

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO. 2010-0288-PST-E RN105015499 CASE NO. 39207

RESPONDENT NAME: PCR CONSTRUCTION / DEVELOPMENT, INC. d/b/a J & J BUSINESS SOLUTIONS, L.L.C. d/b/a GAS & GO

ORDER TYPE:		
<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 checked="" type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	

CASE TYPE:		
<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: 5202 North United States Highway 281, Edinburg, Hidalgo 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 Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired December 6, 2010. No comments were received.

CONTACTS AND MAILING LIST:
TCEQ Attorney: Mr. Gary K. Shiu, Litigation Division, MC R-12, (713) 422-8916
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400
TCEQ Enforcement Coordinator: Mr. Mike Pace, Waste Enforcement Section, MC R-4, (817) 588-5933
TCEQ Regional Contact: Mr. Jaime A. Garza, Harlingen Regional Office, MC R-15, (956) 430-6030
Respondent: Mr. Ruben Cazares, Director, PCR Construction / Development, Inc., P.O. Box 3848, Edinburg, Texas 78540
Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint: N/A</p> <p>Date of Investigation: December 11, 2009</p> <p>Date of NOE: February 19, 2010</p> <p>Background Facts: The EDRP was filed on July 23, 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 EDRP sent by certified mail as "unclaimed." The first class mail has not been returned. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Respondent has not yet submitted documentation to certify compliance with the technical requirements. Respondent's delivery certificate expires in May 2011.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to provide an amended UST registration to the TCEQ for any change or additional information regarding the UST system within 30 days from the date of the occurrence of the change or addition; and failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date [30 TEX. ADMIN. CODE §§ 334.7(d)(3), 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)]. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST system [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)]. Failed to conduct effective manual or automatic inventory control procedures for the UST system at the Facility [30 TEX. ADMIN. CODE § 334.48(c)]. Failed to monitor the UST system for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); failed to test the line leak detectors at least once per 	<p>Total Assessed: \$9,066</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Due to General Revenue: \$9,066</p> <p>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.</p> <p>Compliance History Classifications: <i>Person/CN - Average</i> <i>Site/RN - Average</i></p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provision(s): Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Immediately take the following steps to shut down operations of all USTs at the Facility: <ol style="list-style-type: none"> Cease dispensing fuel from the USTs; Cease receiving deliveries of regulated substances into the USTs; Padlock the dispensers; Empty the USTs of all regulated substances; and Temporarily remove the USTs from service. Respondent's USTs shall remain out of service until such time as Respondent demonstrates that the release detection violations have been corrected. If Respondent elects to permanently remove from service any portion of the UST system, Respondent shall immediately permanently remove the UST system from service, and within 15 days submit a written report documenting compliance. 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 set forth in this Order. Within 10 days, send its UST fuel delivery certificate to the TCEQ. Within 15 days, submit documentation to demonstrate compliance with Ordering Provisions Nos. 1.a. through 1.e. and 5. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline: <ol style="list-style-type: none"> Begin conducting effective manual or automatic inventory control procedures for all USTs at the Facility (violation 3); Implement a release detection method for the UST system at the Facility, conduct annual testing of the line leak detectors for

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>year for performance and operational reliability; failed to conduct reconciliation of detailed inventory control records at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; and failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day [30 TEX. ADMIN. CODE § 334.50(b)(1)(A), (b)(2)(A)(i)(III), (d)(1)(B)(ii) and (d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(a) and (c)(1)].</p> <p>5. Failed to ensure that a legible tag, label or marking with the UST identification number listed on the UST registration and self-certification form is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube of each UST at the Facility [30 TEX. ADMIN. CODE § 334.8(c)(5)(c)].</p>		<p>performance and operational reliability, begin reconciliation of inventory control records, and begin record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day (violation 4);</p> <p>c. Permanently apply or affix tags, labels, or markings to the top of each UST fill tube or non-removable point in the immediate area of the UST fill tube with an identification number that matches the number listed on the UST registration and self-certification form (violation 5); and</p> <p>d. Obtain a new fuel delivery certificate (violations 1 and 2).</p> <p>8. Upon obtaining a new fuel delivery certificate, post the fuel delivery certificate in a location where the delivery certificate is clearly visible at all times.</p> <p>9. Within 10 days of resuming retail sales of gasoline, submit written certification demonstrating compliance with Ordering Provisions Nos. 7 and 8.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	22-Feb-2010	Screening	23-Feb-2010	EPA Due	
	PCW	22-Jul-2010				

RESPONDENT/FACILITY INFORMATION	
Respondent	PCR Construction / Development, Inc dba J & J Business Solutions, L.L.C. dba Gas & Go
Reg. Ent. Ref. No.	RN105015499
Facility/Site Region	15-Harlingen
Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	39207	No. of Violations	5	
Docket No.	2010-0288-PST-E	Order Type	1660	
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No	
Multi-Media		Enf. Coordinator	Mike Pace	
		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	\$8,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes	No adjustments for compliance history.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$1,162	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$3,200	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$8,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	13.3%	Adjustment	\$1,066
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Recommended enhancement to capture the avoided cost of compliance associated with violation no. 4.
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Final Penalty Amount	\$9,066
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$9,066
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$9,066
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Screening Date 23-Feb-2010

Docket No. 2010-0288-PST-E

PCW

Respondent PCR Construction / Development, Inc dba J & J Business:

Policy Revision 2 (September 2002)

Case ID No. 39207

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105015499

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Mike Pace

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%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> 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

No adjustments for compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 23-Feb-2010

Docket No. 2010-0288-PST-E

PCW

Respondent PCR Construction / Development, Inc dba J & J Business Solutions

Policy Revision 2 (September 2002)

Case ID No. 39207

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105015499

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Mike Pace

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code §§ 334.7(d)(3), 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)

Violation Description

Failed to provide an amended UST registration to the agency for any change or additional information regarding the UST within 30 days from the date of the occurrence of the change or addition. Specifically, the Facility's UST registration was not amended to reflect the accurate owner and operator information. Also, failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date. Specifically, the Respondent did not renew the delivery certificate after Respondent became the owner and operator of the Facility on or about July 20, 2009.

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 1 196 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the December 11, 2009 investigation.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement
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

Statutory Limit Test

Estimated EB Amount \$6

Violation Final Penalty Total \$1,133

This violation Final Assessed Penalty (adjusted for limits) \$1,133

Economic Benefit Worksheet

Respondent PCR Construction / Development, Inc dba J & J Business Solutions, L.L.C. dba Gas & Go
Case ID No. 39207
Reg. Ent. Reference No. RN105015499
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$100	19-Aug-2009	22-Oct-2010	1.18	\$6	n/a	\$6
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to accurately prepare and submit an updated UST registration and obtain a current TCEQ delivery certificate. The date required is 30 days after the date of ownership change and the final date is the expected compliance date.

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

\$6

Screening Date 23-Feb-2010 **Docket No.** 2010-0288-PST-E **PCW**
Respondent PCR Construction / Development, Inc dba J & J Business Solutions, *Policy Revision 2 (September 2002)*
Case ID No. 39207 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN105015499
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Mike Pace

Violation Number 2
Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(A)(i) and Tex. Water Code § 26.3467(a)
Violation Description Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST. Specifically, the Respondent received two deliveries of fuel at the Facility without a delivery certificate.
Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				5%
Potential			x	

>>Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.					

Adjustment \$9,500
 \$500

Violation Events

Number of Violation Events 2 2 Number of violation days

<i>mark only one with an x</i>	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$1,000

Two single events are recommended for accepting two deliveries of fuel.

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 **Statutory Limit Test**

Estimated EB Amount \$0 **Violation Final Penalty Total** \$1,133

This violation Final Assessed Penalty (adjusted for limits) \$1,133

Economic Benefit Worksheet

Respondent PCR Construction / Development, Inc dba J & J Business Solutions, L.L.C. dba Gas & Go
Case ID No. 39207
Reg. Ent. Reference No. RN105015499
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Economic benefit included in violation no. 1.

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

\$0

TOTAL

\$0

Screening Date 23-Feb-2010 **Docket No.** 2010-0288-PST-E **PCW**
Respondent PCR Construction / Development, Inc dba J & J Business Solutions, *Policy Revision 2 (September 2002)*
Case ID No. 39207 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN105015499
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Mike Pace

Violation Number
Rule Cite(s)
Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="25%"/>
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
<input type="text" value="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

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text" value="x"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	<input type="text" value="(mark with x)"/>

Notes

Violation Subtotal

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent PCR Construction / Development, Inc dba J & J Business Solutions, L.L.C. dba Gas & Go
Case ID No. 39207
Reg. Ent. Reference No. RN105015499
Media Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$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	\$500	11-Dec-2009	22-Oct-2010	0.86	\$22	n/a	\$22
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 conduct proper inventory control procedures. The date required is the investigation date and the final date is the expected compliance date.

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

\$500

TOTAL

\$22

Screening Date 23-Feb-2010 **Docket No.** 2010-0288-PST-E **PCW**
Respondent PCR Construction / Development, Inc dba J & J Business Solutions, *Policy Revision 2 (September 2002)*
Case ID No. 39207 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN105015499
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Mike Pace

Violation Number 4
Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A), (b)(2)(A)(i)(III), (d)(1)(B)(ii) and (d)(1)(B)(iii)(I) and Tex. Water Code § 26.3475(a) and(c)(1)
Violation Description Failed to monitor the UST at the Facility for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Failed to test the line leak detectors at the Facility at least once per year for performance and operational reliability. Failed to conduct reconciliation of detailed inventory control records at the Facility at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons. Also, failed to record inventory volume measurement at the Facility for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent
	Major	Moderate	Minor	
	Actual			
Potential	x			25%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 73 Number of violation days

<i>mark only one with an x</i>	daily	
	weekly	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One quarterly event is recommended based on documentation of the violation during the December 11, 2009 investigation to the February 22, 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 \$2,500

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$1,130 **Violation Final Penalty Total** \$2,833

This violation Final Assessed Penalty (adjusted for limits) \$2,833

Economic Benefit Worksheet

Respondent PCR Construction / Development, Inc dba J & J Business Solutions, L.L.C. dba Gas & Go
Case ID No. 39207
Reg. Ent. Reference No. RN105015499
Media Petroleum Storage Tank
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$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	11-Dec-2009	22-Oct-2010	0.86	\$65	n/a	\$65

Notes for DELAYED costs

Estimated delayed cost to monitor the UST for releases including volume measurement and monthly reconciliation of inventory control records. The date required is the investigation date and the final date is the expected compliance date.

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	20-Jul-2009	11-Dec-2009	1.31	\$66	\$1,000	\$1,066
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct the required line leak detector testing. The date required is the date of ownership change and the final date is the investigation date.

Approx. Cost of Compliance

\$2,500

TOTAL

\$1,130

Screening Date 23-Feb-2010 **Docket No.** 2010-0288-PST-E **PCW**
Respondent PCR Construction / Development, Inc dba J & J Business Solutions, *Policy Revision 2 (September 2002)*
Case ID No. 39207 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN105015499
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Mike Pace

Violation Number 5
Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(c)
Violation Description Failed to ensure that a legible tag, label or marking with the UST identification number listed on the UST registration and self-certification form is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube of each UST at the Facility.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual			
Potential					

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			x		
100% of the rule requirement was not met.					

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 73 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 based on documentation of the violation during the December 11, 2009 investigation.

Good Faith Efforts to Comply 0.0% Reduction \$0

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

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$4

Violation Final Penalty Total \$1,133

This violation Final Assessed Penalty (adjusted for limits) \$1,133

Economic Benefit Worksheet

Respondent PCR Construction / Development, Inc dba J & J Business Solutions, L.L.C. dba Gas & Go
Case ID No. 39207
Reg. Ent. Reference No. RN105015499
Media Petroleum Storage Tank
Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$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-Dec-2009	22-Oct-2010	0.86	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to label the tank fill port. The date required is the investigation date and the final date is the expected compliance date.

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

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603621145	PCR Construction / Development, Inc.	Classification: Average	Rating: 3.01
Regulated Entity:	RN105015499	J & J Business Solutions, L.L.C. dba Gas & Go	Classification: Average by Default	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	47306
Location:	5202 N US HIGHWAY 281, EDINBURG, TX, 78542			
TCEQ Region:	REGION 15 - HARLINGEN			
Date Compliance History Prepared:	February 22, 2010			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	February 22, 2005 to February 22, 2010			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Mike Pace	Phone:	817-588-5933	

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? Yes
PCR Construction / Development, INC
4. If Yes, who was/were the prior owner(s)/operator(s) ?
Jose Gonzalez and Hector Gonzalez
5. When did the change(s) in owner or operator occur?
7/20/2009

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 02/19/2010 (785646)
 - 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	§	BEFORE THE
ENFORCEMENT ACTION	§	
CONCERNING	§	
PCR CONSTRUCTION / DEVELOPMENT,	§	TEXAS COMMISSION ON
INC. D/B/A	§	
J & J BUSINESS SOLUTIONS, L.L.C.	§	ENVIRONMENTAL QUALITY
D/B/A GAS & GO;	§	
RN105015499	§	

DEFAULT AND SHUTDOWN ORDER

DOCKET NO. 2010-0288-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 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, PCR Construction / Development, Inc. d/b/a J & J Business Solutions, L.L.C. d/b/a Gas & Go ("Respondent"), to shutdown or remove from service the underground storage tanks ("USTs") at the Gas & Go facility, located at 5202 North United States Highway 281, Edinburg, Hidalgo County, Texas.

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

FINDINGS OF FACT

1. Respondent owns and operates, as defined in 30 TEX. ADMIN. CODE § 334.2(70) and (73), a UST system and a convenience store with retail sales of gasoline at 5202 North United States Highway 281, Edinburg, Hidalgo County, Texas (the "Facility").
2. The UST system at the Facility is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contains a regulated petroleum substance as defined in the rules of the TCEQ.
3. On December 11, 2009, a TCEQ Harlingen Regional Office investigator documented that Respondent:
 - a. Failed to provide an amended UST registration to the TCEQ for any change or additional information regarding the UST system within 30 days from the date of the occurrence of the change or addition; and failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date. Specifically, the Facility's UST registration was not timely amended to reflect the correct owner and operator information, and Respondent did not timely renew the delivery certificate after Respondent became the owner and operator of the Facility on or about July 20, 2009;

- b. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST system. Specifically, Respondent received two deliveries of fuel at the Facility without a delivery certificate;
 - c. Failed to conduct effective manual or automatic inventory control procedures for the UST system at the Facility;
 - d. Failed to monitor the UST system at the Facility for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); failed to test the line leak detectors at the Facility at least once per year for performance and operational reliability; failed to conduct reconciliation of detailed inventory control records at the Facility at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; and failed to record inventory volume measurement at the Facility for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; and
 - e. Failed to ensure that a legible tag, label or marking with the UST identification number listed on the UST registration and self-certification form is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube of each UST at the Facility.
4. By letter dated February 19, 2010, the TCEQ Harlingen Regional Office provided Respondent with notice of the violations and TCEQ's authority to shut down and remove from service a UST system not in compliance with release detection, spill and/or overfill prevention, corrosion protection, and/or financial assurance requirements if the violations are not corrected.
 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 PCR Construction / Development, Inc. d/b/a J & J Business Solutions, L.L.C. d/b/a Gas & Go" (the "EDPRP") in the TCEQ Chief Clerk's office on July 23, 2010.
 6. By letter dated July 23, 2010, sent 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.
 7. More than 20 days have elapsed since Respondent received notice of the EDPRP, provided by the Executive Director. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.
 8. By letter dated November 10, 2010, TCEQ provided Respondent with notice of TCEQ's intent to order the UST system at the Facility to be shut down and removed from service if Respondent failed to correct the release detection violations within 30 days after Respondent's receipt of the notice.

9. As of the date of entry of this Order, Respondent has not provided the Executive Director with documentation demonstrating that the release detection violations alleged in Finding of Fact No. 3.d. have been corrected.
10. The UST system at the Facility does not have release detection as required by 30 TEX. ADMIN. CODE § 334.50(b)(1)(A), (b)(2)(A)(i)(III), (d)(1)(B)(ii) and (d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(a) and (c)(1) and may be releasing petroleum products to the environment. Therefore, conditions at the Facility constitute an imminent peril to public health, safety, and welfare.

CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact Nos. 1 and 2, Respondent's UST system 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. 3.a., Respondent violated 30 TEX. ADMIN. CODE §§ 334.7(d)(3), 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii), by failing to provide an amended UST registration to the TCEQ for any change or additional information regarding the UST system within 30 days from the date of the occurrence of the change or addition; and failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date.
3. As evidenced by Finding of Fact No. 3.b., Respondent violated 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST system.
4. As evidenced by Finding of Fact No. 3.c., Respondent violated 30 TEX. ADMIN. CODE § 334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system at the Facility.
5. As evidenced by Finding of Fact No. 3.d., Respondent violated 30 TEX. ADMIN. CODE § 334.50(b)(1)(A), (b)(2)(A)(i)(III), (d)(1)(B)(ii) and (d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(a) and (c)(1), by failing to monitor the UST system at the Facility for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); failing to test the line leak detectors at the Facility at least once per year for performance and operational reliability; failing to conduct reconciliation of detailed inventory control records at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; and failing to record inventory volume measurement at the Facility for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day.
6. As evidenced by Finding of Fact No. 3.e., Respondent violated 30 TEX. ADMIN. CODE § 334.8(c)(5)(c), by failing to ensure that a legible tag, label or marking with the UST identification number listed on the UST registration and self-certification form is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube of each UST at the Facility.

7. As evidenced by Findings of Fact Nos. 5 and 6, 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).
8. As evidenced by Finding of Fact No. 7, 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.
9. 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 and the Texas Health & 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.
10. An administrative penalty in the amount of nine thousand sixty-six dollars (\$9,066.00) 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 Findings of Fact Nos. 8 and 9, Respondent failed to correct documented violations of Commission requirements within 30 days after Respondent 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 30 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 overflow 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 Respondent's UST fuel delivery certificate if the Commission finds that good cause exists.
15. Good cause for revocation of Respondent's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 3, 5, 6 and 7 and Conclusions of Law Nos. 2 through 8.
16. As evidenced by Finding of Fact No. 10, 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, IT IS ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. Immediately upon the effective date of this Order, Respondent shall take the following steps to shut down operations of the UST system at the Facility:
 - a. Cease dispensing fuel from the UST system;
 - b. Cease receiving deliveries of regulated substances into the UST system;
 - c. Padlock the dispensers;
 - d. Empty the UST system of all regulated substances in accordance with 30 TEX. ADMIN. CODE § 334.54(d); and
 - e. Temporarily remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.54.
2. Respondent's UST system shall remain out of service, pursuant to TEX. WATER CODE § 26.3475 and as directed by Ordering Provisions Nos. 1.a. through 1.e., until such time as Respondent demonstrates to the satisfaction of the Executive Director that the violations noted in Finding of Fact No. 3.d. and Conclusion of Law No. 5 have been corrected.
3. If Respondent elects to permanently remove from service any portion of the UST system at the Facility, Respondent shall, immediately upon the effective date of this Order, permanently remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.55, and within 15 days after the effective date of this Order, submit a written report documenting compliance with 30 TEX. ADMIN. CODE § 334.55 to:

Petroleum Storage Tank Registration Team, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
4. Respondent's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Respondent shall cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ in accordance with 30 TEX. ADMIN. CODE §§ 334.7 and 334.8. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements set forth in this Order.
5. Within 10 days after the effective date of this Order, Respondent shall send its 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

6. Within 15 days after the effective date of this Order, Respondent shall submit a detailed written report documenting the steps taken to comply with Ordering Provisions Nos. 1.a. through 1.e. and 5. The written report shall include detailed supporting documentation such as photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall 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 certified written report and supporting documentation 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

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

7. Respondent is assessed an administrative penalty in the amount of nine thousand sixty-six dollars (\$9,066.00) 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 resolve only the violations set forth in this Order. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations which are not raised here.
8. 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: PCR Construction / Development, Inc. d/b/a J & J Business Solutions, L.L.C. d/b/a Gas & Go; Docket No. 2010-0288-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

9. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline, Respondent shall:
 - a. Begin conducting effective manual or automatic inventory control procedures for the UST system at the Facility, in accordance with of 30 TEX. ADMIN. CODE § 334.48;
 - b. Implement a release detection method for the UST system, conduct annual testing of the line leak detectors for performance and operational reliability, begin reconciliation of inventory control records, and begin record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day, in accordance with of 30 TEX. ADMIN. CODE § 334.50;
 - c. Permanently apply or affix tags, labels, or markings to the top of each UST fill tube or nonremovable point in the immediate area of the UST fill tube with an identification number that matches the number listed on the UST registration and self-certification form, in accordance with 30 TEX. ADMIN. CODE § 334.8; and
 - d. Obtain a new fuel delivery certificate from the TCEQ.
10. Upon obtaining a new fuel delivery certificate, Respondent shall post the fuel delivery certificate in a location at the Facility where the delivery certificate is clearly visible at all times, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii).
11. Within 10 days of resuming retail sales of gasoline at the Facility, Respondent shall submit written certification as described below, and include detailed supporting documentation such as photographs, receipts, and/or other records, demonstrating compliance with Ordering Provisions Nos. 9 and 10. The written certification shall be notarized by a State of Texas Notary Public and shall 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 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."

The written certification and supporting documentation 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

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

12. All relief not expressly granted in this Order is denied.
13. The provisions of this Order shall apply to and be binding upon Respondent, and Respondent is ordered to give notice of this Order to all personnel who maintain day-to-day control of the UST system 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 Respondent if the Executive Director determines that Respondent 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 Respondent demonstrates to the satisfaction of the Executive Director all of the violations noted herein have been corrected, whichever is later.
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).

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF GARY K. SHIU

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

"My name is Gary K. Shiu. 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.

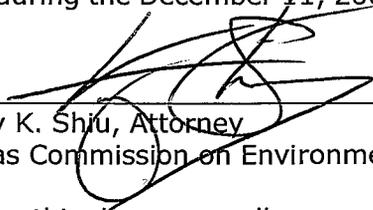
On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of PCR Construction / Development, Inc. d/b/a J & J Business Solutions, L.L.C. d/b/a Gas & Go" (the "EDPRP") was filed with the Office of the Chief Clerk on July 23, 2010.

The EDPRP was mailed to Respondent at its last known address on July 23, 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.

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.

By letter dated November 10, 2010, sent via first class mail and certified mail, return receipt requested article no. **7010 0290 0002 7775 0902**, I provided Respondent with notice of the TCEQ's intent to order the UST system at the Facility shut down and removed from service if the violations pertaining to release detection were not corrected within 30 days of Respondent's receipt of the letter.

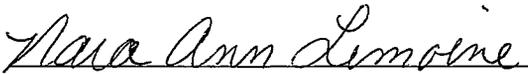
As of the date of this affidavit, I am not aware of any evidence that indicates that Respondent has corrected the violations noted during the December 11, 2009, investigation."



Gary K. Shiu, Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Gary K. Shiu, 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 12 day of November, A.D., 2010.



Notary Signature

