

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER** Page 1 of 3  
**DOCKET NO.: 2007-0495-PST-E TCEQ ID: RN105029896 CASE NO.: 33086**  
**RESPONDENT NAME: BROOKS SPECIAL COMPANY**

<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
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 504 Military Road, Brownsville, Cameron County</p> <p><b>TYPE OF OPERATION:</b> Underground storage tank</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on December 10, 2007. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Mr. Barham A. Richard, Litigation Division, MC 175, (512) 239-0107  Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873  <b>TCEQ Enforcement Coordinator:</b> Mr. Tom Greimel, Waste Enforcement Section, MC 128, (512) 239-5690  <b>TCEQ Regional Contact:</b> Mr. David A. Ramirez, Harlingen Regional Office, MC R-15, (956) 430-6048  <b>Respondent:</b> Mr. Hollis Rankin, Registered Agent, 920 South McColl Road, Edinburg, Texas 78539-8304.  <b>Respondent's Attorney:</b> Mr. Don Grissom, Attorney, 609 West 10<sup>th</sup> Street, Austin, Texas 78701</p>		

**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>Date of Complaints Relating to this Case:</b> None</p> <p><b>Dates of Investigation Relating to this Case:</b> February 12, 2007; September 7, 2006; and December 7, 2006</p> <p><b>Date of NOE Relating to this Case:</b> March 9, 2007 (NOE); September 22, 2006 (NOV); and December 11, 2006 (NOV)</p> <p><b>Background Facts:</b></p> <p>The Executive Director filed an EDPRP on June 4, 2007. The Respondent received notice of the EDPRP, as evidenced by the signature on the "green card," dated June 11, 2007. The Respondent has not filed an answer or requested a hearing.</p> <p>There is no revocation of a delivery certificate because the facility is out of service.</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 either permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, two USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, or ensure that any residue from stored regulated substances which remained in the temporarily out of service UST system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3 % by weight of the system at full capacity. Failed to maintain all piping, pump, mainways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons [30 TEX. ADMIN. CODE §§ 334.47(a)(2), 334.54.(b), and 334.54(d)(2)].</p> <p>2. Failed to notify the agency of any change or additional</p>	<p><b>Total Assessed:</b> \$12,100</p> <p><b>Total Deferred:</b> \$0</p> <p><b>Total Due to General Revenue:</b> \$12,100</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 proposed 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>Technical Requirement(s)</b></p> <p>1. Within 30 days, the Respondent shall:</p> <p>a. Ensure that the UST system has been protected from corrosion and emptied of all regulated substances, and maintain all piping, pumps, man ways, tank access points and ancillary equipment in a capped, plugged, locked and/or otherwise secured manner; and</p> <p>b. Permanently remove the UST system from service.</p> <p>2. Within 45 days, submit an amended registration to reflect the current operational status of the UST system and a current owner contact telephone number.</p>

<p>information regarding the USTs within 30 days of the occurrence of the change [30 TEX. ADMIN. CODE § 334.47(d)(3)].</p>		
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# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision December 8, 2006

**TCEQ**

<b>DATES</b>	Assigned	19-Mar-2007			
	PCW	29-Mar-2007	Screening	28-Mar-2007	EPA Due

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	Brooks Special Company
Reg. Ent. Ref. No.	RN105029896
Facility/Site Region	15-Harlingen
Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	33086	No. of Violations	2
Docket No.	2007-0495-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Thomas Greimel
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** 10% Enhancement *Subtotals 2, 3, & 7*

Notes: Enhancement for two previous NOV's with same or similar violations.

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

Notes: The respondent does not meet the culpability criteria.

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

Before NOV      NOV to EDRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes: The respondent does not meet the good faith criteria.

**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** 0% Reduction *Adjustment*

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**

Screening Date 28-Mar-2007

Docket No. 2007-0495-PST-E

PCW

Respondent Brooks Special Company

Policy Revision 2 (September 2002)

Case ID No. 33086

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN105029896

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

### 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)	2	10%
	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 judgements 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) 10%

>> 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

Enhancement for two previous NOVs with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 10%

Screening Date 28-Mar-2007

Docket No. 2007-0495-PST-E

PCW

Respondent Brooks Special Company

Policy Revision 2 (September 2002)

Case ID No. 33086

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN105029896

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 334.47(a)(2), 334.54(b) and 334.54(d)(2)

Violation Description

Failed to either permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, two USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, or ensure that any residue from stored regulated substances which remained in the temporarily out-of-service UST system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the sytem at full capacity. Specifically, two USTs at the Facility were not brought into timely compliance with the upgrade requirements, and it was documented that tank number 2 contained approximately 12 inches of a regulated substance. Failed to maintain all piping, pump, manways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons. Specifically, the fill pipes on tank nos. 1 and 2 were not locked.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

Human health or the environment could be exposed to significant amounts of pollutants which would exceed levels that are protective of human health or environmental receptors.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 4 44 Number of violation days

mark only one with an x	daily	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$10,000

Four monthly events are recommended (two months per tank) from the February 12, 2007 record review date to the March 28, 2007 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4,390

Violation Final Penalty Total \$11,000

This violation Final Assessed Penalty (adjusted for limits) \$11,000

## Economic Benefit Worksheet

**Respondent** Brooks Special Company  
**Case ID No.** 33086  
**Reg. Ent. Reference No.** RN105029896  
**Media** Petroleum Storage Tank  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Item Description 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
Other (as needed)	\$10,000	22-Dec-1998	1-Oct-2007	8.8	\$4,390	n/a	\$4,390

Notes for DELAYED costs

Estimated cost to permanently remove the UST system from service. Date Required is the date when the respondent was required to upgrade the UST system. Final Date is the date the respondent is projected to come into 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

Approx. Cost of Compliance

\$10,000

**TOTAL**

\$4,390

Screening Date 28-Mar-2007

Docket No. 2007-0495-PST-E

PCW

Respondent Brooks Special Company

Policy Revision 2 (September 2002)

Case ID No. 33086

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN105029896

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.7(d)(3)

Violation Description Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change. Specifically, the registration was not updated to reflect the current out-of-service status of the USTs and it lists contact phone numbers which are no longer in service.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual					0%
Potential					

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			10%
100% of the rule requirement has not been met.					
Adjustment					\$9,000

\$1,000

Violation Events

Number of Violation Events 1 44 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the February 12, 2007 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3

Violation Final Penalty Total \$1,100

This violation Final Assessed Penalty (adjusted for limits) \$1,100

## Economic Benefit Worksheet

**Respondent** Brooks Special Company  
**Case ID No.** 33086  
**Reg. Ent. Reference No.** RN105029896  
**Media** Petroleum Storage Tank  
**Violation No.** 2

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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
Other (as needed)	\$100	12-Feb-2007	1-Oct-2007	0.6	\$3	n/a	\$3

Notes for DELAYED costs

Estimated cost to update the UST registration. Date Required is the date of the record review. Final Date is the date the respondent is projected to come into 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

Approx. Cost of Compliance

\$100

TOTAL

\$3

# Compliance History

Customer/Respondent/Owner-Operator: CN600746580 Brooks Special Company Classification: AVERAGE Rating: 2.00  
 Regulated Entity: RN105029896 BROOKS SPECIAL COMPANY Classification: AVERAGE BY Site Rating: 3.01  
 ID Number(s): PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 30767  
 Location: 504 MILITARY RD, BROWNSVILLE, TX, 78520 Rating Date: 9/1/2006 Repeat Violator: NO  
 TCEQ Region: REGION 15 - HARLINGEN  
 Date Compliance History Prepared: April 03, 2007  
 Agency Decision Requiring Compliance History: Enforcement  
 Compliance Period: April 03, 2002 to April 03, 2007

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

Name: Thomas Greimel Phone: (512) 239-5690

## 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 | 12/11/2006 | (533577) |  |
| 2 | 03/12/2007 | (540752) |  |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |              |   |          |                          |
|--------------|---|----------|--------------------------|
| Date:        | 09/22/2006  | (512438) |                          |
| Self Report? | NO  |          | Classification: Moderate |
| Citation:    | 30 TAC Chapter 334, SubChapter C 334.54(d)(2)   |          |                          |
| Description: | Failure to remove any residue from the system which may not exceed a depth of 2.5 centimeters at the deepest point and shall not exceed 0.3% by weight of the system at full capacity.  |          |                          |
| Self Report? | NO  |          | Classification: Minor    |
| Citation:    | 30 TAC Chapter 334, SubChapter A 334.7(d)(3)  |          |                          |
| Description: | Failure to amend, update or change registration information.  |          |                          |
| Self Report? | NO  |          | Classification: Moderate |
| Citation:    | 30 TAC Chapter 334, SubChapter C 334.49(c)(4)[G]  |          |                          |
| Description: | Failure to have the cathodic protection system inspected and tested for operability and adequacy of protection with three to six months after installation and at a subsequent frequency of at least once every three years.  |          |                          |
| Self Report? | NO  |          | Classification: Moderate |
| Citation:    | 30 TAC Chapter 334, SubChapter C 334.54(b)(2)   |          |                          |
| Description: | Failure to assure that, with the exception of vent lines, all piping, pumps, manways, and ancillary equipment shall be capped, plugged, locked, and/or otherwise secured to prevent access, tampering, or vandalism by unauthorized persons. This shall be done beginning no later than the date on which the UST system has been |          |                          |
| Date:        | 12/11/2006  | (533577) |                          |
| Self Report? | NO  |          | Classification: Moderate |

Citation: 30 TAC Chapter 334, SubChapter C 334.54(d)(2)  
Description: Failure to remove any residue from the system which may not exceed a depth of 2.5 centimeters at the deepest point and shall not exceed 0.3% by weight of the system at full capacity.

Self Report? NO Classification Minor

Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)  
Description: Failure to amend, update or change registration information.

Self Report? NO Classification Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.49(c)(4)[G]  
Description: Failure to have the cathodic protection system inspected and tested for operability and adequacy of protection with three to six months after installation and at a subsequent frequency of at least once every three years.

Self Report? NO Classification Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.54(b)(2)  
Description: Failure to assure that, with the exception of vent lines, all piping, pumps, manways, and ancillary equipment shall be capped, plugged, locked, and/or otherwise secured to prevent access, tampering, or vandalism by unauthorized persons. This shall be done beginning no later than the date on which the UST system has been

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  
BROOKS SPECIAL COMPANY;  
RN105029896**

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§  
§  
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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER DOCKET NO. 2007-0495-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 TEXAS WATER CODE chs. 7 and 26, and 30 TEX. ADMIN. CODE chs. 70 and 334, 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 Brooks Special Company ("Brooks").

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

### **FINDINGS OF FACT**

1. Brooks owns and operates Garza Mini Mart located at 504 Military Road, Brownsville, Cameron County, Texas (the "Facility").
2. Brooks's two underground storage tank(s) ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Brooks's USTs contain a regulated substance as defined in the rules of the Commission.
3. During an investigation conducted on September 7, 2006, and a record review inspection conducted on or about February 12, 2007, a TCEQ Harlingen Regional Office investigator documented that Brooks:
  - a. failed to either permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, two USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, or ensure that any residue from stored regulated substances which remained in the temporarily out of service UST system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity. Specifically, two USTs at the Facility were not brought into timely

compliance with the upgrade requirements, and it was documented that tank number 2 contained approximately 12 inches of a regulated substance. Failed to maintain all piping, pumps, manways, tank access points and ancillary equipment were maintained in a capped, plugged, locked and or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons. Specifically, the fill pipes on tanks number 1 and 2 were not locked.

- b. failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change. Specifically, the registration was not updated to reflect the current out-of-service status of the USTs and it lists contact phone numbers which are no longer in service.
4. Brooks received notice of the violations on or about March 14, 2007.
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 Brooks Special Company" (the "EDPRP") in the TCEQ Chief Clerk's office on June 4, 2007
6. By letter dated June 4, 2007 sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Brooks with notice of the EDPRP. According to the return receipt "green card," Brooks received notice of the EDPRP on June 11, 2007, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Brooks received notice of the EDPRP, provided by the Executive Director. Brooks 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, Brooks is subject to the jurisdiction of the TCEQ pursuant to TEXAS WATER CODE chs. 7 and 26 and 30 TEX. ADMIN. CODE chs. 70 and 334.
2. As evidenced by Finding of Fact No. 3.a., Brooks failed to either permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, two USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, or ensure that any residue from stored regulated substances which remained in the temporarily out of service UST system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity. Specifically, two USTs at the Facility were not brought into timely compliance

with the upgrade requirements, and it was documented that tank number 2 contained approximately 12 inches of a regulated substance in violation of 30 TEX. ADMIN. CODE §§ 334.47(a)(2) and 334.54(d)(2). Brooks failed to maintain all piping, pumps, manways, tank access points and ancillary equipment were maintained in a capped, plugged, locked and or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons. Specifically, the fill pipes on tanks number 1 and 2 were not locked, in violation of 30 TEX. ADMIN. CODE § 334.54(b).

3. As evidenced by Finding of Fact No. 3.b., Brooks failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change. Specifically, the registration was not updated to reflect the current out-of-service status of the USTs and it lists contact phone numbers which are no longer in service in violation of 30 TEX. ADMIN. CODE § 334.47(d)(3).
4. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Brooks 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, Brooks 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 Brooks 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 Brooks for violations of the Texas Water 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 twelve thousand one hundred dollars (\$12,100.00) 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. Brooks is assessed an administrative penalty in the amount of twelve thousand one hundred dollars (\$12,100.00) for violations of the Texas Water Code, and the rules of the TCEQ. The payment of this administrative penalty and Brooks'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: Brooks Special Company; Docket No. 2007-0495-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. Brooks shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of the Commission Order, Brooks shall, either:
    - i. Ensure that the UST system has been protected from corrosion and emptied of all regulated substances, and maintain all piping, pumps, man ways, tank access points and ancillary equipment in a capped, plugged, locked and/or otherwise secured manner, in accordance with 30 TEX. ADMIN. CODE § 334.54; or
    - ii. Permanently remove the UST system from service, in accordance with TEX. ADMIN. CODE § 334.55.
  - b. Within 45 days after the effective date of the Commission Order, Brooks shall submit an amended registration to reflect the current operational status of the UST system and a current owner contact telephone number, in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

Registration and Reporting Section  
Permitting & Remediation Support Division, MC 138

Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

- c. Within 60 days after the effective date of this compliance order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions 2.a.i. or 2.a.ii. and 2.b.

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 a 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.”

The certification shall be submitted to:

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

and

David A. Ramirez, Waste Section Manager  
Texas Commission on Environmental Quality  
Harlingen Regional Office  
1804 West Jefferson Avenue  
Harlingen, Texas 78550-5247

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Brooks.

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

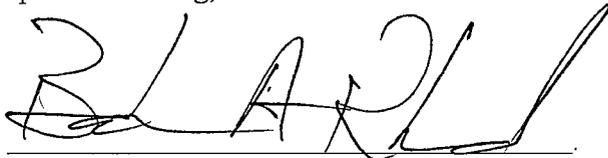
STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Barham A. Richard. 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 Brooks Special Company” (the “EDPRP”) was filed with the Office of the Chief Clerk on June 4, 2007.

The EDPRP was mailed to Brooks at its last known address on June 4, 2007, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Brooks received notice of the EDPRP on June 11, 2007, as evidenced by the signature on the card.

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



Barham A. Richard, Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Barham A. Richard, 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 14<sup>th</sup> day of September, A.D., 2007.

  
Notary Signature