

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-1851-PST-E RN 101435238 CASE NO. 38708
RESPONDENT NAME: J. A. F. ENTERPRISE, INC. DBA CULLEN CHEVRON

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 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: 13306 Cullen Boulevard, Houston, Harris County

TYPE OF OPERATION: convenience store with retail sales of gasoline

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: One complaint was received, alleging a strong odor of gasoline near the facility. The investigator scanned the property with a combustible gas detector and no leak was detected. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: The complainant has not indicated a desire to protest this action or speak at Agenda. No one other than the ED and Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired June 21, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Steven M. Fishburn, Litigation Division, MC 175, (512) 239-3400
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Ms. Theresa Hagood, Waste Enforcement Section, MC 128, (512) 239-2540

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

Respondent: Mr. Pritam Singh Grewal, Director, J. A. F. ENTERPRISE, INC., 4219 Chaboya Hills Court,
San Jose, California 95148

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:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: September 24, 2009</p> <p>Date of Investigation Relating to this Case: September 30, 2009</p> <p>Date of NOE Relating to this Case: October 30, 2009</p> <p>Background Facts: The EDPRP was filed on March 16, 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 EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Respondent has not yet submitted documentation to certify compliance with the technical requirements. Respondent's delivery certificate expires in August 2010.</p> <p>PST: Failed to verify proper operation of the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$ 4,225</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$4,225</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>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>Ordering Provisions:</p> <p>Respondent's UST fuel delivery certificate is revoked immediately. Respondent may submit an application for a new delivery certificate only after Respondent has complied with all of the requirements of this Order.</p> <p>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Within 10 days, send its UST fuel delivery certificate to the TCEQ. 2. Within 30 days, conduct the required triennial testing of the Stage II equipment. 3. Within 45 days, submit written certification demonstrating compliance.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	2-Nov-2009			
	PCW	26-Feb-2010	Screening	13-Nov-2009	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	J. A. F. ENTERPRISE, INC. dba Cullen Chevron				
Reg. Ent. Ref. No.	RN101435238				
Facility/Site Region	12-Houston	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	38708	No. of Violations	1		
Docket No.	2009-1851-PST-E	Order Type	1660		
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Theresa Hagood		
		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	\$2,500
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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	24.0% Enhancement	Subtotals 2, 3, & 7	\$600
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Notes	Enhancement for two NOVs for non-similar violations and one 1660 order.
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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	\$1,125	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,000	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,100
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OTHER FACTORS AS JUSTICE MAY REQUIRE	36.3%	Adjustment	\$1,125
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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 the violation.
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Final Penalty Amount	\$4,225
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$4,225
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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	\$4,225
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Screening Date 13-Nov-2009

Docket No. 2009-1851-PST-E

PCW

Respondent J. A. F. ENTERPRISE, INC. dba Cullen Chevron

Policy Revision 2 (September 2002)

Case ID No. 38708

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101435238

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Theresa Hagood

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	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	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) 24%

>> 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 two NOVs for non-similar violations and one 1660 order.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 24%

Screening Date	13-Nov-2009	Docket No.	2009-1851-PST-E	PCW
Respondent	J. A. F. ENTERPRISE, INC. dba Cullen Chevron			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	38708			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN101435238			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Theresa Hagood			
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 115.245(2) and Tex. Health & Safety Code § 382.085(b)			
Violation Description	Failed to verify proper operation of the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months. Specifically, the Stage II triennial compliance testing had not been conducted.			
		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 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	1095	Number of violation days
<i>mark only one with an x</i>	daily		
	weekly		
	monthly		
	quarterly		
	semiannual		
	annual		
	single event	x	
	One single event is recommended for the three-year period preceding the September 30, 2009 investigation.		

Good Faith Efforts to Comply 0.0% Reduction \$0

		Before NOV	NOV to EDRP/Settlement
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	\$1,125	Violation Final Penalty Total	\$4,225
		This violation Final Assessed Penalty (adjusted for limits)	\$4,225

Economic Benefit Worksheet

Respondent J. A. F. ENTERPRISE, INC. dba Cullen Chevron
Case ID No. 38708
Reg. Ent. Reference No. RN101435238
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				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$1,000	1-Mar-2008	30-Sep-2009	2.50	\$125	\$1,000	\$1,125
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct the testing. The Date Required is the date of ownership change. The Final Date is the investigation date.

Approx. Cost of Compliance

\$1,000

TOTAL

\$1,125

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603391780	J. A. F. ENTERPRISE, INC.	Classification: AVERAGE	Rating: 26.00
Regulated Entity:	RN101435238	CULLEN CHEVRON	Classification: AVERAGE	Site Rating: 26.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	73201
Location:	13306 CULLEN BLVD, HOUSTON, TX, 77047			
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	November 13, 2009			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	November 13, 2004 to November 13, 2009			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Theresa Hagood		Phone:	239 - 2540

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
3. If Yes, who is the current owner/operator? J. A. F. ENTERPRISE, INC.
4. If Yes, who was/were the prior owner(s)/operator(s) ? Andrew Enterprise, Inc. dba Audrey Chevron
5. When did the change(s) in owner or operator occur? 03/01/2008
6. Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site :

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

Effective Date: 06/27/2005

ADMINORDER 2004-1382-PST-E

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.48(c)
30 TAC Chapter 334, SubChapter C 334.50(d)(1)(B)(ii)

Description: Failed to reconcile inventory control records at least once each month, to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons.

Classification: Moderate

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

Description: Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and to conduct annual tightness test for pressurized piping and annual performance test on the line leak detectors.

- 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. (CEEDS Inv. Track. No.)

1	12/12/2005	(439430)
2	08/05/2008	(688347)
3	09/22/2008	(701766)
4	10/30/2009	(778060)

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

Date: 12/12/2005 (439430)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.48(c)
30 TAC Chapter 334, SubChapter C 334.50(d)(1)(B)(ii)

Description: Failed to reconcile inventory control records at least once each month, to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons.

Self Report? NO Classification: Moderate

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

Description: Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and to conduct annual tightness test for pressurized piping and annual performance test on the line leak detectors.

Self Report? NO Classification: Major

Citation: 2A TWC Chapter 7, SubChapter A 7.101
Ordering Provisions 2.a.-2.c. ORDER

Description: Failure to comply with Ordering Provisions of Commission Order Docket No. 2004-1382-PST-E.

Date: 08/05/2008 (688347)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)

Description: 30 Tex. Admin. Code Section 115.242 (3)(G) - Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s), and free of defects that would impair the effectiveness of the system, including vapor return lines, including such components as swivels, anti- recirculation valves, and underground piping, that malfunction, are blocked, or are restricted such that the pressure decay and/or dynamic backpressure through the line exceeds the value as certified in the approved system's CARB Executive Order(s) or third-party certification;

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	§	TEXAS COMMISSION ON
J. A. F. ENTERPRISE, INC. DBA	§	
CULLEN CHEVRON;	§	ENVIRONMENTAL QUALITY
RN101435238		

DEFAULT ORDER
DOCKET NO. 2009-1851-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality, (“Commission” or “TCEQ”) considered the Executive Director’s Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty, corrective action of the respondent, and revocation of the respondent’s fuel delivery certificate. The respondent made the subject of this Order is J. A. F. ENTERPRISE, INC. dba Cullen Chevron (“J. A. F. ENTERPRISE”).

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

FINDINGS OF FACT

1. J. A. F. ENTERPRISE owns and operates two underground storage tanks (“USTs”) and a convenience store with retail sales of gasoline located at 13306 Cullen Boulevard, Houston, Harris County, Texas (the “Station”).
2. J. A. F. ENTERPRISE’S USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contain a regulated substance as defined in the rules of the Commission. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. During an investigation conducted on September 30, 2009, a University of Texas at Arlington Stage II Petroleum Storage Tank investigator documented that J. A. F. ENTERPRISE failed to verify proper operation of the Stage II vapor space manifold and dynamic back pressure at least once every 36 months. Specifically, the Stage II triennial compliance testing had not been conducted.
4. J. A. F. ENTERPRISE received notice of the violation on or about November 4, 2009.

5. The Executive Director filed the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of J. A. F. ENTERPRISE, INC. dba Cullen Chevron” (the “EDPRP”) in the TCEQ Chief Clerk’s office on March 16, 2010.
6. By letter dated March 16, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served J. A. F. ENTERPRISE 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 J. A. F. ENTERPRISE received notice of the EDPRP.
7. More than 20 days have elapsed since J. A. F. ENTERPRISE received notice of the EDPRP, provided by the Executive Director. J. A. F. ENTERPRISE failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, J. A. F. ENTERPRISE is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, J. A. F. ENTERPRISE failed to verify proper operation of the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months, in violation of 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b).
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served J. A. F. ENTERPRISE with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
4. As evidenced by Finding of Fact No. 7, J. A. F. ENTERPRISE 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 J. A. F. ENTERPRISE and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against J. A. F. ENTERPRISE for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission’s jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

6. An administrative penalty in the amount of four thousand two hundred twenty-five dollars (\$4,225.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.
8. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke J. A. F. ENTERPRISE's UST fuel delivery certificate if the Commission finds that good cause exists.
9. Good cause for revocation of J. A. F. ENTERPRISE'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 4.

ORDERING PROVISIONS

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

1. J. A. F. ENTERPRISE is assessed an administrative penalty in the amount of four thousand two hundred twenty-five dollars (\$4,225.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and J. A. F. ENTERPRISE's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: J. A. F. ENTERPRISE, INC. dba Cullen Chevron; Docket No. 2009-1851-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. J. A. F. ENTERPRISE's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. J. A. F. ENTERPRISE may submit an application for a new fuel delivery certificate only after J. A. F. ENTERPRISE has complied with all of the requirements of this Order.

3. Within 10 days after the effective date of this Order, J. A. F. ENTERPRISE shall send its UST fuel delivery certificate to:

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

4. J. A. F. ENTERPRISE shall undertake the following technical requirements:
- a. Within 30 days after the effective date of this Order, J. A. F. ENTERPRISE shall conduct the required triennial testing of the Stage II equipment, in accordance with 30 TEX. ADMIN. CODE § 115.245(2); and
- b. Within 45 days after the effective date of this Order, J. A. F. ENTERPRISE shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision No. 4.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

J. A. F. ENTERPRISE shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision No. 4.a. to:

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

with a copy to:

Ms. Nicole Bealle, Waste Section Manager
Texas Commission on Environmental Quality
Houston Regional Office
5425 Polk Ave., Ste. H
Houston, Texas 77023-1452

5. All relief not expressly granted in this Order is denied.
6. The provisions of this Order shall apply to and be binding upon J. A. F. ENTERPRISE. J. A. F. ENTERPRISE is ordered to give notice of this Order to personnel who maintain day-to-day control over the Station operations referenced in this Order.
7. If J. A. F. ENTERPRISE fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, J. A. F. ENTERPRISE's failure to comply is not a violation of this Order. J. A. F. ENTERPRISE shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. J. A. F. ENTERPRISE shall notify the Executive Director within seven days after J. A. F. ENTERPRISE becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
8. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by J. A. F. ENTERPRISE shall be made in writing to the Executive Director. Extensions are not effective until J. A. F. ENTERPRISE receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
9. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to J. A. F. ENTERPRISE if the Executive Director determines that J. A. F. ENTERPRISE has not complied with one or more of the terms or conditions in this Order.
10. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
11. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF STEVEN M. FISHBURN

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

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

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of J. A. F. ENTERPRISE, INC. dba Cullen Chevron” (the “EDPRP”) was filed with the Office of the Chief Clerk on March 16, 2010.

The EDPRP was mailed to J. A. F. ENTERPRISE at its last known address on March 16, 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 J. A. F. ENTERPRISE received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

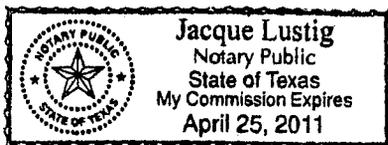
More than 20 days have elapsed since J. A. F. ENTERPRISE received notice of the EDPRP. J. A. F. ENTERPRISE failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.”



Steven M. Fishburn, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 21st day of April, A.D., 2010.


Notary Signature