

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO. 2009-1936-PST-E RN102060407 CASE NO. 38784**  
**RESPONDENT NAME: RUBEN LOPEZ DBA R. J.'S CONVENIENCE STORE**

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input 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	

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

**SITE WHERE VIOLATION(S) OCCURRED:** 1825 Grand Avenue, Big Wells, Dimmit County

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

**SMALL BUSINESS:** Yes

**OTHER SIGNIFICANT MATTERS:** There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** No one other than the ED and the Respondent expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired July 5, 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. Rose Luna-Pirtle, Laredo Regional Office, MC R-16, (956) 753-4052

**Respondent:** Mr. Ruben Lopez, P. O. Box 370, Big Wells, Texas 78830

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

<b>VIOLATION SUMMARY CHART:</b>		
<b>VIOLATION INFORMATION</b>	<b>PENALTY CONSIDERATIONS</b>	<b>CORRECTIVE ACTIONS TAKEN/REQUIRED</b>
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> October 29, 2009</p> <p><b>Date of NOE Relating to this Case:</b> November 13, 2009</p> <p><b>Background Facts:</b> This case was referred to Litigation on April 2, 2010. Settlement was achieved and the agreed order was signed on May 18, 2010.</p> <p><b>Current Compliance Status:</b> Respondent has not yet submitted documentation to certify compliance with the technical requirements. Respondent's delivery certificate expired in February 2010.</p> <p><b>PST:</b></p> <ol style="list-style-type: none"> <li>Failed to provide proper release detection for the piping associated with the USTs (piping tightness test); failed to test the line leak detectors at least once per year for performance and operational reliability; failed to conduct reconciliation of detailed inventory control records at least once each month sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons; and failed to record inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day [30 TEX. ADMIN. CODE § 334.50(b)(2), (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)].</li> <li>Failed to conduct effective manual or automatic inventory control procedures for all USTs at the Facility [30 TEX. ADMIN. CODE § 334.48(c)].</li> </ol>	<p><b>Total Assessed:</b> \$6,096</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid/Due to General Revenue:</b> \$181/\$5,915</p> <p>Respondent paid \$181 of the administrative penalty. The remaining amount of \$5,915 shall be payable in 35 monthly payments of \$169 each.</p> <p><b>Site Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Immediately, begin conducting effective manual or automatic inventory control procedures for all USTs.</li> <li>Within 30 days, implement a release detection method for the USTs, conduct the required annual piping tightness and line leak detector tests, begin conducting monthly reconciliation of detailed inventory control records, and begin recording inventory volume measurements.</li> <li>Within 45 days, submit written certification demonstrating compliance.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	23-Nov-2009			
	<b>PCW</b>	1-Apr-2010	<b>Screening</b>	25-Nov-2009	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>					
<b>Respondent</b>	Ruben Lopez dba R. J.'s Convenience Store				
<b>Reg. Ent. Ref. No.</b>	RN102060407				
<b>Facility/Site Region</b>	16-Laredo	<b>Major/Minor Source</b>	Minor		

<b>CASE INFORMATION</b>					
<b>Enf./Case ID No.</b>	38784	<b>No. of Violations</b>	2		
<b>Docket No.</b>	2009-1936-PST-E	<b>Order Type</b>	1660		
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Government/Non-Profit</b>	No		
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Theresa Hagood		
		<b>EC's Team</b>	Enforcement Team 6		
<b>Admin. Penalty \$ Limit</b>	<b>Minimum</b>	\$0	<b>Maximum</b>	\$10,000	

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$5,000
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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.

<b>Compliance History</b>	0.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$0
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<b>Notes</b>	No adjustments due to compliance history.
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<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$1,165	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$3,000	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$5,000
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	21.9%	<b>Adjustment</b>	\$1,096
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	Enhancement to capture the avoided cost of compliance associated with violation no. 1.
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<b>Final Penalty Amount</b>	\$6,096
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$6,096
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<b>DEFERRAL</b>	0.0%	Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>Notes</b>	Deferral not offered for non-expedited settlement.
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<b>PAYABLE PENALTY</b>	\$6,096
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Screening Date 25-Nov-2009

Docket No. 2009-1936-PST-E

PCW

Respondent Ruben Lopez dba R. J.'s Convenience Store

Policy Revision 2 (September 2002)

Case ID No. 38784

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102060407

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	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 due to compliance history.

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

Screening Date 25-Nov-2009

Docket No. 2009-1936-PST-E

PCW

Respondent Ruben Lopez dba R. J.'s Convenience Store

Policy Revision 2 (September 2002)

Case ID No. 38784

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102060407

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Theresa Hagood

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(2), (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 provide proper release detection for the piping associated with the USTs. Specifically, the Respondent did not conduct the piping tightness test. Failed to test the line leak detectors at least once per year for performance and operational reliability. Failed to conduct reconciliation of detailed inventory control records at least once each month, 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. Failed to record inventory volume measurement 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	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				25%
	Potential	x			

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0%

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 Number of violation days 28

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,500

One monthly event is recommended from the investigation date of October 29, 2009 to the screening date of November 25, 2009.

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 \$1,148

Violation Final Penalty Total \$3,048

This violation Final Assessed Penalty (adjusted for limits) \$3,048

## Economic Benefit Worksheet

**Respondent** Ruben Lopez dba R. J.'s Convenience Store  
**Case ID No.** 38784  
**Reg. Ent. Reference No.** RN102060407  
**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)	\$1,500	29-Oct-2009	10-Jul-2010	0.70	\$52	n/a	\$52

Notes for DELAYED costs

Estimated cost to provide release detection for the UST system including volume measurement and reconciliation of inventory control records. Date Required is the investigation date. 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]	\$1,000	29-Oct-2008	29-Oct-2009	1.92	\$96	\$1,000	\$1,096
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost for piping tightness and line leak detector tests. Date Required is one year prior to the investigation date. Final Date is the investigation date.

Approx. Cost of Compliance

\$2,500

**TOTAL**

\$1,148

**Screening Date** 25-Nov-2009 **Docket No.** 2009-1936-PST-E **PCW**  
**Respondent** Ruben Lopez dba R. J.'s Convenience Store *Policy Revision 2 (September 2002)*  
**Case ID No.** 38784 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN102060407  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Theresa Hagood

**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**

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

**Matrix Notes**

**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" value="x"/>
quarterly	<input type="text"/>
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** Ruben Lopez dba R. J.'s Convenience Store  
**Case ID No.** 38784  
**Reg. Ent. Reference No.** RN102060407  
**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	\$500	29-Oct-2009	10-Jul-2010	0.70	\$17	n/a	\$17
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. Date Required is the investigation date. 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

\$500

**TOTAL**

\$17

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603096090 LOPEZ, RUBEN Classification: AVERAGE Rating: 3.01

Regulated Entity: RN102060407 R. J.'s CONVENIENCE STORE Classification: AVERAGE BY DEFAULT Site Rating: 3.01

ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 73768

Location: 1825 GRAND AVE, BIG WELLS, TX, 78830

TCEQ Region: REGION 16 - LAREDO

Date Compliance History Prepared: November 25, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: November 25, 2004 to November 25, 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?
4. If Yes, who was/were the prior owner(s)/operator(s) ? J. & E. Oil, Inc.
5. When did the change(s) in owner or operator occur? 06/20/2006
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.  
N/A
  - B. Any criminal convictions of the state of Texas and the federal government.  
N/A
  - C. Chronic excessive emissions events.  
N/A
  - D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
1 11/13/2009 (782401)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
  - F. Environmental audits.  
N/A
  - G. Type of environmental management systems (EMSs).  
N/A
  - H. Voluntary on-site compliance assessment dates.  
N/A
  - I. Participation in a voluntary pollution reduction program.  
N/A
  - J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
RUBEN LOPEZ DBA R. J.'S  
CONVENIENCE STORE;  
RN102060407**

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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2009-1936-PST-E**

**I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality (“Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding Ruben Lopez dba R. J.’s Convenience Store (“Mr. Lopez”) under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Lopez appear before the Commission and together stipulate that:

1. Mr. Lopez owns and operates two (2) underground storage tanks (“USTs”) and a convenience store with retail sales of gasoline located at 1825 Grand Avenue, Big Wells, Dimmit County, Texas (the “Facility”). The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contain a regulated petroleum substance as defined in the rules of the TCEQ.
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and Mr. Lopez agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Lopez is subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Lopez of any violation alleged in Section II (“Allegations”), nor of any statute or rule.
5. An administrative penalty in the amount of six thousand ninety-six dollars (\$6,096.00) is assessed by the Commission in settlement of the violations alleged in Section II (“Allegations”). Mr. Lopez paid one hundred eighty-one dollars (\$181.00) of the administrative penalty. The remaining amount of five thousand nine hundred fifteen dollars (\$5,915.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of one hundred sixty-nine dollars (\$169.00) each. The first monthly payment shall

be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Mr. Lopez 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, Mr. Lopez's failure to meet the payment schedule of this Agreed Order constitutes the failure by Mr. Lopez to timely and satisfactorily comply with all of the terms of this Agreed Order.

6. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
7. The Executive Director of the TCEQ and Mr. Lopez agree on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Mr. Lopez has not complied with one or more of the terms or conditions in this Agreed Order.
9. 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.
10. 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.

## **II. ALLEGATIONS**

1. During an investigation conducted on October 29, 2009, a TCEQ Laredo Regional Office investigator documented that Mr. Lopez violated:
  - a. 30 TEX. ADMIN. CODE § 334.50(b)(2), (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 provide proper release detection for the piping associated with the USTs (Mr. Lopez did not conduct the piping tightness test), failing to test the line leak detectors at least once per year for performance and operational reliability, failing to conduct reconciliation of detailed inventory control records at least once each month sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons, and failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; and

- b. 30 TEX. ADMIN. CODE § 334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs at the Facility.
2. Mr. Lopez received notice of the violations on or about November 18, 2009.

### **III. DENIALS**

Mr. Lopez generally denies each Allegation in Section II.

### **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that Mr. Lopez pay an administrative penalty as set forth in Section I, Paragraph 5, above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and Mr. Lopez's compliance with all the terms and conditions set forth in this Agreed Order resolve only the Allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which 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: Ruben Lopez dba R. J.'s Convenience Store, Docket No. 2009-1936-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. Lopez shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, Mr. Lopez shall begin conducting effective manual or automatic inventory control procedures for all USTs, in accordance with 30 TEX. ADMIN. CODE § 334.48;
  - b. Within 30 days after the effective date of this Agreed Order, Mr. Lopez shall implement a release detection method for the USTs, conduct the required annual piping tightness and line leak detector tests, begin conducting monthly reconciliation of detailed inventory control records, and begin recording inventory volume measurements, in accordance with 30 TEX. ADMIN. CODE § 334.50; and
  - c. Within 45 days after the effective date of this Agreed Order, Mr. Lopez shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos.

2.a. and 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

Mr. Lopez shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. to:

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

and

Ms. Rose Luna-Pirtle, Waste Section Manager  
Laredo Regional Office  
Texas Commission on Environmental Quality  
707 East Calton Road, Suite 304  
Laredo, Texas 78041-3887

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Lopez. Mr. Lopez is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Mr. Lopez 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. Lopez's failure to comply is not a violation of this Agreed Order. Mr. Lopez shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Lopez shall notify the Executive Director within seven days after Mr. Lopez 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. Lopez shall be made in writing to the Executive Director. Extensions are not effective until Mr. Lopez receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Lopez 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.
7. 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.
8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of this Agreed Order to Mr. Lopez, or three days after the date on which the Commission mails notice of this Agreed Order to Mr. Lopez, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Ruben Lopez dba R. J.'s Convenience Store  
Docket No. 2009-1936-PST-E  
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

[Signature]  
For the Executive Director

6/25/2010  
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. 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, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on Mr. Lopez's compliance history;
- Greater scrutiny of any permit applications submitted by Mr. Lopez;
- 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. Lopez;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Mr. Lopez; and
- TCEQ seeking other relief as authorized by law.

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

[Signature]  
Signature

5/18/2010  
Date

RUBEN D. LOPEZ  
Name (Printed or typed)  
Authorized representative of  
Ruben Lopez dba R. J.'s Convenience  
Store

OWNER  
Title