

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2009-0392-PST-E TCEQ ID: RN101727113 CASE NO.: 37320**

**RESPONDENT NAME: HOUSTON HARRISBURG CONVENIENCE STORE, INC. DBA HARRISBURG CITGO**

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	

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

**SITE WHERE VIOLATION(S) OCCURRED:** 6503 Harrisburg Boulevard, Houston, Harris County

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

**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 September 7, 2009. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Mr. Steven M. Fishburn, Litigation Division, MC 175, (512) 239-0635

Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

**TCEQ Enforcement Coordinator:** Mr. Steven Lopez, Waste Enforcement Section, MC 128, (512) 239-1896

**TCEQ Regional Contact:** Ms. Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623

**Respondent:** Mr. Amir Shaikh, Director, Houston Harrisburg Convenience Store, Inc., 9314 Stoney Lake Drive, Houston, Texas 77064

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

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input 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>Date of Investigation Relating to this Case:</b> February 25, 2009</p> <p><b>Date of NOE Relating to this Case:</b> March 10, 2009</p> <p><b>Background Facts:</b> The EDPRP was filed June 16, 2009, 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 July 1, 2009. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Current Compliance Status:</b> The Respondent no longer owns or operates the Station as of June 1, 2009, thus, the technical requirements are moot.</p> <p><b>PST:</b> Failed to verify proper operation of the Stage II equipment at least once every 12 months [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p>	<p><b>Total Assessed:</b> \$3,596</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$3,596</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> 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>Ordering Provisions:</b></p> <p>Respondent's UST fuel delivery certificate is revoked immediately.</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. Within 10 days, surrender its delivery certificate to the TCEQ.</li> <li>2. Within 30 days, conduct the required annual testing of the Stage II equipment.</li> <li>3. Within 45 days, submit written certification demonstrating compliance.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	Assigned	16-Mar-2009	Screening	17-Mar-2009	EPA Due	
	PCW	29-May-2009				

## RESPONDENT/FACILITY INFORMATION

Respondent	Houston Harrisburg Convenience Store, Inc. dba Harrisburg Citgo		
Reg. Ent. Ref. No.	RN101727113		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

## CASE INFORMATION

Enf./Case ID No.	37320	No. of Violations	1
Docket No.	2009-0392-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Steven Lopez
		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**

### 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**

Notes

**Culpability**   **Subtotal 4**

Notes

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5**

**Economic Benefit**  **Subtotal 6**

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

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

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

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**

Screening Date 17-Mar-2009

Docket No. 2009-0392-PST-E

PCW

Respondent Houston Harrisburg Convenience Store, Inc. dba Harrisb

Policy Revision 2 (September 2002)

Case ID No. 37320

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101727113

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Lopez

### Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of 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)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

No adjustment due to compliance history.

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

<b>Screening Date</b> 17-Mar-2009	<b>Docket No.</b> 2009-0392-PST-E	<b>PCW</b>	
<b>Respondent</b> Houston Harrisburg Convenience Store, Inc. dba Harrisburg Citgo	<i>Policy Revision 2 (September 2002)</i>		
<b>Case ID No.</b> 37320	<i>PCW Revision October 30, 2008</i>		
<b>Reg. Ent. Reference No.</b> RN101727113			
<b>Media [Statute]</b> Petroleum Storage Tank			
<b>Enf. Coordinator</b> Steven Lopez			
<b>Violation Number</b>	1		
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 115.245(2) and Tex. Health & Safety Code § 382.085(b)		
<b>Violation Description</b>	Failed to verify proper operation of the Stage II equipment at least once every 12 months. Specifically, the Stage II annual compliance testing had not been conducted.		
<b>Base Penalty</b>		\$10,000	
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>			
<b>OR</b>	<b>Harm</b>		
	Major	Moderate	Minor
	Actual	Potential	Percent
	x		25%
<b>&gt;&gt; Programmatic Matrix</b>			
	Major	Moderate	Minor
			Percent
			0%
<b>Matrix Notes</b>	Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.		
<b>Adjustment</b>		\$7,500	
		\$2,500	
<b>Violation Events</b>			
<b>Number of Violation Events</b>	1	365	<b>Number of violation days</b>
<i>mark only one with an x</i>	daily		<b>Violation Base Penalty</b>
	weekly		
	monthly		
	quarterly		
	semiannual		
	annual	x	
	single event		
One annual event is recommended for the 12-month period preceding the February 25, 2009 investigation.			
<b>Good Faith Efforts to Comply</b>		0.0% Reduction	\$0
	Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary			
Ordinary			
N/A	x	(mark with x)	
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.		
<b>Violation Subtotal</b>		\$2,500	
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>	
<b>Estimated EB Amount</b>	\$1,096	<b>Violation Final Penalty Total</b>	\$3,596
		<b>This violation Final Assessed Penalty (adjusted for limits)</b>	\$3,596

## Economic Benefit Worksheet

**Respondent** Houston Harrisburg Convenience Store, Inc. dba Harrisburg Citgo

**Case ID No.** 37320

**Reg. Ent. Reference No.** RN101727113

**Media** Petroleum Storage Tank

**Violation No.** 1

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

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

**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]	\$1,000	25-Feb-2008	25-Feb-2009	1.92	\$96	\$1,000	\$1,096
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost for annual testing of the Stage II equipment. The Date Required is one year prior to the investigation date. The Final Date is the investigation date.

Approx. Cost of Compliance

\$1,000

TOTAL

\$1,096

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603386061 Houston Harrisburg Convenience Store, Inc. Classification: AVERAGE Rating: 3.01

Regulated Entity: RN101727113 Harrisburg Citgo Classification: AVERAGE BY DEFAULT Site Rating: 3.01

ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 71614  
REGISTRATION

Location: 6503 HARRISBURG BLVD, HOUSTON, TX, 77011

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: March 17, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: March 17, 2004 to March 17, 2009

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

Name: Steven Lopez Phone: 512-239-1896

## 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
6. Rating Date: 9/1/2008 Repeat Violator: NO

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
  - B. Any criminal convictions of the state of Texas and the federal government.  
N/A
  - C. Chronic excessive emissions events.  
N/A
  - D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
N/A
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
  - 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  
HOUSTON HARRISBURG  
CONVENIENCE STORE, INC.  
DBA HARRISBURG CITGO,  
RN101727113

§  
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§  
§  
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BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**DEFAULT ORDER**  
**DOCKET NO. 2009-0392-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. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent and revocation of the respondent's fuel delivery certificate. The respondent made the subject of this Order is Houston Harrisburg Convenience Store, Inc. dba Harrisburg CITGO ("Harrisburg CITGO").

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

**FINDINGS OF FACT**

1. Harrisburg CITGO owns and operates a convenience store with retail sales of gasoline located at 6503 Harrisburg Boulevard, Houston, Harris County, Texas (the "Station").
2. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. During an inspection on February 25, 2009, a TCEQ Regional Office investigator documented that Harrisburg CITGO failed to verify proper operation of the Stage II equipment at least once every 12 months. Specifically, the Stage II annual compliance testing had not been conducted.

4. Harrisburg CITGO received notice of the violation on or about March 15, 2009.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Houston Harrisburg Convenience Store, Inc. dba Harrisburg CITGO" (the "EDPRP") in the TCEQ Chief Clerk's office on June 16, 2009.
6. By letter dated June 16, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Harrisburg CITGO with notice of the EDPRP. According to the return receipt "green card", Harrisburg CITGO received notice of the EDPRP on July 1, 2009, as evidenced by the signature on the card. The first class mail has not been returned, indicating that Harrisburg CITGO received notice of the EDPRP.
7. More than 20 days have elapsed since Harrisburg CITGO received notice of the EDPRP, provided by the Executive Director. Harrisburg CITGO failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.

#### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Harrisburg CITGO is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3., Harrisburg CITGO failed to verify proper operation of the Stage II equipment at least once every 12 months; i.e., the Stage II annual compliance testing had not been conducted, in violation of 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b).
3. As evidenced by Finding of Fact Nos. 5. and 6., the Executive Director timely served Harrisburg CITGO with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 7., Harrisburg CITGO failed to file a timely answer 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 Harrisburg CITGO and assess the penalty recommended by the Executive Director.

5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Harrisburg CITGO for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of three thousand five hundred ninety-six dollars (\$3,596.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. 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.
8. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Harrisburg CITGO's UST fuel delivery certificate if the Commission finds that good cause exists.
9. Good cause for revocation of Harrisburg CITGO's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2., 3., 5., 6., and 7. and Conclusions of Law Nos. 2. through 4.

#### **ORDERING PROVISIONS**

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

1. Harrisburg CITGO is assessed an administrative penalty in the amount of three thousand five hundred ninety-six dollars (\$3,596.00) for violations of state statutes and TCEQ rules. The payment of this administrative penalty and Harrisburg CITGO's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Houston Harrisburg Convenience Store, Inc. dba Harrisburg CITGO; Docket No. 2009-0392-PST-E" to:

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

2. Harrisburg CITGO's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Harrisburg CITGO may submit an application for a new delivery certificate only after Harrisburg CITGO has complied with all of the requirements of this Order.
3. Within 10 days after the effective date of this Order, Harrisburg CITGO shall send its UST fuel delivery certificate to:

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

4. Harrisburg CITGO shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Order, Harrisburg CITGO shall conduct the required annual testing of the Stage II equipment, in accordance with 30 TEX. ADMIN. CODE § 115.245; and
  - b. Within 45 days after the effective date of this Order, Harrisburg CITGO 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 No. 4.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

with a copy to:

Ms. Nicole Bealle  
Waste Section Manager  
Houston Regional Office  
Texas Commission on Environmental Quality  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486

5. All relief not expressly granted in this Order is denied.
6. The provisions of this Order shall apply to and be binding upon Harrisburg CITGO. Harrisburg CITGO is ordered to give notice of this Order to personnel who maintain day-to-day control over the Station operations referenced in this Order.
7. If Harrisburg CITGO fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Harrisburg CITGO's failure to comply is not a violation of this Order. Harrisburg CITGO shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Harrisburg CITGO shall notify the Executive Director within seven days after Harrisburg CITGO becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
8. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Harrisburg CITGO shall be made in writing to the Executive Director. Extensions are not effective until Harrisburg CITGO receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
9. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Harrisburg

CITGO if the Executive Director determines that Harrisburg CITGO has not complied with one or more of the terms or conditions in this Order.

10. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
11. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Houston Harrisburg Convenience Store, Inc. dba Harrisburg CITGO  
Docket No. 2009-0392-PST-E  
Page 7

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

AFFIDAVIT OF STEVEN M. FISHBURN

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Steven M. Fishburn. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Houston Harrisburg Convenience Store, Inc. dba Harrisburg CITGO” (the “EDPRP”) was filed with the Office of the Chief Clerk on June 16, 2009.

I sent the EDPRP to Harrisburg CITGO at its last known address on June 16, 2009 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card”, Harrisburg CITGO received notice of the EDPRP on July 1, 2009, as evidenced by the signature on the card.

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

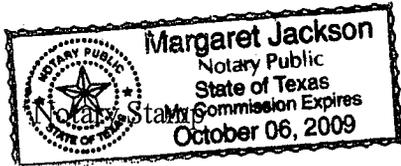


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Steven M. Fishburn  
Attorney  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Steven M. Fishburn, 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 21 day of July, A.D., 2009.



*Margaret Jackson*  
Notary Signature