</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"/> Avg. <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b> <input type="checkbox"/> High <input checked="" type="checkbox"/> Avg. <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><b>Ordering Provision(s)</b></p> <p>(1) The Respondent's UST delivery certificate is revoked immediately upon the effective date of this Order.</p> <p>(2) Within 10 days, the Respondent shall send its UST delivery certificate to TCEQ.</p> <p>The Respondent shall undertake the following technical requirements:</p> <p>(3) Within 30 days:</p> <p>(a) Conduct triennial testing of the Stage II Vapor Recovery System; and</p> <p>(b) Post operating instructions on the front of each dispenser, and begin maintaining the Stage II Vapor Recovery System in proper operational condition.</p> <p>(4) Within 45 days, submit written certification demonstrating compliance.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 19, 2005

<b>DATES</b>	Assigned	21-Feb-2006	Screening	22-Feb-2006	EPA Due	
	PCW	24-Feb-2006				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	J.C. Conoco, Inc.
Reg. Ent. Ref. No.	RN101836518
Facility/Site Region	12-Houston
Major/Minor Source	Minor Source

<b>CASE INFORMATION</b>			
Enf./Case ID No.	28448	No. of Violations	2
Docket No.	2006-0216-PST-E	Order Type	Findings
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Deana Holland
Multi-Media		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 **\$3,500**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** 17% Enhancement Subtotals 2, 3, & 7 **\$595**

Notes: Enhancement for three NOV's with same or similar violations and one NOV without same or similar violations.

**Culpability** No 0% Enhancement Subtotal 4 **\$0**

Notes: The respondent does not meet the culpability criteria.

**Good Faith Effort to Comply** 0% Reduction Subtotal 5 **\$0**

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with a small x)
Notes	The respondent is not yet in compliance.	

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

Total EB Amounts	\$1,622	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,500	

**SUM OF SUBTOTALS 1-7** Final Subtotal **\$4,095**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** Adjustment **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

**Final Penalty Amount** **\$4,095**

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty **\$4,095**

**DEFERRAL** 0% Reduction Adjustment **\$0**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral offered with findings order.

**PAYABLE PENALTY** **\$4,095**

**Screening Date** 22-Feb-2006 **Docket No.** 2006-0216-PST-E **PCW**  
**Respondent** J.C. Conoco, Inc. *Policy Revision 2 (September 2002)*  
**Case ID No.** 28448 *PCW Revision May 19, 2005*  
**Reg. Ent. Reference No.** RN101836518  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Deana Holland

**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> )	3	15%
	Other written NOVs	1	2%
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</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**

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

<b>Screening Date</b>	22-Feb-2006	<b>Docket No.</b>	2006-0216-PST-E	<b>PCW</b>
<b>Respondent</b>	J.C. Conoco, Inc.	<i>Policy Revision 2 (September 2002)</i>		
<b>Case ID No.</b>	28448	<i>PCW Revision May 19, 2005</i>		
<b>Reg. Ent. Reference No.</b>	RN101836518			
<b>Media [Statute]</b>	Petroleum Storage Tank			
<b>Enf. Coordinator</b>	Deana Holland			
<b>Violation Number</b>	1			
<b>Primary Rule Cite(s)</b>	30 Tex. Admin. Code § 115.245(2)			
<b>Secondary Rule Cite(s)</b>	Tex. Health and Safety Code § 382.085(b)			
<b>Violation Description</b>	Failure to verify proper operation of the Stage II equipment at least once every 36 months. Specifically, at the time of the investigation the Stage II triennial system tests had not been performed.			
<b>Base Penalty</b>				\$10,000

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

OR	<b>Harm</b>				
	<b>Release</b>	Major	Moderate	Minor	
	Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Percent <input type="text" value="25%"/>
Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent <input type="text"/>
<b>Matrix Notes</b>	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**

**Base Penalty Subtotal**

**Violation Events**

Number of Violation Events

<i>mark only one use a small x</i>	daily	<input type="checkbox"/>
	monthly	<input type="checkbox"/>
	quarterly	<input type="checkbox"/>
	semiannual	<input type="checkbox"/>
	annual	<input type="checkbox"/>
single event	<input checked="" type="checkbox"/>	

**Violation Base Penalty**

One single event is recommended for the 36 month period preceding the investigation date of February 7, 2006.

**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: J.C. Conoco, Inc.  
 Case ID No.: 28448  
 Reg. Ent. Reference No.: RN101836518  
 Media [Statute]: Petroleum Storage Tank  
 Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

Item	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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**Delayed Costs**

Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

n/a

**Avoided Costs**

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

Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling	\$500	07-Feb-2003	07-Feb-2006	3.0	\$75	\$1,501	\$1,576
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
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 verify proper operation of the Stage II equipment. The Date Required is three years prior to the investigation date and the Final Date is the investigation date.

Approx. Cost of Compliance

**TOTAL**

Screening Date 22-Feb-2006

Docket No. 2006-0216-PST-E

PCW

Respondent J.C. Conoco, Inc.

Policy Revision 2 (September 2002)

Case ID No. 28448

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101836518

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Deana Holland

Violation Number 2

Primary Rule Cite(s) 30 Tex. Admin. Code § 115.242(3) and 115.242(9)

Secondary Rule Cite(s) Tex. Health and Safety Code § 382.085(b)

Violation Description

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. In addition, failure to post operating instructions conspicuously on the front of each dispenser equipped with a Stage II system. Specifically, at the time of the investigation the hoses on dispensers #2 and #4 were cracked and the proper operating instructions were not observed on any dispensers.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

		Harm				
Release		Major	Moderate	Minor		
OR	Actual				Percent	10%
	Potential		X			

>> Programmatic Matrix

		Major	Moderate	Minor		
Falsification					Percent	

Matrix Notes Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

Violation Events

Number of Violation Events 1

mark only one use a small x	daily	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,000

One quarterly event is recommended from the February 7, 2006 investigation date to the February 22, 2006 screening date.

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount \$45

Violation Final Penalty Total \$1,170

This violation Final Assessed Penalty (adjusted for limits) \$1,170

### Economic Benefit Worksheet

Respondent: J.C. Conoco, Inc.  
 Case ID No. 28448  
 Reg. Ent. Reference No. RN101836518  
 Media [Statute] Petroleum Storage Tank  
 Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs							
Equipment	\$1,000	07-Feb-2006	01-Oct-2006	0.6	\$2	\$43	\$45
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: The estimated cost to replace the hoses and to post the operating instruction on each dispenser. The Date Required is the date of the investigation 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				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs: n/a

Approx. Cost of Compliance

**TOTAL**

## Compliance History

Customer/Respondent/Owner-Operator:	CN600999544 J.C. Conoco, Inc.	Classification: AVERAGE	Rating: 4.00
Regulated Entity:	RN101836518 J C CONOCO INC	Classification: AVERAGE	Site Rating: 4.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	27473
Location:	4612 W CEDAR BAYOU LYNCHBURG RD, BAYTOWN, TX, 77521	Rating Date: 9/1/2005	Repeat Violator: NO
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	February 22, 2006		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	February 22, 2001 to February 22, 2006		

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

Name: Deana Holland Phone: 239-2504

### 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 of the site during the compliance period?    | No  |
| 3. If Yes, who is the current owner?   | N/A |
| 4. If Yes, who was/were the prior owner(s)?  | N/A |
| 5. When did the change(s) in ownership occur?  | N/A |

#### 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 | 06/30/2004 | (277636) |
| 2 | 02/15/2006 | (454696) |
| 3 | 11/01/2005 | (435390) |
| 4 | 02/25/2003 | (275679) |
| 5 | 12/16/2005 | (438625) |
| 6 | 08/23/2005 | (401437) |

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

Date: 12/16/2005 (438625)

Classification: Moderate

Self Report? NO

Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)

Description: Failure to verify proper operation of the Stage II equipment at least once every twelve months or upon major system replacement or modification. The verification shall include all functional tests that were required for the initial system test, which must be performed at least once every 36 months.

Classification: Moderate

Self Report? NO

Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)

Description: Failure to verify proper operation of the Stage II equipment at least once every twelve months or upon major system replacement or modification. The verification shall include all functional tests that were required for the initial system test, which must be performed at least once every 36 months.

Classification: Moderate

Self Report? NO

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(B)

Description: Failure to maintain hose in a manner that the hose is not crimped, kinked, or flattened such that the vapor passage is blocked, or the back-pressure through the vapor system exceeds the value as certified in the approved system's CARB

Executive Order(s):  
Self Report? NO  
Citation: 30 TAC Chapter 115, SubChapter C 115.242(9)[G]  
Description: Failure to post operating instructions conspicuously on the front of each dispenser equipped with a Stage II system.  
Classification: Minor

Self Report? NO  
Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(A)  
Description: Failure to provide and maintain the Stage II Vapor Recovery system in proper operating condition, as specified by the California Air Resources Board (CARB) Executive Order, including the absence or disconnection of any component that is a part of the approved system.  
Date: 02/25/2003 (275679)  
Classification: Moderate

Self Report? NO  
Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)[G]  
30 TAC Chapter 37, SubChapter I 37.815(b)[G]  
Description: Failure to provide acceptable financial assurance  
Date: 08/23/2005 (401437)  
Classification: Moderate

Self Report? NO  
Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)  
Description: Failure to verify proper operation of the Stage II equipment at least once every twelve months or upon major system replacement or modification. The verification shall include all functional tests that were required for the initial system test, which must be performed at least once every 36 months.  
Classification: Moderate

Self Report? NO  
Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)  
Description: Failure to verify proper operation of the Stage II equipment at least once every twelve months or upon major system replacement or modification. The verification shall include all functional tests that were required for the initial system test, which must be performed at least once every 36 months.  
Classification: Moderate

Self Report? NO  
Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(B)  
Description: Failure to maintain hose in a manner that the hose is not crimped, kinked, or flattened such that the vapor passage is blocked, or the back-pressure through the vapor system exceeds the value as certified in the approved system's CARB Executive Order(s).  
Classification: Minor

Self Report? NO  
Citation: 30 TAC Chapter 115, SubChapter C 115.242(9)[G]  
Description: Failure to post operating instructions conspicuously on the front of each dispenser equipped with a Stage II system.  
Classification: Moderate

Self Report? NO  
Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(A)  
Description: Failure to provide and maintain the Stage II Vapor Recovery system in proper operating condition, as specified by the California Air Resources Board (CARB) Executive Order, including the absence or disconnection of any component that is a part of the approved system.  
Date: 11/01/2005 (435390)  
Classification: Moderate

Self Report? NO  
Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)  
Description: Failure to verify proper operation of the Stage II equipment at least once every twelve months or upon major system replacement or modification. The verification shall include all functional tests that were required for the initial system test, which must be performed at least once every 36 months.  
Classification: Moderate

Self Report? NO  
Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)  
Description: Failure to verify proper operation of the Stage II equipment at least once every twelve months or upon major system replacement or modification. The verification shall include all functional tests that were required for the initial system test, which must be performed at least once every 36 months.  
Classification: Moderate

Self Report? NO  
Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(B)  
Description: Failure to maintain hose in a manner that the hose is not crimped, kinked, or flattened such that the vapor passage is blocked, or the back-pressure through the vapor system exceeds the value as certified in the approved system's CARB Executive Order(s).  
Classification: Moderate

Self Report? NO  
Citation: 30 TAC Chapter 115, SubChapter C 115.242(9)[G]  
Description: Failure to post operating instructions conspicuously on the front of each dispenser equipped with a Stage II system.  
Classification: Minor

Self Report? NO  
Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(A)  
Description: Failure to provide and maintain the Stage II Vapor Recovery system in proper operating condition, as specified by the California Air Resources Board (CARB) Executive Order, including the absence or disconnection of any component that is a part of the approved system.  
Classification: Moderate

- 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  
J.C. CONOCO, INC.;  
RN101836518**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER  
DOCKET NO. 2006-0216-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 ch. 7, TEX. HEALTH & SAFETY CODE ch. 382, 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 J.C. Conoco, Inc. ("J.C. Conoco").

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

**FINDINGS OF FACT**

1. J.C. Conoco owns and operates a convenience store with retail sales of gasoline located at 4612 West Cedar Bayou Lynchburg Road, Baytown, Harris County, Texas (the "Station").
2. J.C. Conoco's three underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. J.C. Conoco's USTs 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 inspection conducted on July 25, 2005, and record reviews conducted on October 24, 2005, November 11, 2005, and February 7, 2006, a TCEQ Houston Regional Office investigator documented that J.C. Conoco:
  - a. Failed to verify the proper operation of the Stage II equipment at least once every 36 months. Specifically, at the time of the investigation, J.C. Conoco was unable to provide documentation to demonstrate that the Stage II triennial system tests had been performed; and

- b. Failed to maintain the Stage II vapour recovery system (the "System") in proper operating condition as specified by the manufacturer and/or any applicable CARB Executive Order(s), failing to keep the system free of defects that would impair the effectiveness of the system, and failing to post operating instructions conspicuously on the front of each dispenser equipped with a Stage II system. Specifically, during the July 25, 2005, investigation it was observed that the hoses on dispensers #2 and #4 were cracked, and the proper operating instructions were not posted on any dispensers.
4. J.C. Conoco received notice of the violations on or about August 28, 2005, November 1, 2005, and December 6, 2005
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of J.C. Conoco, Inc." (the "EDPRP") in the TCEQ Chief Clerk's office on August 1, 2006.
6. By letter dated August 1, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served J.C. Conoco with notice of the EDPRP. According to the return receipt "green card," J.C. Conoco received notice of the EDPRP on August 3, 2006, as evidenced by the signature on the card.
7. More than 20 days have elapsed since J.C. Conoco received notice of the EDPRP, provided by the Executive Director. J.C. Conoco 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 Finding of Fact Nos. 1 and 2, J.C. Conoco is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., J.C. Conoco failed to verify the proper operation of the Stage II equipment at least once every 36 months, in violation of 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b).
3. As evidenced by Finding of Fact No. 3.b., J.C. Conoco failed to maintain the Stage II vapor recovery system (the "System") in proper operating condition as specified by the manufacturer and/or any applicable CARB Executive Order(s), failing to keep the system free of defects that would impair the effectiveness of the system, and failing to post operating

instructions conspicuously on the front of each dispenser equipped with a Stage II system, in violation of 30 TEX. ADMIN. CODE § 115.242(3) and (9), and TEX. HEALTH & SAFETY CODE § 382.085(b).

4. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served J.C. Conoco with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
5. As evidenced by Finding of Fact No. 7, J.C. Conoco failed to file a timely answer to the EDPRP, 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 J.C. Conoco 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 J.C. Conoco for violations of 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 ninety-five dollars (\$4,095.00) 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.
9. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke J.C. Conoco's UST delivery certificate if the Commission finds that good cause exists.
10. Good cause for revocation of J.C. Conoco's UST delivery certificate exists as justified by Findings of Fact Nos. 2, 3, 5, 6, and 7, and Conclusions of Law Nos. 2 through 5.

### **ORDERING PROVISIONS**

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

1. J.C. Conoco is assessed an administrative penalty in the amount of four thousand ninety-five dollars (\$4,095.00) for violations of the Texas Health & Safety Code and the rules of the TCEQ. The payment of this administrative penalty and J.C. Conoco'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: J.C. Conoco, Inc.; Docket No. 2006-0216-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. J.C. Conoco's UST delivery certificate is revoked immediately upon the effective date of this Order. J.C. Conoco may submit an application for a new delivery certificate only after J.C. Conoco has complied with all of the requirements of this Order.
3. Within 10 days after the effective date of this Order, J.C. Conoco shall send its UST delivery certificate to:

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

4. J.C. Conoco shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Order, J.C. Conoco shall:
    - i. Conduct triennial testing of the Stage II vapor recovery system, in accordance with 30 TEX. ADMIN CODE § 115.245; and
    - ii. Post operating instructions on the front of each dispenser, and begin maintaining the Stage II vapor recovery system in proper operational condition, in accordance with 30 TEX. ADMIN. CODE § 115.242.

- b. Within 45 days after the effective date of this Order, J.C. Conoco shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with ordering provision Nos. 3, and 4.a.i. and ii. 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.”

J.C. Conoco shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 3, and 4.a.i. and ii. 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:

Stephen Smith, Water Section Manager  
Texas Commission on Environmental Quality  
Houston Regional Office  
5425 Polk Street, Ste. H  
Houston, Texas 77023-1452

5. All relief not expressly granted in this Order is denied.
6. The provisions of this Order shall apply to and be binding upon J.C. Conoco. J.C. Conoco is ordered to give notice of this Order to personnel who maintain day-to-day control over the Station operations referenced in this Order.
7. If J.C. Conoco 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, J.C. Conoco's failure to comply is not a violation of this Order. J.C. Conoco shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. J.C. Conoco shall notify the Executive Director within seven days after J.C. Conoco becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

8. 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 J.C. Conoco shall be made in writing to the Executive Director. Extensions are not effective until J.C. Conoco receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
9. 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 J.C. Conoco if the Executive Director determines that J.C. Conoco has not complied with one or more of the terms or conditions in this Order.
10. 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.
11. 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 LENA ROBERTS**

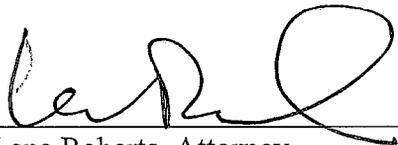
STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Lena Roberts. 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 J.C. Conoco, Inc.” (the “EDPRP”) was filed with the Office of the Chief Clerk on August 1, 2006.

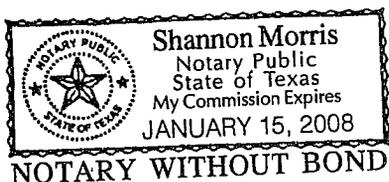
The EDPRP was mailed to J.C. Conoco at its last known address on August 1, 2006,, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” J.C. Conoco received notice of the EDPRP on August 3, 2006, as evidenced by the signature on the card.

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

  
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Lena Roberts, Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Lena Roberts, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 14<sup>th</sup> day of February, A.D., 2007.



  
\_\_\_\_\_  
Notary Signature