EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2010-0179-PST-E RN101786945 CASE NO. 39533
RESPONDENT NAME: JIM BROOM

ORDER TYPE:		
__1660 AGREED ORDER	___FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
_X_FINDINGS DEFAULT ORDER	__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: northeast corner of County Road 780 and State Highway 21, Douglass, Nacogdoches County

TYPE OF OPERATION: former convenience store with three inactive underground storage tanks

SMALL BUSINESS: _____ Yes _____ No _X_ N/A

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 Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired October 25, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Marshall Coover, Litigation Division, MC 175, (512) 239-0620
Lena Roberts, Litigation Division, MC 175, (512) 239-0629
TCEQ Enforcement Coordinator: Danielle Porras, Waste Enforcement Section, MC R-12, (713) 767-3682
TCEQ Regional Contact: Derek Eades, Beaumont Regional Office, MC R-10, (409) 898-3838
Respondent: Jim Broom, P. O. Box 98, Douglass, Texas 75943
Respondent's Attorney: Not represented by counsel on this enforcement matter.

RESPONDENT NAME: JIM BROOM
DOCKET NO. 2010-0179-PST-E

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN / REQUIRED
Type of Investigation: ____ Complaint ____ Routine ____ Enforcement Follow-up _X_ Records Review **Date of Complaint**: None **Date of Investigation**: December 23, 2009 **Date of NOE**: January 25, 2010 **Background Facts**: The EDPRP was filed on July 27, 2010, and mailed to Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference. **Current Compliance Status:** Respondent has not yet submitted documentation to certify compliance with the technical requirements. **PST:** 1. Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, [30 TEX. ADMIN. CODE § 334.47(a)(2)]. 2. Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)].	**Total Assessed**: $6,300 **Total Deferred**: $0 ___ Expedited Order ___ Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Due to General Revenue**: $6,300 This is a Default Order. Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order. **Compliance History Classifications:** *Person/CN* – Average by Default *Site/RN* – Average by Default **Major Source**: ___ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** Respondent's UST fuel delivery certificate is revoked immediately. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements of these Ordering Provisions. Respondent shall undertake the following technical requirements: 1. Within 10 days, send his UST fuel delivery certificate to TCEQ. 2. Within 30 days, permanently remove the UST system from service. 3. Within 45 days, submit an amended registration to indicate the operational status of the UST system. 4. Within 60 days, submit written certification demonstrating compliance.

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) *PCW Revision October 30, 2008*

TCEQ

DATES					
Assigned	1-Feb-2010				
PCW	1-Jul-2010	Screening	2-Feb-2010	EPA Due	

RESPONDENT/FACILITY INFORMATION			
Respondent	Jim Broom		
Reg. Ent. Ref. No.	RN101786945		
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	39533	No. of Violations	2
Docket No.	2010-0179-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Danielle Porras
		EC's Team	Enforcement Team 7
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* **$6,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **5.0%** Enhancement *Subtotals 2, 3, & 7* **$300**

Notes: Enhancement for one previous NOV with same or similar violations.

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 $4,487
Approx. Cost of Compliance $7,600

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 *Final Subtotal* **$6,300**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0.0%** *Adjustment* **$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **$6,300**

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* **$6,300**

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: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY **$6,300**

Screening Date	2-Feb-2010	**Docket No.**	2010-0179-PST-E	**PCW**
Respondent	Jim Broom			*Policy Revision 2 (September 2002)*
Case ID No.	39533			*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN101786945			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Danielle Porras			

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%

		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) 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

Enhancement for one previous NOV with same or similar violations.

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

Screening Date	2-Feb-2010	**Docket No.** 2010-0179-PST-E	**PCW**
Respondent	Jim Broom		*Policy Revision 2 (September 2002)*
Case ID No.	39533		*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN101786945		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Danielle Porras		

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.47(a)(2)

Violation Description Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an underground storage tank ("UST") system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.

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: 2 — 41 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $5,000

Two monthly events are recommended from the December 23, 2009 record review to the February 2, 2010 screening date.

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 $5,000

Economic Benefit (EB) for this violation

Estimated EB Amount $4,483

Statutory Limit Test

Violation Final Penalty Total $5,250

This violation Final Assessed Penalty (adjusted for limits) $5,250

Economic Benefit Worksheet

Respondent Jim Broom
Case ID No. 39533
Reg. Ent. Reference No. RN101786945
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	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)	$7,500	22-Dec-1998	2-Dec-2010	11.95	$4,483	n/a	$4,483

Notes for DELAYED costs: Estimated cost to permanently remove from service three USTs with a combined capacity of 10,000 gallons at $0.75 per gallon. The Date Required is the date when the Respondent was required to upgrade the UST system 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				0.00	$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 $7,500

TOTAL $4,483

Screening Date	2-Feb-2010	**Docket No.**	2010-0179-PST-E	**PCW**
Respondent	Jim Broom			*Policy Revision 2 (September 2002)*
Case ID No.	39533			*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN101786945			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Danielle Porras			

Violation Number 2

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

Violation Description Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition. Specifically, the registration was not updated to reflect that the tanks are out of service.

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 — 105 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $1,000

One single event is recommended.

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 $5

Statutory Limit Test

Violation Final Penalty Total $1,050

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

Economic Benefit Worksheet

Respondent Jim Broom
Case ID No. 39533
Reg. Ent. Reference No. RN101786945
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	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)	$100	23-Dec-2009	2-Dec-2010	0.94	$5	n/a	$5
Notes for DELAYED costs	Estimated cost to accurately prepare and submit an updated UST registration. The Date Required is the date of the record review 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				0.00	$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**	$5

Compliance History Report

Customer/Respondent/Owner-Operator:	CN600967434	Broom, Jim	Classification: Average By Default	Rating: 3.01
Regulated Entity:	RN101786945	Jim Broom	Classification: Average By Default	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	25446
Location:	On the northeast corner of County Road 780 and State Highway 21 , Douglass TX			
TCEQ Region:	REGION 10 - BEAUMONT			
Date Compliance History Prepared:	April 07, 2010			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	April 07, 2005 to April 07, 2010			

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

Name: Danielle Porras Phone: (512) 239-2602

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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. if Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 11/13/2009 (779688)

2 01/21/2010 (786694)

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

Date: 11/12/2009 (779688) CN600967434

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)

Description: Failure to amend, update, or change the PST registration information.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)

Description: Failure to perform the permanent removal of a UST that has not met technical upgrade requirements.

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 JIM BROOM; RN101786945	**§ § § § §**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2010-0179-PST-E

At its _____ agenda meeting, 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 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 respondent made the subject of this Order is Jim Broom ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns property with three inactive underground storage tanks ("USTs") and a former convenience store with retail sales of gasoline located at the northeast corner of County Road 780 and State Highway 21, Douglass, Nacogdoches County, Texas (the "Facility"). The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contain a regulated petroleum substance as defined in the rules of the TCEQ.

2. During a record review investigation conducted on December 23, 2009, a TCEQ Beaumont Regional Office investigator documented that Respondent:

   a. Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and

   b. Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition. Specifically, the registration was not updated to reflect that the tanks are out of service.

3. Respondent received notice of the violations on or about January 30, 2010.

4. 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 Jim Broom" (the "EDPRP") in the TCEQ Chief Clerk's office on July 27, 2010.

5. By letter dated July 27, 2010, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.

6. More than 20 days have elapsed since Respondent received notice of the EDPRP provided by the Executive Director. Respondent failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the Commission.

2. As evidenced by Finding of Fact No. 2.a., Respondent failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, in violation of 30 TEX. ADMIN. CODE § 334.47(a)(2).

3. As evidenced by Finding of Fact No. 2.b., Respondent failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3).

4. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).

5. As evidenced by Finding of Fact No. 6, Respondent 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 Respondent and assess the penalty recommended by the Executive Director.

6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

7. An administrative penalty in the amount of six thousand three hundred dollars ($6,300.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

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

10. Good cause for revocation of Respondent's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2 and 4 through 6, and Conclusions of Law Nos. 2 through 5.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of six thousand three hundred dollars ($6,300.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent'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.

2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Jim Broom; Docket No. 2010-0179-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

3. Respondent's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements of this Order.

4. Within 10 days after the effective date of this Order, Respondent shall send his UST fuel delivery certificate to:

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

5. Respondent shall undertake the following technical requirements:

   a. Within 30 days after the effective date of this Order, Respondent shall permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55;

   b. Within 45 days after the effective date of this Order, Respondent shall submit an amended registration to indicate the operational status of the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

      Registration and Reporting Section
      Permitting & Registration Support Division, MC 129
      Texas Commission on Environmental Quality
      P. O. Box 13087
      Austin, Texas 78711-3087

c. Within 60 days after the effective date of this Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 4., 5.a., and 5.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

> "I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is 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."

Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions 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:

Derek Eades, Waste Section Manager
Texas Commission on Environmental Quality
Beaumont Regional Office
3870 Eastex Freeway
Beaumont, Texas 77703-1830

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

7. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.

8. If Respondent 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, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

9. 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

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

11. 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.

12. 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.

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

AFFIDAVIT OF MARSHALL COOVER

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

"My name is Marshall Coover. 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 Jim Broom" (the "EDPRP") was filed with the Office of the Chief Clerk on July 27, 2010.

The EDPRP was mailed to Respondent at his last known address on July 27, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

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

Marshall Coover, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 31st day of August, A.D., 2010.

Cheryl Arredondo
Notary Public
State of Texas
My Commission Expires
August 11, 2013

Cheryl Arredondo
Notary Signature