

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2007-0102-MLM-E TCEQ ID: RN100691674 CASE NO.: 32680**

**RESPONDENT NAME: DEREK BROUSSARD DBA BROUSSARD AUTO PARTS & REPAIR**

<b>ORDER TYPE:</b>		
<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	

<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL 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 checked="" type="checkbox"/> USED OIL	<input type="checkbox"/> DRY CLEANER REGISTRATION

**SITE WHERE VIOLATION(S) OCCURRED:** 99 Green Avenue, Orange, Orange County

**TYPE OF OPERATION:** inactive auto repair station

**SMALL BUSINESS:**  Yes  No

**OTHER SIGNIFICANT MATTERS:** There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

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

**COMMENTS RECEIVED:** The *Texas Register* comment period expired June 1, 2009. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Ms. Peipey Tang, Litigation Division, MC 175, (512) 239-0654  
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

**TCEQ Enforcement Coordinator:** Mr. John Shelton, Waste Enforcement Section, MC 128, (512) 239-2563

**TCEQ Regional Contact:** Mr. Derek Eades, Beaumont Regional Office, MC R-10, (409) 898-3838

**Respondent:** Mr. Derek Broussard, Broussard Auto Parts & Repair, 2948 North 16th Street, Orange, Texas 77630

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

BROUSSARD AUTO PARTS & REPAIR

DOCKET NO.: 2007-0102-MLM-E

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input checked="" type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Dates of Investigations Relating to this Case:</b> November 6, 2006</p> <p><b>Date of NOE Relating to this Case:</b> November 27, 2006</p> <p><b>Background Facts:</b> The EDPRP was filed November 6, 2007. The Respondent filed an answer and the case was referred to SOAH. A preliminary hearing was held November 6, 2008. A settlement agreement was reached and a signed Agreed Order was received March 2, 2009.</p> <p><b>Current Compliance Status:</b> No outstanding Technical Requirements.</p> <p><b>MLM:</b></p> <ol style="list-style-type: none"> <li>Failed to permanently remove from service, no later than 60 days after the prescribed implementation date, five 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 temporary out-of-service UST shall not exceed 2.5 centimeters at the deepest point and not exceed 0.3 percent by weight of the system at full capacity; and failed to maintain all piping, pumps, 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 [30 TEX. ADMIN. CODE §§ 334.47(a)(2) and 334.54(b) and (d)(2)].</li> <li>Failed to provide an amended registration to TCEQ for any change or additional information regarding USTs within 30 days of the date on which the owner or operator first became aware of the change or addition, as applicable [30 TEX. ADMIN. CODE § 334.7(d)(3)].</li> <li>Failed to ensure that containers and aboveground tanks used to store used oil at the Facility are in good condition (no severe rusting, apparent structural defects or deterioration) and not leaking; and failed to, upon detection of release of used oil to the environment, stop the release, contain the release, properly clean up and manage</li> </ol>	<p><b>Initial Calculated Penalty:</b> \$5,775</p> <p><b>Total Assessed:</b> \$5,775</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid to General Revenue:</b> \$5,775</p> <p>The Respondent paid the administrative penalty in full.</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>Corrective Actions Taken:</b></p> <p>The ED recognizes that the Respondent implemented the following corrective measures:</p> <ol style="list-style-type: none"> <li>On June 2, 2007, permanently removed the tanks at the Facility.</li> <li>On June 28, 2007, the TCEQ received the updated registration for the Facility.</li> <li>On January 31, 2007, properly disposed of the used oil from the used oil tank for recycling.</li> <li>On January 31, 2007, emptied and cleaned the used oil containers.</li> <li>On December 23, 3008, the Executive Director verified through a site investigation that the Respondent removed the used oil containers from the Facility and that the soil at the used oil containers location was clean.</li> </ol>

RESPONDENT NAME: DEREK BROUSSARD DBA  
BROUSSARD AUTO PARTS & REPAIR  
DOCKET NO.: 2007-0102-MLM-E

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>the release, and if necessary, repair/replace any leaking used oil storage containers prior to returning them to service [30 TEX. ADMIN. CODE § 324.6 and 40 CODE OF FEDERAL REGULATIONS ("C.F.R.") § 279.22(b) and (d)].</p> <p>4. Failed to properly label or mark used oil containers with the words "Used Oil [30 TEX. ADMIN. CODE § 324.6 and 40 C.F.R § 279.22(c)(1)].</p>		



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision December 8, 2006

TCEQ

DATES	Assigned	4-Dec-2006	Screening	9-Jan-2007	EPA Due	
	PCW	12-Jan-2009				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Derek Broussard dba Broussard Auto Parts & Repair		
Reg. Ent. Ref. No.	RN100691674		
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	32680	No. of Violations	2
Docket No.	2007-0102-MLM-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Dana Shuler
Multi-Media	Used Oil	EC's Team	EnforcementTeam 8
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** *Subtotals 2, 3, & 7* **\$175**

5% Enhancement

Notes: The Respondent received one NOV for same or similar violations at this site within the past five years.

**Culpability** *Subtotal 4* **\$0**

0% Enhancement

Notes: The Respondent does not meet the culpability criteria.

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

0% Reduction

Before NOV      NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	X	(mark with x)

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

**Total EB Amounts** *Subtotal 6* **\$0**

**Approx. Cost of Compliance** *\*Capped at the Total EB \$ Amount*

Total EB Amounts	\$255
Approx. Cost of Compliance	\$5,100

**SUM OF SUBTOTALS 1-7** *Final Subtotal* **\$3,675**

**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* **\$3,675**

**STATUTORY LIMIT ADJUSTMENT** *Final Assessed Penalty* **\$3,675**

**DEFERRAL** *Adjustment* **\$0**

0% Reduction

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** **\$3,675**

PCW 1

Screening Date 9-Jan-2007

Docket No. 2007-0102-MLM-E

PCW

Respondent Derek Broussard dba Broussard Auto Parts & Repair

Policy Revision 2 (September 2002)

Case ID No. 32680

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN100691674

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Dana Shuler

**Compliance History Worksheet**

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOV's with same or similar violations as those in the current enforcement action (number of NOV's meeting criteria)	1	5%
	Other written NOV's	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) 5%

>> 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

The Respondent received one NOV for same or similar violations at this site within the past five years.

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

Screening Date 9-Jan-2007

Docket No. 2007-0102-MLM-E

PCW

Respondent Derek Broussard dba Broussard Auto Parts & Repair

Policy Revision 2 (September 2002)

Case ID No. 32680

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN100691674

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Dana Shuler

Violation Number 1

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

Violation Description

Failed to permanently remove from service, no later than 60 days after the prescribed implementation date, a UST system 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 temporary out-of-service UST shall not exceed 2.5 centimeters at the deepest point and not exceed 0.3 percent by weight of the system at full capacity. Specifically, the five USTs at the Facility were not brought into timely compliance with the upgrade requirements, and one of the five tanks (used oil tank) was filled with used oil. Also, the Respondent 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, as documented during investigation conducted on November 6, 2006.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 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 \$7,500

\$2,500

Violation Events

Number of Violation Events 1

64 Number of violation days

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,500

One quarterly event is recommended from the November 6, 2006 investigation date to the January 9, 2007 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$250

Violation Final Penalty Total \$2,625

This violation Final Assessed Penalty (adjusted for limits) \$2,625

## Economic Benefit Worksheet

**Respondent:** Derek Broussard dba Broussard Auto Parts & Repair  
**Case ID No.:** 32680  
**Reg. Ent. Reference No.:** RN100691674  
**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
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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)	\$5,000	6-Nov-2006	6-Nov-2007	1.0	\$250	n/a	\$250

Notes for DELAYED costs

Estimated minimum cost to permanently remove a UST system from service. Date Required is the date of the investigation and 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

Approx. Cost of Compliance

\$5,000

TOTAL

\$250

Screening Date 9-Jan-2007

Docket No. 2007-0102-MLM-E

PCW

Respondent Derek Broussard dba Broussard Auto Parts & Repair

Policy Revision 2 (September 2002)

Case ID No. 32680

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN100691674

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Dana Shuler

Violation Number 2

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

Violation Description Failed to provide an amended registration to the TCEQ for any change or additional information regarding USTs within 30 days of the date on which the owner or operator first became aware of the change or addition, as applicable, as documented during an investigation conducted on November 6, 2006. Specifically, the Respondent has not updated the facility's registration information to reflect the current owner or tank status.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual				
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
		x			

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 64

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

Violation Base Penalty \$1,000

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$5

Violation Final Penalty Total \$1,050

This violation Final Assessed Penalty (adjusted for limits) \$1,050

## Economic Benefit Worksheet

**Respondent:** Derek Broussard dba Broussard Auto Parts & Repair

**Case ID No.:** 32680

**Reg. Ent. Reference No.:** RN100691674

**Media:** 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
<small>No commas or \$</small>							

**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	6-Nov-2006	6-Nov-2007	1.0	\$5	n/a	\$5

Notes for DELAYED costs

Estimated cost to complete and submit a UST registration and self-certification form. 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

Approx. Cost of Compliance

\$100

**TOTAL**

\$5



# Penalty Calculation Worksheet (PCW)

<b>DATES</b>	<b>Assigned</b>	4-Dec-2006	<b>Screening</b>	9-Jan-2007	<b>EPA Due</b>	
	<b>PCW</b>	25-Jun-2007				

<b>RESPONDENT/FACILITY INFORMATION</b>			
<b>Respondent</b>	Derek Broussard dba Broussard Auto Parts & Repair		
<b>Reg. Ent. Ref. No.</b>	RN100691674		
<b>Facility/Site Region</b>	10-Beaumont	<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	32680	<b>No. of Violations</b>	2
<b>Docket No.</b>	2007-0102-MLM-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Used Oil	<b>Enf. Coordinator</b>	Dana Shuler
<b>Multi-Media</b>	Petroleum Storage Tank	<b>EC's Team</b>	EnforcementTeam 8
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$2,500

## 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**  Enhancement **Subtotals 2, 3, & 7**

**Notes**

**Culpability**   Enhancement **Subtotal 4**

**Notes**

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

Before NOV      NOV to EDPRP/Settlement Offer

Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/> X	(mark with x)

**Notes**

**Total EB Amounts**  **Subtotal 6**   
**Approx. Cost of Compliance**  **0% Enhancement\***  
**\*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**  Reduction **Adjustment**

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

**Notes**

**PAYABLE PENALTY**

PCW 2

Screening Date 9-Jan-2007

Docket No. 2007-0102-MLM-E

PCW

Respondent: Derek Broussard dba Broussard Auto Parts & Repair

Policy Revision 2 (September 2002)

Case ID No. 32680

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN100691674

Media [Statute] Used Oil

Enf. Coordinator Dana Shuler

**Compliance History Worksheet**

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	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) 5%

>> 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

The Respondent received one NOV for same or similar violations at this site within the past five years.

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

Screening Date 9-Jan-2007

Docket No. 2007-0102-MLM-E

PCW

Respondent Derek Broussard dba Broussard Auto Parts & Repair

Policy Revision 2 (September 2002)

Case ID No. 32680

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN100691674

Media [Statute] Used Oil

Enf. Coordinator Dana Shuler

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 324.6 and 40 Code of Federal Regulations § 279.22(b) and (d)

Violation Description

Failed to ensure that containers and aboveground tanks used to store used oil at the facility are in good condition (no severe rusting, apparent structural defects or deterioration), and not leaking; and failed to, upon detection of a release of used oil to the environment, stop the release, contain the release, properly clean up and manage the release, and if necessary, repair/replace any leaking used oil storage containers prior to returning them to service, as documented during an investigation conducted on November 6, 2006. Specifically, used oil releases were observed from rusted containers that were not properly sealed and leaking.

Base Penalty \$2,500

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants as a result of these violations.

Adjustment \$2,250

\$250

Violation Events

Number of Violation Events 1

64 Number of violation days

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

Violation Base Penalty \$250

One quarterly event is recommended from the November 6, 2006 investigation date to the January 9, 2007 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$25

Violation Final Penalty Total \$263

This violation Final Assessed Penalty (adjusted for limits) \$263

## Economic Benefit Worksheet

**Respondent:** Derek Broussard dba Broussard Auto Parts & Repair

**Case ID No.:** 32680

**Reg. Ent. Reference No.:** RN100691674

**Media:** Used Oil

**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
Other (as needed)	\$500	6-Nov-2006	6-Nov-2007	1.0	\$25	n/a	\$25

Notes for DELAYED costs

Estimated cost to properly clean up spills. Date Required is the investigation date and 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

Approx. Cost of Compliance

\$500

**TOTAL**

\$25

Screening Date 9-Jan-2007

Docket No. 2007-0102-MLM-E

PCW

Respondent Derek Broussard dba Broussard Auto Parts & Repair

Policy Revision 2 (September 2002)

Case ID No. 32680

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN100691674

Media [Statute] Used Oil

Enf. Coordinator Dana Shuler

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 324.6 and 40 Code of Federal Regulations § 279.22(c)(1)

Violation Description Failed to properly label or mark used oil containers with the words "Used Oil," as documented during an investigation conducted on November 6, 2006. Specifically, six 55-gallon drums were not labeled.

Base Penalty \$2,500

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	x			10%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$2,250

\$250

Violation Events

Number of Violation Events 6 Number of violation days 64

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,500

Six single events are recommended (one event per container).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$1,575

This violation Final Assessed Penalty (adjusted for limits) \$1,575

## Economic Benefit Worksheet

**Respondent** Derek Broussard dba Broussard Auto Parts & Repair  
**Case ID No.** 32680  
**Reg. Ent. Reference No.** RN100691674  
**Media** Used Oil  
**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
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	6-Nov-2006	31-Jan-2007	0.2	\$1	n/a	\$1

Notes for DELAYED costs

Estimated cost to label and mark used oil containers with the words "Used Oil." Date Required is the investigation date and Final Date is the date the Respondent came 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**

\$1



generator facilities are in good condition (no severe rusting, apparent structural defects or deterioration), and not leaking.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 324, SubChapter A 324.6  
40 CFR Chapter 279, SubChapter I, PT 279, SubPT C 279.22(c)(1)

Description: Failure to have used oil containers properly labeled or marked clearly with the words "used oil" at generator facilities.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 324, SubChapter A 324.6  
40 CFR Chapter 279, SubChapter I, PT 279, SubPT C 279.22(d)

Description: Failure for the owner/operator, upon detection of a release of used oil to the environment, to stop the release, contain the released used oil, properly clean up and manage the released used oil, and if necessary, repair/replace any leaking used oil storage container prior to returning them to service.

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  
AGAINST DEREK BROUSSARD DBA  
BROUSSARD AUTO PARTS &  
REPAIR;  
RN100691674**

§  
§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2007-0102-MLM-E**

**I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Derek Broussard dba Broussard Auto Parts & Repair ("Mr. Broussard") under the authority of TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 371, and the rules of the TCEQ. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Broussard appear before the Commission and together stipulate that:

1. Mr. Broussard owns an inactive auto repair station located at 99 Green Avenue in Orange, Orange County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 371, 40 C.F.R. pt. 279, and TCEQ rules.
3. The Commission and Mr. Broussard agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Broussard is subject to the Commission's jurisdiction.
4. Mr. Broussard received notice of the violations alleged in Section II ("Allegations") on or about December 2, 2006.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Broussard of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of five thousand seven hundred seventy-five dollars (\$5,775.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Broussard paid five thousand seven hundred seventy-five dollars (\$5,775.00) of the administrative 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. Broussard 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 Mr. Broussard implemented the following corrective measures at the Facility in response to this enforcement action:
  - a. On June 2, 2007, Mr. Broussard permanently removed the underground storage tanks ("USTs") at the Facility.
  - b. On June 28, 2007, the TCEQ received the updated registration for the Facility.
  - c. On January 31, 2007, Mr. Broussard properly disposed of the used oil from the used oil tank for recycling.
  - d. On January 31, 2007, Mr. Broussard emptied and cleansed the used oil containers.
  - e. On December 23, 2008, the Executive Director verified through a site investigation that Mr. Broussard removed the used oil containers from the Facility and that the soil at the used oil containers location was clean.
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. Broussard 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

1. During an investigation conducted on November 6, 2006, a TCEQ Beaumont Regional Office investigator documented that Mr. Broussard violated:
  - a. 30 TEX. ADMIN. CODE §§ 334.47(a)(2), 334.54(b), and 334.54(d)(2) by failing to permanently remove from service, no later than 60 days after the prescribed implementation date, five 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 temporary out-of-service UST shall not exceed 2.5 centimeters at the deepest point and not exceed 0.3 percent by weight of the system at full capacity. Specifically, the five USTs at the Facility were not brought into timely compliance with the upgrade requirements, and one of the five tanks (used oil tank) was filled with used oil. Also, Mr. Broussard failed to maintain all piping, pumps, 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.
  - b. 30 TEX. ADMIN. CODE § 334.7(d)(3) by failing to provide an amended registration to the TCEQ for any change or additional information regarding USTs within 30 days of the date on which the owner or operator first became aware of the change or addition, as applicable. Specifically, Mr. Broussard had not updated the Facility's registration information to reflect the current owner or tank status.
  - c. 30 TEX. ADMIN. CODE § 324.6 and 40 C.F.R. § 279.22(b) and (d) by failing to ensure that containers and above ground tanks used to store used oil at the Facility are in good condition (no severe rusting, apparent structural defects or deterioration), and not leaking; and failing to, upon detection of a release of used oil to the environment, stop the release, contain the release, properly clean up and manage the release, and if necessary, repair/replace any leaking used oil storage containers prior to returning them to service. Specifically, used oil releases were observed from rusted containers that were not properly sealed and leaking.
  - d. 30 TEX. ADMIN. CODE § 324.6 and 40 C.F.R. § 279.22(c)(1) by failing to properly label or mark used oil containers with the words "Used Oil." Specifically, six 55-gallon drums were not labeled.

## III. DENIALS

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

#### IV. ORDER

1. It is, therefore, ordered by the TCEQ that Mr. Broussard pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Broussard'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 considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Derek Broussard dba Broussard Auto Parts & Repair, Docket No. 2007-0102-MLM-E" to:

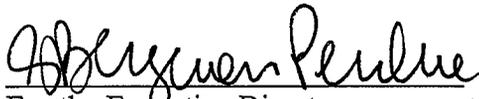
Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon Mr. Broussard. Mr. Broussard 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. Broussard 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 Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order 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) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Mr. Broussard, or three days after the date on which the Commission mails notice of the Order to Mr. Broussard, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

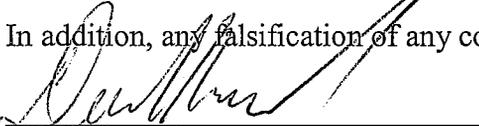
5/3/2009  
\_\_\_\_\_  
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that 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 Mr. Broussard's compliance history;
- Greater scrutiny of any permit applications submitted by Mr. Broussard;
- 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 Mr. Broussard;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Mr. Broussard; and
- TCEQ seeking other relief as authorized by law.

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

  
\_\_\_\_\_  
Signature

3-2-09  
\_\_\_\_\_  
Date

Derek Broussard  
\_\_\_\_\_  
Name (Printed or typed)

Owner  
\_\_\_\_\_  
Title

Authorized representative of

Derek Broussard dba Broussard Auto Parts & Repair