

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

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
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
<p>SITE WHERE VIOLATIONS OCCURRED: 14758 Farm-to-Market Road 59, Athens, Henderson County</p> <p>TYPE OF OPERATION: Underground storage tank system</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location. This Respondent was assessed an administrative penalty of \$10,800 in case no. 2005-1850-PST-E for the same violations as in the current action. The agreed order was approved at the July 25, 2007, Commission agenda. The Respondent is making monthly payments of \$300 per the 2005 order.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on April 26, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3693 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400 TCEQ Enforcement Coordinator: Ms. Elvia Maske, Waste Enforcement Section, MC 128, (512) 239-0789 TCEQ Regional Contact: Mr. Michael Brashear, Tyler Regional Office, MC R-5, (903) 535-5176 Respondent: Mr. Robert McAdams, 792 Robindale Lane, Fairfield, Texas 75840 Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input checked="" type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: June 2, 2008, and June 11, 2008</p> <p>Date of NOE Relating to this Case: June 30, 2008</p> <p>Background Facts: The EDP RP was filed November 4, 2008. The Respondent filed an answer and the case was referred to SOAH. Settlement was achieved, and an agreed order was signed on February 15, 2010.</p> <p>Current Compliance Status: Not yet in compliance. The Respondent owes \$787.81 in past-due fees. The Respondent's delivery certificate expired in April 2005.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to provide proper corrosion protection for the UST system [TEX. WATER CODE § 26.3475(d), 30 TEX. ADMIN. CODE § 334.49(a), and TCEQ Agreed Order, Docket No. 2005-1850-PST-E, Ordering Provision No. 2.b.i.]. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b) and TCEQ Agreed Order, Docket No. 2005-1850-PST-E, Ordering Provision No. 2.b.ii.]. Failed to provide proper release detection for the UST system [TEX. WATER CODE § 26.3475(c)(1), 30 TEX. ADMIN. CODE § 334.50(b)(1)(A), and TCEQ Agreed Order, Docket No. 2005-1850-PST-E, Ordering Provision No. 2.b.iii.]. Failed to provide written notice of any change or additional information to the agency within thirty days from the date of the occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)]. Failed to pay UST fees for TCEQ Financial Account No. 0055137U and associated late fees for fiscal year 2003 through 2007 [TEX. WATER CODE § 5.702, 30 TEX. ADMIN. CODE § 334.22(a), and TCEQ Agreed Order, Docket No. 2005-1850-PST-E, Ordering Provision No. 2.a.]. 	<p>Total Assessed: \$46,145</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid/Due to General Revenue: \$700/\$45,445</p> <p>The Respondent paid \$700 of the administrative penalty. The remaining amount of \$45,445 shall be paid in 11 monthly installments of \$700, followed by 23 monthly installments of \$1,572, and a final monthly installment of \$1,589.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>Findings Order Justification: Indifference to legal duty based on violation of a TCEQ Agreed Order.</p>	<p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Within 30 days: <ol style="list-style-type: none"> Install or implement a corrosion protection method for the UST system at the Facility; Install or implement a release detection method for all USTs at the Facility; Demonstrate current acceptable financial assurance for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and Submit payment for all outstanding fees, including any associated penalties and interest. Within 45 days, submit an amended UST registration to reflect the owner's current contact information. Within 60 days, submit written certification to demonstrate compliance with Ordering Provision Nos. 1 and 2.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

TCEQ

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

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

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

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$29,000
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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	45.0% Enhancement	Subtotals 2, 3, & 7	\$13,050
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Notes: Enhancement for one NOV for same or similar violations and two 1660 orders.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

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 \$5,373
 Approx. Cost of Compliance \$13,550
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$42,050
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OTHER FACTORS AS JUSTICE MAY REQUIRE	9.7%	Adjustment	\$4,095
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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. 2.

Final Penalty Amount	\$46,145
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$46,145
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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: No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$46,145
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Screening Date 28-Aug-2008

Docket No. 2008-1490-PST-E

PCW

Respondent Robert McAdams

Policy Revision 2 (September 2002)

Case ID No. 27285

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN102488780

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	2	40%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 45%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

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

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

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

Violation Number 1
Rule Cite(s) 30 Tex. Admin. Code § 334.49(a), Tex. Water Code § 26.3475(d) and TCEQ Docket No. 2005-1850-PST-E, Ordering Provision No. 2.b.i.
Violation Description Failed to provide proper corrosion protection for the UST system.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent
	Major	Moderate	Minor	
	Actual			
	Potential	x		25%

>> Programmatic Matrix

	Major	Moderate	Minor	Percent
Falsification				
				0%

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 5 384 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$12,500

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

Good Faith Efforts to Comply 0.0% Reduction \$0

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

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

Violation Subtotal \$12,500

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

Estimated EB Amount \$1,151 **Violation Final Penalty Total** \$19,890

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

Economic Benefit Worksheet

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

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment	\$10,000	10-Aug-2007	1-Apr-2009	1.64	\$55	\$1,096	\$1,151
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

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

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$1,151

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

Violation Number 2
Rule Cite(s) 30 Tex. Admin. Code § 37.815(a) and (b), and TCEQ Docket No. 2005-1850-PST-E, Ordering Provision No. 2.b.ii.
Violation Description Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
		x			10%

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 3 384 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$3,000

Three single events are recommended for the three USTs.

Good Faith Efforts to Comply 0.0% Reduction \$0

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

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

Violation Subtotal \$3,000

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

Estimated EB Amount \$4,095 **Violation Final Penalty Total** \$4,774

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

Economic Benefit Worksheet

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

Percent Interest	Years of Depreciation
5.0	15

Item Description	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

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]	\$1,950	10-Aug-2007	1-Apr-2009	2.00	\$195	\$3,900	\$4,095
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to provide financial assurance for three USTs (\$650 per tank). The Date Required is the effective date of the agreed order. The Final Date is expected date of compliance.

Approx. Cost of Compliance

\$1,950

TOTAL

\$4,095

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

Violation Number 3
Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A), Tex. Water Code § 26.3475(c)(1) and TCEQ Docket No. 2005-1850-PST-E, Ordering Provision No. 2.b.iii.
Violation Description Failed to provide proper release detection for the UST system.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate		Minor
	Actual				
	Potential	x			
				Percent 25%	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
					Percent 0%

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 5 384 Number of violation days

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

Violation Base Penalty \$12,500

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

Good Faith Efforts to Comply 0.0% Reduction \$0

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

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

Violation Subtotal \$12,500

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount \$123 **Violation Final Penalty Total** \$19,890

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

Economic Benefit Worksheet

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

Percent Interest	Years of Depreciation
5.0	15

Item Description	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	10-Aug-2007	1-Apr-2009	1.64	\$123	n/a	\$123

Notes for DELAYED costs

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

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$123

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

Violation Number
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="0%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
	<input type="text" value="100% of the rule requirement was not met."/>	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	

Adjustment

Violation Events

Number of Violation Events Number of violation days

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

mark only one with an x
Violation Base Penalty

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	(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 Robert McAdams
Case ID No. 27285
Reg. Ent. Reference No. RN102488780
Media Petroleum Storage Tank
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item 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-Jun-2008	1-Apr-2009	0.81	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to update the UST registration. Date Required is the investigation date. Final Date is the expected date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$4

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

Violation Number 5
Rule Cite(s) 30 Tex. Admin. Code § 334.22(a), Tex. Water Code § 5.702 and TCEQ Docket No. 2005-1850-PST-E, Ordering Provision No. 2.a.
Violation Description Failed to pay UST fees for TCEQ Financial Account No. 0055137U and associated late fees for fiscal years 2003 through 2007.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent
	Major	Moderate	Minor	
	Actual			
	Potential			

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent

Matrix Notes

Adjustment \$10,000

\$0

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty \$0

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

Good Faith Efforts to Comply 0.0% Reduction \$0

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

Notes

Violation Subtotal \$0

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

Estimated EB Amount \$0 **Violation Final Penalty Total** \$0

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

Economic Benefit Worksheet

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

Percent Interest	Years of Depreciation
5.0	15

Item 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

N/A

Avoided Costs

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

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

Notes for AVOIDED costs

N/A

Approx. Cost of Compliance

\$0

TOTAL

\$0

Compliance History

Customer/Respondent/Owner-Operator: CN601279532 McAdams, Robert Classification: AVERAGE Rating: 34.14
Regulated Entity: RN102488780 MCs Country Store and Café Classification: AVERAGE Site Rating: 34.14
ID Number(s):
Location: 14758 FM 59, ATHENS, TX, 75751 Rating Date: 9/1/2008 Repeat Violator: NO
TCEQ Region: REGION 05 - TYLER
Date Compliance History Prepared: September 16, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: September 16, 2003 to September 16, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Elvia Maske Phone: (512) 239-0789

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

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

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

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

30 TAC Chapter 37, SubChapter I 37.815(b)

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

Classification: Moderate

Citation: 2A TWC Chapter 5, SubChapter A 5.702

30 TAC Chapter 334, SubChapter B 334.22(a)

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

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

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

30 TAC Chapter 334, SubChapter C 334.49(a)

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

Classification: Moderate

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

30 TAC Chapter 37, SubChapter I 37.815(b)

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

Classification: Moderate

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

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

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

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

N/A

- C. Chronic excessive emissions events.

N/A

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

1. 10/27/2005
2. 04/02/2007
3. 05/22/2008
4. 06/10/2008
5. 06/30/2008

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

Date: 12/20/2007 (610894)

Self Report? NO

Classification: Moderate

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

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

Self Report? NO

Classification: Moderate

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

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

Self Report? NO

Classification: Moderate

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

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

Self Report? NO

Classification: Major

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

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

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

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
ROBERT MCADAMS;
RN102488780**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2008-1490-PST-E**

At its _____ agenda, the Texas Commission on Environmental Quality (“Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding Robert McAdams (“Mr. McAdams”) under the authority of TEX. WATER CODE chs. 5, 7, and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Robert McAdams presented this agreement to the Commission.

Mr. McAdams understands that he has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, Mr. McAdams agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon Mr. McAdams.

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

FINDINGS OF FACT

1. Mr. McAdams owns an underground storage tank (“UST”) system located at 14758 Farm-to-Market Road 59, Athens, Henderson County, Texas (the “Facility”).
2. Mr. McAdams’s three USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. McAdams’s USTs contain a regulated petroleum substance as defined in the rules of the Commission.

3. During a record review conducted on June 2, 2008, and an investigation conducted on June 11, 2008, a TCEQ Tyler Regional Office investigator documented that Mr. McAdams:
 - a. Failed to provide proper corrosion protection for the UST system.
 - b. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs.
 - c. Failed to provide proper release detection for the UST system.
 - d. Failed to pay UST fees for TCEQ Financial Account No. 0055137U and associated late fees for fiscal years 2003 through 2007.
4. During an investigation conducted on June 11, 2008, a TCEQ Tyler Regional Office investigator documented that Mr. McAdams failed to provide written notice of any change or additional information to the agency within thirty days from the date of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the owner's current contact information.
5. Mr. McAdams received notice of the violations on or about July 5, 2008.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. McAdams is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 5, 7, and 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. McAdams failed to provide proper corrosion protection for the UST system, in violation of TEX. WATER CODE § 26.3475(d); 30 TEX. ADMIN. CODE § 334.49(a); and TCEQ Agreed Order, Docket No. 2005-1850-PST-E, Ordering Provision No. 2.b.i.
3. As evidenced by Finding of Fact No. 3.b., Mr. McAdams failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b) and TCEQ Agreed Order, Docket No. 2005-1850-PST-E, Ordering Provision No. 2.b.ii.
4. As evidenced by Finding of Fact No. 3.c., Mr. McAdams failed to provide proper release detection for the UST system, in violation of TEX. WATER CODE § 26.3475(c)(1); 30 TEX.

ADMIN. CODE § 334.50(b)(1)(A); and TCEQ Agreed Order, Docket No. 2005-1850-PST-E, Ordering Provision No. 2.b.iii.

5. As evidenced by Finding of Fact No. 3.d., Mr. McAdams failed to pay UST fees for TCEQ Financial Account No. 0055137U and associated late fees for fiscal years 2003 through 2007, in violation of TEX. WATER CODE § 5.702; 30 TEX. ADMIN. CODE § 334.22(a); and TCEQ Agreed Order, Docket No. 2005-1850-PST-E, Ordering Provision No. 2.a.
6. As evidenced by Finding of Fact No. 4, Mr. McAdams failed to provide written notice of any change or additional information to the agency within thirty days from the date of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3).
7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. McAdams for violations of the Texas Water Code 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.
8. An administrative penalty in the amount of forty-six thousand one hundred forty-five dollars (\$46,145.00) is justified by the facts recited in this Agreed Order and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Mr. McAdams has paid seven hundred dollars (\$700.00) of the administrative penalty. The remaining amount of forty-five thousand four hundred forty-five dollars (\$45,445.00) of the administrative penalty shall be payable in 11 monthly payments of seven hundred dollars (\$700.00) each, followed by 23 monthly payments of one thousand five hundred seventy-two dollars (\$1,572.00) each, followed by a final payment of one thousand five hundred eighty-nine dollars (\$1,589.00). The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be remitted not later than 30 days following the due date of the previous payment. If Mr. McAdams fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of Mr. McAdams to meet the payment schedule of this Agreed Order constitutes the failure by Mr. McAdams to timely and satisfactorily comply with all of the terms of this Agreed Order.

ORDERING PROVISIONS

1. Mr. McAdams is assessed an administrative penalty in the amount of forty-six thousand one hundred forty-five dollars (\$46,145.00) as set forth in Conclusion of Law No. 8, above. The payment of this administrative penalty and Mr. McAdams's compliance with all the terms

and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Robert McAdams; Docket No. 2008-1490-PST-E" to:

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

2. Mr. McAdams shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, Mr. McAdams shall:
 - i. Install or implement a corrosion protection method for the UST system at the Facility in accordance with 30 TEX. ADMIN. CODE § 334.49;
 - ii. Install or implement a release detection method for all USTs at the Facility in accordance with 30 TEX. ADMIN. CODE § 334.50;
 - iii. Demonstrate current acceptable financial assurance for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs in accordance with 30 TEX. ADMIN. CODE § 37.815; and
 - iv. Submit payment for all outstanding fees, including any associated penalties and interest with the notation, "Robert McAdams, TCEQ Financial Account No. 0055137U" to:

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

- b. Within 45 days after the effective date of this Agreed Order, Mr. McAdams shall submit an amended UST registration to reflect the owner's current contact information in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

Registration and Reporting Section
Permitting & Remediation Support Division, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- c. Within 60 days after the effective date of this Agreed Order, Mr. McAdams shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b., above.

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."

Mr. McAdams shall submit 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:

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

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. McAdams. Mr. McAdams is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Mr. McAdams fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. McAdams's failure to comply is not a violation of this Agreed Order. Mr. McAdams has the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. McAdams shall notify the Executive Director within seven days after Mr. McAdams becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. McAdams shall be made in writing to the Executive Director. Extensions are not effective until Mr. McAdams receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. 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 Mr. McAdams if the Executive Director determines that Mr. McAdams has not complied with one or more of the terms or conditions in this Agreed Order.
7. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
8. This Agreed Order, issued by the Commission, shall not be admissible against Mr. McAdams in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

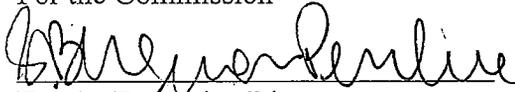
9. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date is the date of hand-delivery of this Agreed Order to Mr. McAdams, or three days after the date on which the Commission mails notice of this Agreed Order to Mr. McAdams, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

3/19/2010

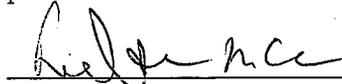
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Robert McAdams. I represent that I am authorized to agree to the attached Agreed Order on behalf of Robert McAdams and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on Mr. McAdams's compliance history;
- Greater scrutiny of any permit applications submitted by Mr. McAdams;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against Mr. McAdams;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Mr. McAdams; and
- TCEQ seeking other relief as authorized by law.

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



Signature

2-15-10

Date

Robert McAdams

Name (printed or typed)

Owner

Title