

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-0319-PST-E **TCEQ ID:** RN104747167 **CASE NO.:** 32875

RESPONDENT NAME: John W. Cooke dba Phippen Motor

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL 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
<p>SITE WHERE VIOLATION(S) OCCURRED: Phippen Motor, 1300 West Panola Street, Carthage, Panola County</p> <p>TYPE OF OPERATION: Automotive repair shop with an underground storage tank</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: No complaints were received. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on June 18, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Judy Kluge, Enforcement Division, Enforcement Team 6, MC R-04, (817) 588-5825; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896 Respondent: Mr. John W. Cooke, President/Owner, Phippen Motor, 1300 West Panola Street, Carthage, Texas 75633 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

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 type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: January 24, 2007</p> <p>Date of NOE Relating to this Case: April 30, 2007 (NOE)</p> <p>Background Facts: This was a routine investigation. One violation was documented.</p> <p>WASTE</p> <p>Failed to provide a method of release detection capable of detecting a release from any portion of the UST system which contained regulated substances including tanks, piping, and other ancillary equipment [30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].</p>	<p>Total Assessed: \$2,250</p> <p>Total Deferred: \$450 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$1,800</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that as of March 21, 2007, the UST system has been removed by a TCEQ licensed contractor.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision January 9, 2007

TCEQ

DATES	Assigned	5-Mar-2007	Screening	6-Mar-2007	EPA Due	
	PCW	6-Mar-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	John W. Cooke dba Pippen Motor
Reg. Ent. Ref. No.	RN104747167
Facility/Site Region	5-Tyler
Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	32875	No. of Violations	1	
Docket No.	2007-0319-PST-E	Order Type	1660	
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Judy Kluge	
Multi-Media		EC's Team	Enforcement Team 7	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **0%** Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability **0%** Enhancement **Subtotal 4**

Notes

Good Faith Effort to Comply **10%** Reduction **Subtotal 5**

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		X
N/A		(mark with x)

Notes

Total EB Amounts **0%** Enhancement* **Subtotal 6**
 Approx. Cost of Compliance *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

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

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL **20%** Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 6-Mar-2007

Docket No. 2007-0319-PST-E

PCW

Respondent John W. Cooke dba Pippen Motor

Policy Revision 2 (September 2002)

Case ID No. 32875

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN104747167

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

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)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment due to compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 6-Mar-2007

Docket No. 2007-0319-PST-E

PCW

Respondent John W. Cooke dba Phippen Motor

Policy Revision 2 (September 2002)

Case ID No. 32875

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN104747167

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number

Rule Cite(s) 30 Tex. Admin. Code § 334.50(a)(1)(A) and Tex. Water Code § 26.3475(c)(1)

Violation Description Failed to provide a method of release detection capable of detecting a release from any portion of the UST system which contained regulated substances including tanks, piping, and other ancillary equipment.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR

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

Violation Events

Number of Violation Events Number of violation days

mark only one with an x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input checked="" type="checkbox"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
single event	<input type="text"/>	

Violation Base Penalty

One quarterly event is recommended based on the January 24, 2007 investigation date to the March 6, 2007 screening date.

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 John W. Cooke dba Phippen Motor
Case ID No. 32875
Reg. Ent. Reference No. RN104747167
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

No commas or \$

Delayed Costs

Equipment				0.0	\$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
Release Detection				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Release Detection	\$1,000	24-Jan-2007	21-Mar-2007	0.2	\$8	\$153	\$161
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
Tightness testing	\$1,000	24-Jan-2006	24-Jan-2007	1.9	\$96	\$1,000	\$1,096

Notes for AVOIDED costs

Avoided costs for tightness testing. The date required is one year prior to the investigation date and the final date is the investigation date. Avoided cost to provide a method of release detection for the UST. The date required is the investigation date and the final date is the date the UST was removed.

Approx. Cost of Compliance

\$2,000

TOTAL

\$1,257

Compliance History

Customer/Respondent/Owner-Operator:	CN602905432 COOKE, JOHN W	Classification: AVERAGE BY DEFAULT	Rating: 3.01
Regulated Entity:	RN104747167 PIPPEN MOTOR	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK	REGISTRATION	788
Location:	1300 W PANOLA ST, CARTHAGE, TX, 75633	Rating Date: 9/1/2006 Repeat Violator: NO	
TCEQ Region:	REGION 05 - TYLER		
Date Compliance History Prepared:	March 05, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	March 05, 2002 to March 05, 2007		

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

Name: Judy Kluge Phone: 817-588-5825

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 02/27/2007 (540045)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - 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

CONFIDENTIAL

Washington, D.C. 20540

February 19, 1964

Mr. J. Edgar Hoover

Director

Federal Bureau of Investigation

Washington, D.C.

Dear Mr. Hoover:

Reference is made to your letter of February 11, 1964, regarding the above captioned matter.

The Bureau is currently reviewing the information provided to it by the State Department on this matter.

Very truly yours,

Walter S. Rorer

Special Agent in Charge

Enclosure

cc - Bureau

Very truly yours,

Walter S. Rorer

Special Agent in Charge

Washington, D.C.

Walter S. Rorer

Special Agent in Charge

Enclosure

cc - Bureau

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Special Agent in Charge

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cc - Bureau

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
JOHN W. COOKE DBA PIPPEN
MOTOR
RN104747167**

§
§
§
§
§

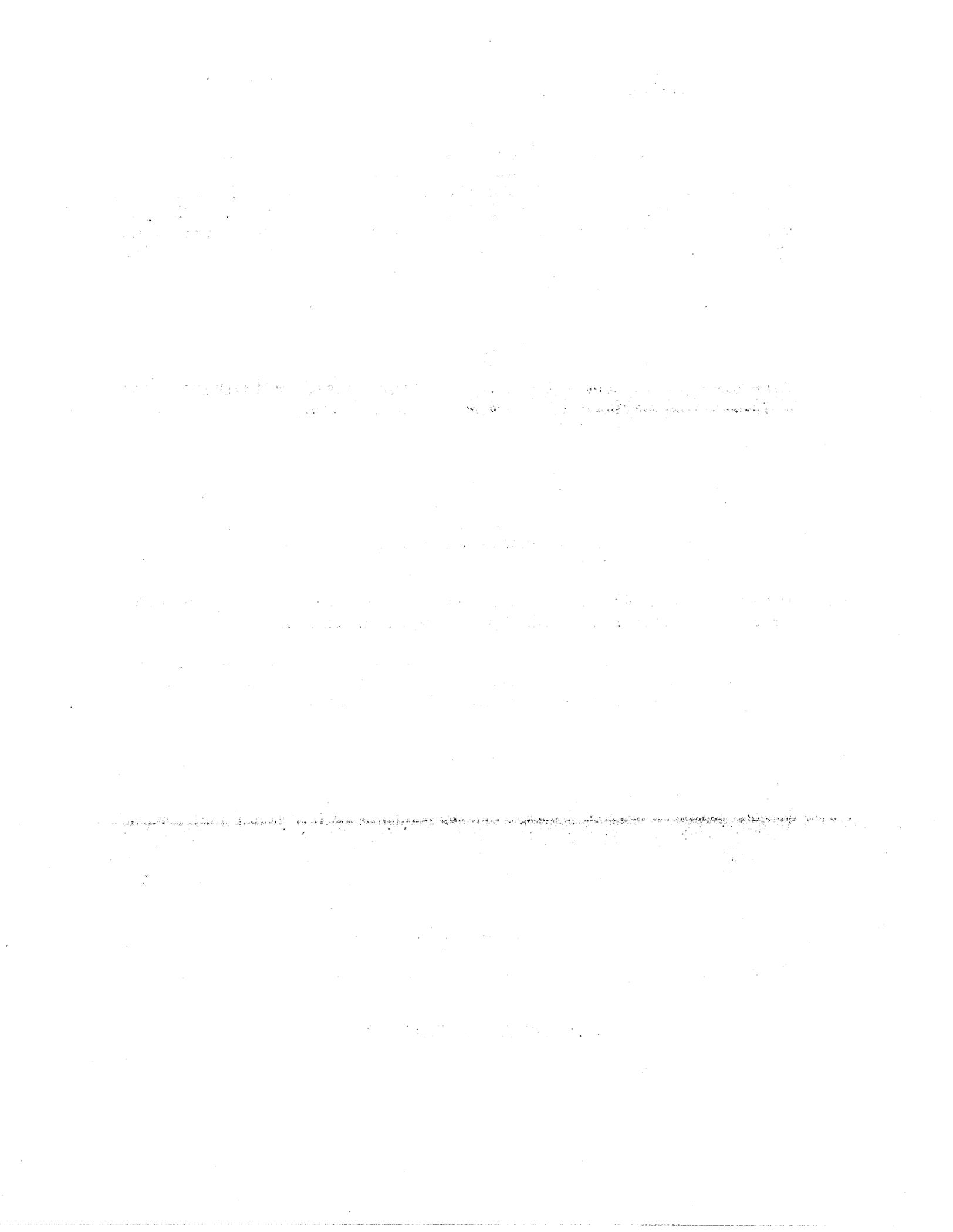
**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2007-0319-PST-E**

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding John W. Cooke dba Pippen Motor ("Mr. Cooke") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Mr. Cooke appear before the Commission and together stipulate that:

1. Mr. Cooke owns and operates an active car dealership and automotive repair shop with an underground storage tank ("UST") at 1300 West Panola Street in Carthage, Panola County, Texas (the "Facility").
2. Mr. Cooke's one UST is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Commission and Mr. Cooke agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Cooke is subject to the Commission's jurisdiction.
4. Mr. Cooke received notice of the violations alleged in Section II ("Allegations") on or about March 5, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Cooke of any violation alleged in Section II ("Allegations"), nor of any statute or rule.



6. An administrative penalty in the amount of Two Thousand Two Hundred Fifty Dollars (\$2,250) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Cooke has paid One Thousand Eight Hundred Dollars (\$1,800) of the administrative penalty and Four Hundred Fifty Dollars (\$450) is deferred contingent upon Mr. Cooke's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Mr. Cooke fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Mr. Cooke to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Mr. Cooke have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that as of March 21, 2007, the UST system has been removed by a TCEQ licensed contractor.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Mr. Cooke has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, Mr. Cooke is alleged to have failed to provide a method of release detection capable of detecting a release from any portion of the UST system which contained regulated substances including tanks, piping, and other ancillary equipment, in violation of 30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on January 24, 2007.

III. DENIALS

Mr. Cooke generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Cooke pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Cooke's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: John W. Cooke dba Pippen Motor, Docket No. 2007-0319-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. The provisions of this Agreed Order shall apply to and be binding upon Mr. Cooke. Mr. Cooke is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Cooke in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Mr. Cooke, or three days after the date on which the Commission mails notice of the Order to Mr. Cooke, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

First paragraph of handwritten text, starting with a capital letter.

Second paragraph of handwritten text, possibly a continuation or a separate point.

Third paragraph of handwritten text, continuing the narrative or list.

Fourth paragraph of handwritten text, showing further detail.

Fifth paragraph of handwritten text, possibly a concluding sentence for a section.

Sixth paragraph of handwritten text, continuing the main body.

Seventh paragraph of handwritten text, showing the flow of the document.

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Ninth paragraph of handwritten text, continuing the content.

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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

7/6/07

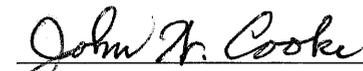
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me;
- and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

4-11-07

Date

John W. Cooke

Name (Printed or typed)
Authorized Representative of
John W. Cooke dba Pippen Motor

Pres.

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

