EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-1490-PST-E TCEQ ID: RN102488780 CASE NO.: 27285
RESPONDENT NAME: ROBERT MCADAMS

ORDER TYPE:		
_1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
X FINDINGS DEFAULT ORDER	X SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	X PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__ DRY CLEANER REGISTRATION

SITE WHERE VIOLATIONS OCCURRED: 14758 Farm-to-Market Road 59, Athens, Henderson County

TYPE OF OPERATION: Convenience store with retail sales of gasoline

SMALL BUSINESS: _X_ Yes ____ No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location. This Respondent was assessed an administrative penalty of $10,800 in case no. 2005-1850-PST-E for the same violations as in the current action. The agreed order was approved at the July 25, 2007, Commission agenda. The Respondent is making monthly payments of $300 per the 2005 order.

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 on June 1, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3693
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019
TCEQ Enforcement Coordinator: Ms. Elvia Maske, Waste Enforcement Section, MC 128, (512) 239-0789
TCEQ Regional Contact: Mr. Michael Brashear, Tyler Regional Office, MC R-5, (903) 535-5176
Respondent: Mr. Robert McAdams, 792 Robindale Lane, Fairfield, Texas 75840
Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __Complaint __ Routine X Enforcement Follow-up X Records Review **Date of Complaint Relating to this Case:** None **Dates of Investigation Relating to this Case:** June 2, 2008, and June 11, 2008 **Date of NOE Relating to this Case:** June 30, 2008 **Background Facts:** The EDPRP was filed November 4, 2008, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on November 7, 2008. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference. The Notice of Intent ("NOI") to Shutdown USTs was mailed to the Respondent January 2, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received the NOI on January 5, 2009. **Current Compliance Status:** Not yet in compliance. The Respondent owes $787.81 in past-due fees. **PST:** 1. Failed to provide proper corrosion protection for the UST system [TEX. WATER CODE § 26.3475(d), 30 TEX. ADMIN. CODE § 334.49(a), and TCEQ Docket No. 2005-1850-PST-E Ordering Provision No. 2.b.i.]. 2. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b) and TCEQ Docket No. 2005-1850-PST-E Ordering Provision No. 2.b.ii.]. 3. Failed to provide proper release detection for the UST system [TEX. WATER CODE § 26.3475(c)(1), 30 TEX. ADMIN. CODE § 334.50(b)(1)(A), and TCEQ Docket No. 2005-1850-PST-E Ordering Provision No. 2.b.iii.].	**Total Assessed:** $46,145 **Total Deferred:** $0 ___ Expedited Order ___ Financial Inability to Pay ___SEP Conditional Offset **Total Due to General Revenue:** $46,145 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. **Site Compliance History Classification** __ High X Average __ Poor **Person Compliance History Classification** __ High X Average __ Poor **Major Source:** ___ Yes X No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** The Respondent's UST delivery certificate is revoked immediately. The Respondent may submit an application for a new delivery certificate only after the Respondent has complied with all of the requirements of this Order. The Respondent shall undertake the following technical requirements: 1. Immediately, take the following steps to shut down operations of all USTs at the Facility: a. Cease dispensing fuel from the USTs; b. Cease receiving deliveries of regulated substances into the USTs; c. Padlock the dispensers; d. Empty the USTs of all regulated substances in accordance with 30 Tex. Admin. Code § 334.54(d); and e. Temporarily remove the USTs from service in accordance with 30 Tex. Admin. Code § 334.54. 2. Within 10 days, send his UST delivery certificate to TCEQ. 3. Within 15 days, submit a detailed written report documenting the steps taken to comply with Ordering Provision Nos. 1 and 2. 4. Within 15 days, if Respondent elects to permanently remove from service any USTs at the Facility, submit to the TCEQ a written report documenting that the USTs have been removed from service in compliance with TCEQ rules. 5. The USTs shall remain out of service until such time as Respondent demonstrates to the satisfaction of the Executive Director that it has completed the Ordering Provisions 6.a. – 6.c., below. 6. Prior to resuming sales of gasoline: a. Demonstrate current financial assurance for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs;

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
4. Failed to provide written notice of any change or additional information to the agency within thirty days from the date of the occurrence of the change or addition [TEX. ADMIN. CODE § 334.7(d)(3)]. 5. Failed to pay UST fees for TCEQ Financial Account No. 0055137U and associated late fees for fiscal year 2003 through 2007 [TEX. WATER CODE § 5.702, 30 TEX. ADMIN. CODE § 334.22(a), and TCEQ Docket No. 2005-1850-PST-E, Ordering Provision No. 2.a.].		b. Install or implement a corrosion protection method for the UST system at the Facility in accordance with 30 Tex. Admin. Code § 334.49; and c. Install or implement a release detection method for all USTs at the Facility in accordance with 30 Tex. Admin. Code § 334.50. 7. Prior to receiving deliveries of gasoline: a. Submit payment for all outstanding fees; b. Submit an amended UST registration form to reflect owner's current contact information; and c. Obtain a new delivery certificate. 8. Within 10 days of resuming service, submit written certification to demonstrate compliance with Ordering Provision Nos. 6 and 7. 9. Upon obtaining a new delivery certificate, post the delivery certificate in a location where the document is clearly visible at all times.

Penalty Calculation Worksheet (PCW)

TCEQ

Policy Revision 2 (September 2002) — *PCW Revision June 12, 2008*

DATES					
Assigned	18-Aug-2008				
PCW	15-Sep-2008	Screening	28-Aug-2008	EPA Due	

RESPONDENT/FACILITY INFORMATION			
Respondent	Robert McAdams		
Reg. Ent. Ref. No.	RN102488780		
Facility/Site Region	5-Tyler	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	27285	No. of Violations	5
Docket No.	2008-1490-PST-E	Order Type	Findings
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Elvia Maske
		EC's Team	Enforcement Team 6
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)		*Subtotal 1*	$29,000
ADJUSTMENTS (+/-) TO SUBTOTAL 1			
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.			
Compliance History	45.0% Enhancement	*Subtotals 2, 3, & 7*	$13,050
Notes	Enhancement for one NOV for same or similar violations and two 1660 orders.		
Culpability: No	0.0% Enhancement	*Subtotal 4*	$0
Notes	The Respondent does not meet the culpability criteria.		
Good Faith Effort to Comply Total Adjustments		*Subtotal 5*	$0
Economic Benefit	0.0% Enhancement*	*Subtotal 6*	$0
Total EB Amounts	$5,373	**Capped at the Total EB $ Amount*	
Approx. Cost of Compliance	$13,550		
SUM OF SUBTOTALS 1-7		*Final Subtotal*	$42,050
OTHER FACTORS AS JUSTICE MAY REQUIRE	9.7%	*Adjustment*	$4,095
Reduces or enhances the Final Subtotal by the indicated percentage.			
Notes	Recommended enhancement to capture the avoided cost of compliance associated with Violation No. 2.		
		Final Penalty Amount	$46,145
STATUTORY LIMIT ADJUSTMENT		*Final Assessed Penalty*	$46,145
DEFERRAL	0.0% Reduction	*Adjustment*	$0
Reduces the Final Assessed Penalty by the indicted percentage. *(Enter number only; e.g. 20 for 20% reduction.)*			
Notes	No deferral is recommended for Findings Orders.		
PAYABLE PENALTY			$46,145

Screening Date 28-Aug-2008 **Docket No.** 2008-1490-PST-E **PCW**

Respondent Robert McAdams *Policy Revision 2 (September 2002)*

Case ID No. 27285 *PCW Revision June 12, 2008*

Reg. Ent. Reference No. RN102488780

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

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*)	2	40%
	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%

		Please Enter Yes or No	
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) 45%

>> 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 one NOV for same or similar violations and two 1660 orders.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 45%

Screening Date 28-Aug-2008 **Docket No.** 2008-1490-PST-E **PCW**

Respondent Robert McAdams *Policy Revision 2 (September 2002)*

Case ID No. 27285 *PCW Revision June 12, 2008*

Reg. Ent. Reference No. RN102488780

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.49(a), Tex. Water Code § 26.3475(d) and TCEQ Docket No. 2005-1850-PST-E, Ordering Provision No. 2.b.i.

Violation Description Failed to provide proper corrosion protection for the UST system.

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 5 | 384 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $12,500

Five quarterly events are recommended from the effective date of the Agreed Order (August 10, 2007) to the date of screening (August 28, 2008).

Good Faith Efforts to Comply

0.0% Reduction $0

	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 for this violation.

Violation Subtotal $12,500

Economic Benefit (EB) for this violation

Estimated EB Amount $1,151

Statutory Limit Test

Violation Final Penalty Total $19,890

This violation Final Assessed Penalty (adjusted for limits) $19,890

Economic Benefit Worksheet

Respondent Robert McAdams
Case ID No. 27285
Reg. Ent. Reference No. RN102488780
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment	$10,000	10-Aug-2007	1-Apr-2009	1.64	$55	$1,096	$1,151
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)				0.00	$0	n/a	$0

Notes for DELAYED costs: Estimated cost to provide corrosion protection equipment for the UST system. Date Required is the effective date of the order. Final Date is the estimated date of compliance.

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0

Notes for AVOIDED costs:

Approx. Cost of Compliance: $10,000

TOTAL: $1,151

Screening Date 28-Aug-2008 **Docket No.** 2008-1490-PST-E **PCW**
Respondent Robert McAdams *Policy Revision 2 (September 2002)*
Case ID No. 27285 *PCW Revision June 12, 2008*
Reg. Ent. Reference No. RN102488780
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Elvia Maske

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 37.815(a) and (b), and TCEQ Docket No. 2005-1850-PST-E, Ordering Provision No. 2.b.ii.

Violation Description Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

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

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 3 | 384 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $3,000

Three single events are recommended for the three USTs.

Good Faith Efforts to Comply

0.0% Reduction $0

	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 for this violation.

Violation Subtotal $3,000

Economic Benefit (EB) for this violation

Estimated EB Amount $4,095

Statutory Limit Test

Violation Final Penalty Total $4,774

This violation Final Assessed Penalty (adjusted for limits) $4,774

Economic Benefit Worksheet

Respondent Robert McAdams
Case ID No. 27285
Reg. Ent. Reference No. RN102488780
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)				0.00	$0	n/a	$0
Notes for DELAYED costs							
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]	$1,950	10-Aug-2007	1-Apr-2009	2.00	$195	$3,900	$4,095
ONE-TIME avoided costs [3]				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Notes for AVOIDED costs	Estimated cost to provide financial assurance for three USTs ($650 per tank). The Date Required is the effective date of the agreed order. The Final Date is expected date of compliance.						

Approx. Cost of Compliance: $1,950

TOTAL: $4,095

Screening Date 28-Aug-2008 **Docket No.** 2008-1490-PST-E **PCW**

Respondent Robert McAdams *Policy Revision 2 (September 2002)*

Case ID No. 27285 *PCW Revision June 12, 2008*

Reg. Ent. Reference No. RN102488780

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A), Tex. Water Code § 26.3475(c)(1) and TCEQ Docket No. 2005-1850-PST-E, Ordering Provision No. 2.b.iii.

Violation Description Failed to provide proper release detection for the UST system.

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 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 5 | 384 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $12,500

Five quarterly events are recommended from the effective date of the Agreed Order (August 10, 2007) to the date of screening (August 28, 2008).

Good Faith Efforts to Comply

0.0% Reduction $0

	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 for this violation.

Violation Subtotal $12,500

Economic Benefit (EB) for this violation

Estimated EB Amount $123

Statutory Limit Test

Violation Final Penalty Total $19,890

This violation Final Assessed Penalty (adjusted for limits) $19,890

Economic Benefit Worksheet

Respondent Robert McAdams
Case ID No. 27285
Reg. Ent. Reference No. RN102488780
Media Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)	$1,500	10-Aug-2007	1-Apr-2009	1.64	$123	n/a	$123

Notes for DELAYED costs: Estimated cost to provide release detection for the UST system. Date Required is the effective date of the agreed order. Final Date is the estimated date of compliance.

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

Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0

Notes for AVOIDED costs:

Approx. Cost of Compliance: $1,500

TOTAL: $123

Screening Date 28-Aug-2008 **Docket No.** 2008-1490-PST-E **PCW**

Respondent Robert McAdams *Policy Revision 2 (September 2002)*

Case ID No. 27285 *PCW Revision June 12, 2008*

Reg. Ent. Reference No. RN102488780

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 4

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

Violation Description Failed to provide written notice of any change or additional information to the agency within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the owner's current contact information.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

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

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 1 | 78 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 June 11, 2008 investigation.

Good Faith Efforts to Comply

0.0% Reduction $0

	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 for this violation.

Violation Subtotal $1,000

Economic Benefit (EB) for this violation

Estimated EB Amount $4

Statutory Limit Test

Violation Final Penalty Total $1,591

This violation Final Assessed Penalty (adjusted for limits) $1,591

Economic Benefit Worksheet

Respondent Robert McAdams
Case ID No. 27285
Reg. Ent. Reference No. RN102488780
Media Petroleum Storage Tank
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	No commas or $						
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)	$100	11-Jun-2008	1-Apr-2009	0.81	$4	n/a	$4

Notes for DELAYED costs: Estimated cost to update the UST registration. Date Required is the investigation date. Final Date is the expected date of compliance.

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

Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0

Notes for AVOIDED costs:

Approx. Cost of Compliance $100

TOTAL $4

Screening Date 28-Aug-2008 **Docket No.** 2008-1490-PST-E **PCW**

Respondent Robert McAdams *Policy Revision 2 (September 2002)*

Case ID No. 27285 *PCW Revision June 12, 2008*

Reg. Ent. Reference No. RN102488780

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 5

Rule Cite(s) 30 Tex. Admin. Code § 334.22(a), Tex. Water Code § 5.702 and TCEQ Docket No. 2005-1850-PST-E, Ordering Provision No. 2.a.

Violation Description Failed to pay UST fees for TCEQ Financial Account No. 0055137U and associated late fees for fiscal years 2003 through 2007.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Adjustment $10,000

$0

Violation Events

Number of Violation Events

Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $0

No additional administrative penalty was calculated for this violation as penalties and interest will be assessed on the next fee billing.

Good Faith Efforts to Comply

0.0% Reduction $0

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

Notes

Violation Subtotal $0

Economic Benefit (EB) for this violation

Estimated EB Amount $0

Statutory Limit Test

Violation Final Penalty Total $0

This violation Final Assessed Penalty (adjusted for limits) $0

Economic Benefit Worksheet

Respondent Robert McAdams
Case ID No. 27285
Reg. Ent. Reference No. RN102488780
Media Petroleum Storage Tank
Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	No commas or $						
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)				0.00	$0	n/a	$0
Notes for DELAYED costs	N/A						
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Notes for AVOIDED costs	N/A						

Approx. Cost of Compliance: $0

TOTAL: $0

Compliance History

Customer/Respondent/Owner-Operator:	CN601279532	McAdams, Robert	Classification: AVERAGE	Rating: 34.14
Regulated Entity:	RN102488780	MCs Country Store and Café	Classification: AVERAGE	Site Rating: 34.14
ID Number(s):				
Location:	14758 FM 59, ATHENS, TX, 75751		Rating Date: 9/1/2008 Repeat Violator: NO	
TCEQ Region:	REGION 05 - TYLER			

Date Compliance History Prepared: September 16, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: September 16, 2003 to September 16, 2008

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

Name: Elvia Maske Phone: (512) 239-0789

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 judgments, and consent decrees of the state of Texas and the federal government.

Effective Date: 07/22/2006 ADMINORDER 2003-1035-PST-E

Classification: Moderate

Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)

30 TAC Chapter 37, SubChapter I 37.815(b)

Description: Failure to provide an acceptable financial assurance mechanism upon request of the ED.

Classification: Moderate

Citation: 2A TWC Chapter 5, SubChapter A 5.702

30 TAC Chapter 334, SubChapter B 334.22(a)

Description: Respondent failed to pay fees for ust account nos. 55137A and 55137U for fiscal years 2002 and 2003.

Effective Date: 08/10/2007 ADMINORDER 2005-1850-PST-E

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(d)

30 TAC Chapter 334, SubChapter C 334.49(a)

Description: Failure to maintain continuous cathodic protection to the underground storage tank system located at 14758 FM 59 in Athens.

Classification: Moderate

Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)

30 TAC Chapter 37, SubChapter I 37.815(b)

Description: Failure to maintain financial assurance in the event of a release in accordance with 30 TAC chapter 37.815. The investigators observed 5 inches of product in the unleaded tank.

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)

30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)

Description: Failure to maintain release detection in accordance with 30 TAC 334.50.

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. 10/27/2005
2. 04/02/2007
3. 05/22/2008
4. 06/10/2008
5. 06/30/2008

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

Date: 12/20/2007 (610894)

Self Report? NO Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(d)
30 TAC Chapter 334, SubChapter C 334.49(a)

Description: Failure to maintain continuous cathodic protection to the underground storage tank system located at 14758 FM 59 in Athens.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)
30 TAC Chapter 37, SubChapter I 37.815(b)

Description: Failure to maintain financial assurance in the event of a release in accordance with 30 TAC chapter 37.815. The investigators observed 5 inches of product in the unleaded tank.

Self Report? NO Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)
30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)

Description: Failure to maintain release detection in accordance with 30 TAC 334.50.

Self Report? NO Classification: Major

Citation: 2A TWC Chapter 7, SubChapter A 7.051(a)(1)(B)

Rqmt Prov: ORDER 1, 2.a., 2.b.i.-2.b.iii., and 2.c

Description: Failed to comply with Commission Order Docket No. 2005-1850-PST-E.

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 ROBERT MCADAMS; RN102488780	§ § § § §	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

DEFAULT AND SHUTDOWN ORDER

DOCKET NO. 2008-1490-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 5, 7, and 26, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty, corrective action of the respondent, and revocation of the respondent's fuel delivery certificate. The Commission also considered the Executive Director's Motion requesting entry of an Order requiring the respondent, Robert McAdams ("Mr. McAdams"), to shutdown or remove from service the Underground Storage Tanks ("USTs") at the MC's Country Store and Café facility, located at 14758 Farm-to-Market Road 59, Athens, Henderson County, Texas.

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

FINDINGS OF FACT

1. Mr. McAdams owns and operates a convenience store with retail sales of gasoline, located at 14758 Farm-to-Market Road 59, Athens, Henderson County, Texas (the "Facility").

2. The USTs at the Facility contain regulated substances as defined in the Commission's rules. The USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.

3. On June 2, 2008, and June 11, 2008, an investigator from the TCEQ Tyler Regional Office documented that Mr. McAdams:

a. Failed to provide proper corrosion protection for the UST system.

b. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs.

c. Failed to provide proper release detection for the UST system.

d. Failed to provide written notice of any change or additional information to the agency within thirty days from the date of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the owner's current contact information.

e. Failed to pay UST fees for TCEQ Financial Account No. 0055137U and associated late fees for fiscal year 2003 through 2007.

4. By letter dated June 30, 2008, the TCEQ Tyler Regional Office provided Mr. McAdams with notice of the violations and the TCEQ's authority to shut down and remove from service USTs not in compliance with release detection, spill and/or overfill prevention, and corrosion protection regulations if the violations were not corrected.

5. Mr. McAdams received notice of the violations on or about July 5, 2008.

6. 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 Robert McAdams" (the "EDPRP") in the TCEQ Chief Clerk's office on November 4, 2008.

7. By letter dated November 4, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. McAdams with notice of the EDPRP. According to the return receipt "green card," Mr. McAdams received notice of the EDPRP on November 7, 2008, as evidenced by the signature on the card.

8. More than twenty days have elapsed since Mr. McAdams received notice of the EDPRP, provided by the Executive Director. Mr. McAdams failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

9. By letter dated January 2, 2009, TCEQ provided Mr. McAdams with notice of TCEQ's intent to order the USTs at the Facility shut down and removed from service if Mr. McAdams

failed to correct the TEX. WATER CODE §§ 26.3475(c)(1) and 26.3475(d) and 30 TEX. ADMIN. CODE § 37.815(a) and (b) violations within thirty days after Mr. McAdams's receipt of the notice.

10. As of the date of entry of this Order, Mr. McAdams has not corrected the violations noted during the June 2, 2008, and June 11, 2008, investigations.

11. The USTs at the Facility do not have proper corrosion protection or proper release detection, as required by 30 TEX. ADMIN. CODE § 334.50, or financial assurance, as required by 30 TEX. ADMIN. CODE § 37.815(a) and (b), and may be releasing petroleum products to the environment without the knowledge of the tank owner or operator. Therefore, conditions at the Facility constitute an imminent peril to public health, safety, and welfare.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. McAdams's USTs are subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 5, 7, and 26, and the rules of the Commission.

2. As evidenced by Finding of Fact Number 3.a., Mr. McAdams violated TEX. WATER CODE § 26.3475(d), 30 TEX. ADMIN. CODE § 334.49(a), and TCEQ Agreed Order Docket No. 2005-1850-PST-E Ordering Provision No. 2.b.i., by failing to provide proper corrosion protection for the UST system.

3. As evidenced by Finding of Fact Number 3.b., Mr. McAdams violated 30 TEX. ADMIN. CODE § 37.815(a) and (b) and TCEQ Agreed Order Docket No. 2005-1850-PST-E Ordering Provision No. 2.b.ii., by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs.

4. As evidenced by Finding of Fact Number 3.c., Mr. McAdams violated TEX. WATER CODE § 26.3475(c)(1), 30 TEX. ADMIN. CODE § 334.50(b)(1)(A), and TCEQ Agreed Order Docket No. 2005-1850-PST-E Ordering Provision No. 2.b.iii., by failing to provide proper release detection for the UST system.

5. As evidenced by Finding of Fact Number 3.d., Mr. McAdams violated 30 TEX. ADMIN. CODE § 334.7(d)(3), by failing to provide written notice of any change or additional information to the agency within thirty days from the date of the occurrence of the change or addition.

Specifically, the registration was not updated to reflect the owner's current contact information.

6. As evidenced by Finding of Fact Number 3.e., Mr. McAdams violated TEX. WATER CODE § 5.702, 30 TEX. ADMIN. CODE § 334.22(a), and TCEQ Agreed Order Docket No. 2005-1850-PST-E Ordering Provision No. 2.a., by failing to pay UST fees for TCEQ Financial Account No. 0055137U and associated late fees for fiscal year 2003 through 2007.

7. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director has timely served Mr. McAdams with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).

8. As evidenced by Finding of Fact No. 8, Mr. McAdams 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 Mr. McAdams and assess the penalty recommended by the Executive Director.

9. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. McAdams 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.

10. An administrative penalty in the amount of forty six thousand one hundred forty five dollars ($46,145.00) is justified by the facts recited in this Order and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

11. As evidenced by Finding of Fact Nos. 3, 5, 9, and 10, Mr. McAdams failed to correct documented violations of Commission requirements within thirty days after Mr. McAdams received notice of the violations and notice of the Executive Director's intent to shut down the Facility.

12. TEX. WATER CODE §§ 26.3475(e) and 26.352(i) authorize the Commission to order a UST owner or operator to shut down a UST system if, within thirty days after receiving notice of the violations, the owner or operator fails to correct violations of Commission regulatory requirements relating to release detection for tanks and/or piping, spill and overfill protection for tanks, corrosion protection for tanks and piping, and/or acceptable financial assurance.

13. 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.

14. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Mr. McAdams's UST delivery certificate if the Commission finds that good cause exists.

15. Good cause for revocation of Mr. McAdams's UST delivery certificate exists as justified by Findings of Fact Nos. 3 through 10 and Conclusions of Law Nos. 2 through 8 and 11.

16. As evidenced by Finding of Fact Number 11, current conditions at the Facility constitute an imminent peril to public health, safety and welfare. Therefore, pursuant to the Administrative Procedure Act, TEX. GOV'T CODE § 2001.144(a)(3), this Order is final and effective on the date rendered.

ORDERING PROVISIONS

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. Immediately upon the effective date of this Order, Mr. McAdams shall take the following steps to shut down operations of all USTs at the Facility:

    a. Cease dispensing fuel from the USTs;

    b. Cease receiving deliveries of regulated substances into the USTs;

    c. Padlock the dispensers;

    d. Empty the USTs of all regulated substances in accordance with 30 TEX. ADMIN. CODE § 334.54(d); and

    e. Temporarily remove the USTs from service in accordance with 30 TEX. ADMIN. CODE § 334.54.

2. Mr. McAdams's UST delivery certificate is revoked immediately upon the effective date of this Order. Mr. McAdams may submit an application for a new delivery certificate only after Mr. McAdams has complied with all the requirements set forth in these Ordering Provisions.

3. Within ten days after the effective date of this Order, Mr. McAdams shall send his UST delivery certificate to:

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

4. Within fifteen days after the effective date of this Order, Mr. McAdams shall submit to the Executive Director a detailed written report documenting the steps he has taken to comply with Ordering Provision Nos. 1.a. through 1.e. and 3. Mr. McAdams shall submit the report to:

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

   and

   Michael Brashear, Waste Section Manager
   Texas Commission on Environmental Quality
   Tyler Regional Office
   2916 Teague Drive
   Tyler, Texas 75701-3734

5. If Mr. McAdams elects to permanently remove from service any USTs at the Facility, Mr. McAdams shall immediately and permanently remove the UST system in accordance with 30 TEX. ADMIN. CODE § 334.55. If Mr. McAdams permanently removes any portion of the UST system from service, Mr. McAdams shall, within fifteen days after the effective date of this order, submit to the Commission a written report documenting compliance with 30 TEX. ADMIN. CODE § 334.55. Mr. McAdams shall submit the written report to:

   Petroleum Storage Tank Registration Team, MC 138
   Texas Commission on Environmental Quality
   P.O. Box 13087
   Austin, Texas 78711-3087

6. Mr. McAdams is assessed an administrative penalty in the amount of forty six thousand one hundred forty five dollars ($46,145.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Mr. McAdams's compliance with all the terms and conditions set forth in this Order completely resolve only 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 that 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 thirty days after the effective date of this Order and shall be sent with the notation "Re: Robert McAdams; Docket No. 2008-1490-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

7. Mr. McAdams's USTs shall remain out of service, pursuant to TEX. WATER CODE § 26.3475 and as directed by Ordering Provision Nos. 1.a. through 1.e., until such time as Mr. McAdams demonstrates to the satisfaction of the Executive Director that it has corrected the violations noted in Finding of Fact Nos. 3.a. through 3.c. and Conclusion of Law Nos. 2 through 5 as listed herein.

8. Prior to resuming retail sales of gasoline, Mr. McAdams shall:

   a. Install or implement a corrosion protection method for the UST system at the Facility in accordance with 30 TEX. ADMIN. CODE § 334.49;

   b. Install or implement a release detection method for all USTs at the Facility in accordance with 30 TEX. ADMIN. CODE § 334.50; and

   c. Demonstration current financial assurance for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs in accordance with 30 TEX. ADMIN. CODE § 37.815.

9. Prior to receiving deliveries of gasoline, Mr. McAdams shall:

a. Submit payment for all outstanding fees, including any associated penalties and interest with the notation, "Robert McAdams, TCEQ Financial Account No. 0055137U" 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

b. Submit an amended UST registration to reflect the owner's current contact information 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, Texas 78711-3087

c. Obtain a new delivery certificate from the TCEQ.

10. Within ten days of resuming retail sales of gasoline, Mr. McAdams shall submit written certification as described below and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 8 and 9. The written certification shall be notarized by a State of Texas Notary Public and include the following certification language:

> "I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

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

Michael Brashear, Waste Section Manager
Texas Commission on Environmental Quality
Tyler Regional Office
2916 Teague Drive
Tyler, Texas 75701-3734

11. Upon obtaining a new delivery certificate, Mr. McAdams shall post the delivery certificate in a location where the document is clearly visible at all times, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii).

12. All relief not expressly granted in this Order is denied.

13. The provisions of this Order shall apply to and be binding upon Mr. McAdams, and Mr. McAdams is ordered to give notice of this Order to personnel who maintain day to day control of the USTs at the Facility.

14. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Mr. McAdams if the Executive Director determines that Mr. McAdams is noncompliant with or in violation of any of the terms and conditions set forth in this Order.

15. This Order shall terminate five years from its effective date or when Mr. McAdams demonstrates to the satisfaction of the Executive Director that it has corrected all of the violations noted herein.

16. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order is the date this decision was rendered, pursuant to TEX. GOV'T CODE § 2001.144(a)(3).

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____

For the Commission

AFFIDAVIT OF STEPHANIE J. FRAZEE

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

"My name is Stephanie J. Frazee. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Robert McAdams" (the "EDPRP") with the Office of the Chief Clerk on November 4, 2008.

I sent the EDPRP to Mr. McAdams at his last known address on November 4, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Mr. McAdams received notice of the EDPRP on November 7, 2008, as evidenced by the signature on the card.

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

By letter dated January 2, 2009, sent via first class mail and certified mail, return receipt requested article no. 9171082133393523106377, I provided Mr. McAdams with notice of the TCEQ's intent to order the USTs at the Facility shut down and removed from service if the violations pertaining to corrosion protection and release detection were not corrected within thirty days of Mr. McAdams's receipt of the letter.

As of the date of this affidavit, I am not aware of any evidence indicating that Mr. McAdams has corrected the violations noted during the June 2, 2008, and June 11, 2008, investigations."

Stephanie J. Frazee, Attorney
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 30th day of March A.D., 2009.

Rochelle D. Collins
Notary Public
State of Texas
My Commission Expires
May 15, 2011

Rochelle D. Collins
Notary Signature