

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO. 2010-0300-PST-E**

**RN101654804**

**CASE NO. 39209**

**RESPONDENT NAME: R.G.B. TRANSPORTATION COMPANY, INC.**

**ORDER TYPE:**

<input type="checkbox"/> <b>AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS ORDER FOLLOWING SOAH HEARING</b>
<input checked="" type="checkbox"/> <b>FINDINGS DEFAULT ORDER</b>	<input checked="" type="checkbox"/> <b>SHUTDOWN ORDER</b>	<input type="checkbox"/> <b>IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER</b>
<input type="checkbox"/> <b>AMENDED ORDER</b>	<input type="checkbox"/> <b>EMERGENCY ORDER</b>	

**CASE TYPE:**

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

**SITE WHERE VIOLATION(S) OCCURRED:** 1034 Humble Place, El Paso County

**TYPE OF OPERATION:** fleet refueling facility

**SMALL BUSINESS:**  Yes  No

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

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

**COMMENTS RECEIVED:** The *Texas Register* comment period expired November 22, 2010. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Peipey Tang, Litigation Division, MC 175, (512) 239-3400  
Lena Roberts, Litigation Division, MC 175, (512) 239-3400

**TCEQ Enforcement Coordinator:** Elvia Maske, Waste Enforcement Section, MC 128, (512) 239-0789

**TCEQ Regional Contact:** Kent Waggoner, El Paso Regional Office, MC R-6, (915) 834-4957

**Respondent:** Mr. Rufus Brijalba, Jr., President and Director, R.G.B. Transportation Company, Inc., 1653 Billy Casper Dr., El Paso, TX 79936

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

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<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:</b> None</p> <p><b>Date of Investigation:</b> December 15, 2009</p> <p><b>Date of NOE:</b> March 17, 2010</p> <p><b>Background Facts:</b> The EDPRP was filed on June 3, 2010, and mailed to Respondent via first class mail and certified mail, return receipt requested. The EDPRP sent by certified mail was returned "unclaimed." The first class mail has not been returned. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>A Notice of Intent ("NOI") to shut down the USTs was mailed to Respondent on September 10, 2010. The NOI sent by certified mail was returned "unclaimed." The first class mail has not been returned. As of the date of the entry of this order, Respondent has not provided the ED with documentation demonstrating that the cathodic protection and release detection violations have been corrected.</p> <p><b>Current Compliance Status:</b> Respondent has not yet submitted documentation demonstrating compliance with the technical requirements.</p> <p><b>PST:</b></p> <ol style="list-style-type: none"> <li>Failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years [30 TEX. ADMIN. CODE § 334.49(c)(4) and TEX. WATER CODE § 26.3475(d)].</li> <li>Failed to provide proper release detection for the pressurized piping associated with the UST; failed to equip each separate pressurized line with an automatic line leak detector; and failed to provide release detection for the UST system by failing to conduct reconciliation of inventory control records at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons [30 TEX. ADMIN. CODE § 334.50(b)(2), (b)(1)(A), (b)(2)(A)(i), and (d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(a) and (c)(1)].</li> </ol>	<p><b>Total Assessed:</b> \$9,292</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>Total Due to General Revenue:</b> \$9,292</p> <p>This is a Default Order. Respondent has not actually paid any of the assessed administrative penalty but will be required to do so within 30 days under the terms of this Order.</p> <p><b>Compliance History Classifications:</b>  <i>Person/CN</i> – High  <i>Site/RN</i> – High</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 take the following steps to shut down operations of all USTs at the Facility: <ol style="list-style-type: none"> <li>Cease dispensing fuel from the USTs;</li> <li>Cease receiving deliveries of regulated substances into the USTs;</li> <li>Padlock the dispensers;</li> <li>Empty the USTs of all regulated substances;</li> <li>Temporarily remove the USTs from service.</li> </ol> </li> <li>Respondent's UST shall remain out of service until Respondent demonstrates to the satisfaction of the Executive Director that the violations have been corrected.</li> <li>If Respondent elects to permanently remove from service any portion of the UST system at the Facility, Respondent shall immediately and permanently remove the UST system from service and within 15 days submit a written report documenting compliance.</li> <li>Respondent's UST fuel delivery certificate is revoked immediately. Respondent shall cease accepting fuel until a valid delivery certificate is obtained from the TCEQ. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements.</li> <li>Within 10 days, Respondent shall send its UST fuel delivery certificate to TCEQ.</li> <li>Within 15 days, Respondent shall submit a detailed written report documenting the steps taken to comply with Ordering Provision Nos. 1.a. through 1.e. and 5.</li> <li>Prior to receiving deliveries of gasoline and resuming retail sales of gasoline, Respondent shall: <ol style="list-style-type: none"> <li>Implement a release detection method for the UST at the Facility and begin conducting volume measurement and reconciliation of inventory control records;</li> <li>Conduct the required triennial testing of the cathodic protection system;</li> </ol> </li> </ol>

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>3. Failed to ensure that a legible tag, label, or marking with tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form [30 Tex. ADMIN. CODE § 334.8(c)(5)(C)].</p> <p>4. Failed to equip each tank with a valve or other appropriate device designed to either automatically shut off the flow or restrict the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level [30 Tex. ADMIN. CODE § 334.51(b)(2)(C) and TEX. WATER CODE § 26.3475(c)(2)].</p>		<p>c. Permanently apply or affix tags, labels, or markings to the UST fill tubes with an identification number that matches the number listed on the UST registration and self-certification form;</p> <p>d. Install overfill prevention equipment on each tank; and</p> <p>e. Obtain a new fuel delivery certificate from the TCEQ.</p> <p>8. Upon obtaining a new fuel delivery certificate, Respondent shall post the fuel delivery certificate in a location at the Facility where the delivery certificate is clearly visible at all times.</p> <p>9. Within 10 days of resuming retail sales of gasoline submit written certification demonstrating compliance with Ordering Provision Nos. 7 and 8.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	11-Jan-2010	<b>Screening</b>	21-Jan-2010	<b>EPA Due</b>	
	<b>PCW</b>	26-May-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	R.G.B. TRANSPORTATION COMPANY, INC.
<b>Reg. Ent. Ref. No.</b>	RN101654804
<b>Facility/Site Region</b>	6-El Paso
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	39209	<b>No. of Violations</b>	4
<b>Docket No.</b>	2010-0300-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>	Elvia Maske
		<b>EC's Team</b>	Enforcement Team 7
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History**  Reduction **Subtotals 2, 3, & 7**

**Notes**

**Culpability**   Enhancement **Subtotal 4**

**Notes**

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5**

**Economic Benefit**  Enhancement\* **Subtotal 6**

<b>Total EB Amounts</b>	\$2,399	<i>*Capped at the Total EB \$ Amount</i>
<b>Approx. Cost of Compliance</b>	\$4,600	

**SUM OF SUBTOTALS 1-7** **Final Subtotal**

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes**

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL**  Reduction **Adjustment**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

**Notes**

**PAYABLE PENALTY**

Screening Date 21-Jan-2010

Docket No. 2010-0300-PST-E

PCW

Respondent R.G.B. TRANSPORTATION COMPANY, INC.

Policy Revision 2 (September 2002)

Case ID No. 39209

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101654804

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)	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%

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) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Reduction due to high performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) -10%

Screening Date 21-Jan-2010

Docket No. 2010-0300-PST-E

PCW

Respondent R.G.B. TRANSPORTATION COMPANY, INC.

Policy Revision 2 (September 2002)

Case ID No. 39209

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101654804

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 334.49(c)(4) and Tex. Water Code § 26.3475(d)

Violation Description

Failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years. Specifically, the triennial test had not been conducted.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Harm		
	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

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

Violation Base Penalty \$2,500

One single event is recommended for the three-year period preceding the December 15, 2009 investigation.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

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

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,196

Violation Final Penalty Total \$3,319

This violation Final Assessed Penalty (adjusted for limits) \$3,319

## Economic Benefit Worksheet

**Respondent** R.G.B. TRANSPORTATION COMPANY, INC.  
**Case ID No.** 39209  
**Reg. Ent. Reference No.** RN101654804  
**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
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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	15-Dec-2006	15-Dec-2009	3.92	\$196	\$1,000	\$1,196
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost for completing the triennial test. Date required is three years prior to the investigation date and final date is the investigation date.

Approx. Cost of Compliance

\$1,000

**TOTAL**

\$1,196

Screening Date 21-Jan-2010

Docket No. 2010-0300-PST-E

PCW

Respondent R.G.B. TRANSPORTATION COMPANY, INC.

Policy Revision 2 (September 2002)

Case ID No. 39209

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101654804

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 334.50(b)(2), (b)(1)(A), (b)(2)(A)(i), (d)(1)(B)(ii) and Tex. Water Code § 26.3475(a) and (c)(1)

Violation Description

Failed to provide proper release detection for the pressurized piping associated with the UST. Specifically, the Respondent did not conduct the annual piping tightness test. Failed to monitor underground storage tanks (USTs) for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring). Failed to equip each separate pressurized line with an automatic line leak detector (LLD). Specifically, the LLD was disconnected and not being used. Failed to provide release detection for the UST system by failing to conduct reconciliation of inventory control records at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

>> 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 37 Number of violation days

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

Violation Base Penalty \$2,500

One quarterly event is recommended based on documentation of the violation during the December 15, 2009 investigation to the January 21, 2010 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

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

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,149

Violation Final Penalty Total \$3,319

This violation Final Assessed Penalty (adjusted for limits) \$3,319

## Economic Benefit Worksheet

**Respondent** R.G.B. TRANSPORTATION COMPANY, INC.  
**Case ID No.** 39209  
**Reg. Ent. Reference No.** RN101654804  
**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 \$							
<b>Delayed Costs</b>							
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	15-Dec-2009	1-Sep-2010	0.71	\$53	n/a	\$53

Notes for DELAYED costs

Estimated cost to provide release detection for the UST including recording daily volume measurement and monthly reconciliation of inventory control records. Date required is the investigation date and 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]	\$1,000	15-Dec-2008	15-Dec-2009	1.92	\$96	\$1,000	\$1,096
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to conduct annual piping tightness and line leak detector tests. Date required is one year prior to the investigation date and final date is the date of investigation.

Approx. Cost of Compliance

\$2,500

**TOTAL**

\$1,149

Screening Date 21-Jan-2010

Docket No. 2010-0300-PST-E

PCW

Respondent R.G.B. TRANSPORTATION COMPANY, INC.

Policy Revision 2 (September 2002)

Case ID No. 39209

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101654804

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 334.8(c)(5)(C)

Violation Description

Failed to ensure that a legible tag, label, or marking with tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

37 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the December 15, 2009 investigation.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

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

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4

Violation Final Penalty Total \$1,327

This violation Final Assessed Penalty (adjusted for limits) \$1,327

## Economic Benefit Worksheet

**Respondent** R.G.B. TRANSPORTATION COMPANY, INC.  
**Case ID No.** 39209  
**Reg. Ent. Reference No.** RN101654804  
**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
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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	15-Dec-2009	1-Sep-2010	0.71	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to label tank fill ports. Date required is the investigation date and final date is the estimated date of compliance.

**Avoided Costs**

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

**TOTAL**

\$4

Screening Date 21-Jan-2010

Docket No. 2010-0300-PST-E

PCW

Respondent R.G.B. TRANSPORTATION COMPANY, INC.

Policy Revision 2 (September 2002)

Case ID No. 39209

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101654804

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code § 334.51(b)(2)(C) and Tex. Water Code § 26.3475(c)(2),

Violation Description

Failed to equip each tank with a valve or other appropriate device designed to either automatically shut off the flow or restrict the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

37 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$1,000

One quarterly event is recommended based on documentation of the violation during the December 15, 2009 investigation to the January 21, 2010 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

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

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$25

Violation Final Penalty Total \$1,327

This violation Final Assessed Penalty (adjusted for limits) \$1,327

## Economic Benefit Worksheet

**Respondent** R.G.B. TRANSPORTATION COMPANY, INC.  
**Case ID No.** 39209  
**Reg. Ent. Reference No.** RN101654804  
**Media** Petroleum Storage Tank  
**Violation No.** 4

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

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

**Delayed Costs**

Equipment	\$500	15-Dec-2009	1-Sep-2010	0.71	\$1	\$24	\$25
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 install overfill prevention equipment. Date required is the investigation date and 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**

\$25

# Compliance History Report

Customer/Respondent/Owner-Operator: CN600891832 R.G.B. TRANSPORTATION COMPANY, INC. Classification: HIGH Rating: 0.00  
Regulated Entity: RN101654804 R.G.B. Transportation Classification: HIGH Site Rating: 0.00  
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 59034  
REGISTRATION  
STORMWATER PERMIT TXRNER593  
STORMWATER PERMIT TXRNEV328  
Location: 1034 HUMBLE PL, EL PASO, TX, 79915  
TCEQ Region: REGION 06 - EL PASO  
Date Compliance History Prepared: January 14, 2010  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: January 14, 2005 to January 14, 2010  
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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2009 Repeat Violator: NO

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
1 07/10/2007 (567206)  
2 01/08/2010 (785807)
- 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  
R.G.B. TRANSPORTATION  
COMPANY, INC.;  
RN101654804**

§  
§  
§  
§  
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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**DEFAULT AND SHUTDOWN ORDER**

**DOCKET NO. 2010-0300-PST-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty, corrective action of the respondent, and revocation of the respondent's fuel delivery certificate. The Commission also considered the Executive Director's Motion requesting entry of an Order requiring the respondent, R.G.B. Transportation Company, Inc. ("Respondent"), to shutdown or remove from service the underground storage tank ("UST") at the R.G.B. Transportation Company, Inc. facility, located at 1034 Humble Place in El Paso, El Paso County, Texas.

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

**FINDINGS OF FACT**

1. Respondent owns and operates one UST and a fleet refueling facility located at 1034 Humble Place, El Paso County, Texas (the "Facility").
2. The UST at the Facility is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contains a regulated petroleum substance as defined in the rules of the TCEQ.
3. On December 15, 2009, an investigator from the TCEQ El Paso Regional Office documented that Respondent:
  - a. Failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years. Specifically, the triennial test had not been conducted;
  - b. Failed to provide proper release detection for the pressurized piping associated with the UST; failed to monitor the UST for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); failed to equip each separate pressurized line with an

automatic line leak detector ("LLD"); and failed to provide release detection for the UST system by failing to conduct reconciliation of inventory control records at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons. Specifically, Respondent did not conduct the annual piping tightness test, and the LLD was disconnected and not being used;

- c. Failed to ensure that a legible tag, label, or marking with tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form; and
  - d. Failed to equip each tank with a valve or other appropriate device designed to either automatically shut off the flow or restrict the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level.
4. By letter dated March 17, 2010, the TCEQ Central Office provided Respondent with notice of the violations and TCEQ's authority to shut down and remove from service USTs not in compliance with release detection, spill and/or overfill prevention, corrosion protection, and/or financial assurance requirements if the violations are not corrected.
  5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of R.G.B. Transportation Company, Inc." (the "EDPRP") in the TCEQ Chief Clerk's office on June 3, 2010.
  6. By letter dated June 3, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.
  7. More than 20 days have elapsed since Respondent received notice of the EDPRP, provided by the Executive Director. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.
  8. By letter dated September 10, 2010, TCEQ provided Respondent with notice of TCEQ's intent to order the UST at the Facility to be shut down and removed from service if Respondent failed to correct the release detection, corrosion protection, and spill and overfill violations within 30 days after Respondent's receipt of the notice.

9. As of the date of entry of this Order, Respondent has not provided the Executive Director with documentation demonstrating that the release detection, corrosion protection, and spill and overfill violations alleged in Findings of Fact Nos. 3.a., 3.b., and 3.d. have been corrected.
10. The UST at the Facility does not have release detection, corrosion protection, and spill and overfill prevention as required by 30 TEX. ADMIN. CODE §§ 334.49(c)(4), 334.50(b)(1)(A), 334.50(b)(2), 334.50(b)(2)(A)(i), 334.50(d)(1)(B)(ii), 334.51(b)(2)(C), and TEX. WATER CODE § 26.3475(a), (c)(1), (c)(2) and (d). and may be releasing petroleum products to the environment. Therefore, conditions at the Facility constitute an imminent peril to public health, safety, and welfare.

### **CONCLUSIONS OF LAW**

1. As evidenced by Findings of Fact Nos. 1 and 2, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No.3.a., Respondent violated 30 TEX. ADMIN. CODE § 334.49(c)(4) and TEX. WATER CODE § 26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years.
3. As evidenced by Finding of Fact No. 3.b., Respondent violated 30 TEX. ADMIN. CODE § 334.50(b)(2), (b)(1)(A), (b)(2)(A)(i) and (d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(a) and (c)(1), by failing to provide proper release detection for the pressurized piping associated with the UST; failing to monitor the UST for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); failing to equip each separate pressurized line with an automatic LLD; and failing to provide release detection for the UST system by failing to conduct reconciliation of inventory control records at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons.
4. As evidenced by Finding of Fact No. 3.c., Respondent violated 30 TEX. ADMIN. CODE § 334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form.
5. As evidenced by Finding of Fact No. 3.d., Respondent violated 30 TEX. ADMIN. CODE § 334.51(b)(2)(C) and TEX. WATER CODE § 26.3475(c)(2), by failing to equip each tank with a valve or other appropriate device designed to either

automatically shut off the flow or restrict the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level.

6. As evidenced by Findings of Fact Nos. 5 and 6, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
7. As evidenced by Finding of Fact No. 7, Respondent failed to file a timely answer, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
8. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of the Texas Water Code and the Texas Health & Safety Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
9. An administrative penalty in the amount of nine thousand two hundred ninety-two dollars (\$9,292.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
10. As evidenced by Findings of Fact Nos. 4, 8 and 9, Respondent failed to correct documented violations of Commission release detection, corrosion protection, and spill and overfill requirements within 30 days after Respondent received notice of the violations and notice of the Executive Director's intent to shut down the Facility.
11. TEX. WATER CODE §§ 26.3475(e) and 26.352(j) authorize the Commission to order a UST owner or operator to shut down a UST system if, within 30 days after receiving notice of the violations, the owner or operator fails to correct violations of Commission regulatory requirements relating to release detection for tanks and/or piping, spill and overfill protection for tanks, corrosion protection for tanks and piping, and/or acceptable financial assurance.
12. 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.
13. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Respondent's UST fuel delivery certificate if the Commission finds that good cause exists.

14. Good cause for revocation of Respondent's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 3, 5, 6, and 7 and Conclusions of Law Nos. 2 through 7.
15. As evidenced by Finding of Fact No. 10, current conditions at the Facility constitute an imminent peril to public health, safety, and welfare. Therefore, pursuant to the Administrative Procedure Act, TEX. GOV'T CODE § 2001.144(a)(3), this Order is final and effective on the date rendered.

### **ORDERING PROVISIONS**

NOW, THEREFORE, IT IS ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. Immediately upon the effective date of this Order, Respondent shall take the following steps to shut down operations of all USTs at the Facility:
  - a. Cease dispensing fuel from the USTs;
  - b. Cease receiving deliveries of regulated substances into the USTs;
  - c. Padlock the dispensers;
  - d. Empty the USTs of all regulated substances in accordance with 30 TEX. ADMIN. CODE § 334.54(d); and
  - e. Temporarily remove the USTs from service in accordance with 30 TEX. ADMIN. CODE § 334.54.
2. Respondent's USTs shall remain out of service, pursuant to TEX. WATER CODE § 26.3475 and as directed by Ordering Provision Nos. 1.a. through 1.e., until such time as Respondent demonstrates to the satisfaction of the Executive Director that the violations noted in Findings of Fact Nos. 3.a., 3.b. and 3.d. and Conclusions of Law Nos. 2, 3, and 5 have been corrected.
3. If Respondent elects to permanently remove from service any portion of the UST system at the Facility, Respondent shall, immediately upon the effective date of this Order, permanently remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.55, and within 15 days after the effective date of this Order, submit a written report documenting compliance with 30 TEX. ADMIN. CODE § 334.55 to:

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

4. Respondent's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Respondent shall cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ in accordance with 30 TEX. ADMIN. CODE §§ 334.7 and 334.8. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements set forth in this Order.
5. Within 10 days after the effective date of this Order, Respondent shall send its UST fuel delivery certificate to:

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

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

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

The certified written report and supporting documentation shall be submitted to:

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

and:

Mr. Kent Waggoner, Waste Section Manager  
El Paso Regional Office  
Texas Commission on Environmental Quality  
401 East Franklin Avenue, Suite 560  
El Paso, Texas 79901-1206

7. Respondent is assessed an administrative penalty in the amount of nine thousand two hundred ninety-two dollars (\$9,292.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order resolve only the violations set forth in this Order. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations which are not raised here.
8. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: R.G.B. Transportation Company, Inc.; Docket No. 2010-0300-PST-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088
9. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline, Respondent shall:
  - a. Implement a release detection method for the UST at the Facility and begin conducting volume measurement and reconciliation of inventory control records, in accordance with 30 TEX. ADMIN. CODE § 334.50;
  - b. Conduct the required triennial testing of the cathodic protection system, in accordance with 30 TEX. ADMIN. CODE § 334.49;
  - c. Permanently apply or affix tags, labels, or markings to the UST fill tubes with an identification number that matches the number listed on the UST registration and self-certification form, in accordance with 30 TEX. ADMIN. CODE § 334.8;
  - d. Install overfill prevention equipment on each tank, in accordance with 30 TEX. ADMIN. CODE § 334.51; and
  - e. Obtain a new fuel delivery certificate from the TCEQ.

10. Upon obtaining a new fuel delivery certificate, Respondent shall post the fuel delivery certificate in a location at the Facility where the delivery certificate is clearly visible at all times, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii).
11. Within 10 days of resuming retail sales of gasoline at the Facility, Respondent shall submit written certification as described below, and include detailed supporting documentation such as photographs, receipts, and/or other records, demonstrating compliance with Ordering Provisions Nos. 9 and 10. The written certification shall be notarized by a State of Texas Notary Public and shall include the following certification language:

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

The written certification and supporting documentation shall be submitted to:

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

and:

Mr. Kent Waggoner, Waste Section Manager  
El Paso Regional Office  
Texas Commission on Environmental Quality  
401 East Franklin Avenue, Suite 560  
El Paso, Texas 79901-1206

12. All relief not expressly granted in this Order is denied.
13. The provisions of this Order shall apply to and be binding upon Respondent, and Respondent is ordered to give notice of this Order to all personnel who maintain day-to-day control of the USTs at the Facility.
14. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent is

noncompliant with or in violation of any of the terms and conditions set forth in this Order.

15. This Order shall terminate five years from its effective date or when Respondent demonstrates to the satisfaction of the Executive Director all of the violations noted herein have been corrected, whichever is later.
16. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order is the date this decision was rendered, pursuant to TEX. GOV'T CODE § 2001.144(a)(3).

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

**AFFIDAVIT OF PEIPEY TANG**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Peipey Tang. 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 R.G.B. Transportation Company, Inc.” (the “EDPRP”) was filed with the Office of the Chief Clerk on June 3, 2010.

The EDPRP was mailed to Respondent at its last known address on June 3, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.

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

By letter dated September 10, 2010, sent via first class mail and certified mail, return receipt requested article no. 7009 1680 0002 2323 2919 and 7009 1680 0002 2323 2926, I provided Respondent with notice of the TCEQ’s intent to order the UST at the Facility shut down and removed from service if the violations pertaining to release detection, corrosion protection, and spill and overflow prevention equipment were not corrected within 30 days of Respondent’s receipt of the letter.

As of the date of this affidavit, I am not aware of any evidence that indicates that Respondent has corrected the violations noted during the December 15, 2009 investigation.”

*Peipey Tang*  
\_\_\_\_\_  
Peipey Tang, Attorney  
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 28 day of September, A.D., 2010.

*Linda Quintanilla*

Notary Signature

