

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO. 2009-2055-PST-E

RN100532803

CASE NO. 38880

RESPONDENTS NAME: ANNA S. FULLER D/B/A FULLER OIL CO., DUDE FULLER D/B/A FULLER OIL CO., AND PRISSY F. KNIGHTEN D/B/A FULLER OIL CO.

ORDER TYPE:		
<input type="checkbox"/> 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: 535 East Avenue G, Silsbee, Hardin County

TYPE OF OPERATION: Former retail gasoline facility with four underground storage tanks ("USTs")

SMALL BUSINESS: Yes No N/A

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 Respondents 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: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503
Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Wallace Myers, Waste Enforcement Section, MC 128, (512) 239-6580

TCEQ Regional Contact: Derek Eades, Beaumont Regional Office, MC R-10, (409) 898-3838

Respondents: Prissy F. Knighten, P.O. Box 575, Silsbee, Texas 77656 and 535 East Avenue G, Silsbee, Texas 77656;
Anna S. Fuller, 890 Barnhill Road, Silsbee, Texas, 77656, P.O. Box 575, Silsbee, Texas 77656, and 535 East Avenue G, Silsbee, Texas 77656, Dude Fuller, P.O. Box 575, Silsbee, Texas 77656

Respondents' Attorney: Not represented by counsel on this enforcement matter.

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
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FULLER OIL CO., AND PRISSY F. KNIGHTEN D/B/A FULLER OIL CO.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date of Complaint: N/A</p> <p>Dates of Investigations: November 20, 2009 December 18, 2009</p> <p>Date of NOE: December 1, 2009</p> <p>Background Facts: The EDRP was filed on February 12, 2010, and mailed to Respondents via first class mail and certified mail, return receipt requested. According to the return receipt "green card," Respondents received the EDRP on February 16, 2010. The EDFARP was filed on June 10, 2010, and mailed to Respondents via first class mail and certified mail, return receipt requested. The EDFARP sent by certified mail was returned "unclaimed." The first class mail has not been returned. Respondents filed answers and the case was referred to SOAH. Notice of the September 23, 2010 preliminary hearing was mailed to Respondents via first class mail and certified mail, return receipt requested. According to the return receipt "green cards," Respondents received the notice of preliminary hearing on February 16, 2010. The ALJ convened the preliminary hearing but Respondents failed to appear. The ED requested the matter be remanded to the ED so that a Default Order be entered. The ALJ remanded the matter to the ED September 27, 2010 to be disposed on a default basis.</p> <p>Current Compliance Status: Respondents have not yet submitted documentation demonstrating compliance with the technical requirements. Respondents do not have a delivery certificate.</p> <p>PST:</p> <p>1. Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)].</p>	<p>Total Assessed: \$5,425</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Due to General Revenue: \$5,425</p> <p>This is a Default Order. Respondents have 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>Compliance History Classifications: <i>Person/CN</i> – Average <i>Site/RN</i> – Average</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>Respondents shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Within 30 days: <ol style="list-style-type: none"> a. Permanently remove the UST system from service; and b. Submit payment for all outstanding fees, including any associated penalties and interest. 2. Within 45 days, submit an amended registration to reflect the current ownership information and operational status of the UST system. 3. Within 60 days, submit written certification demonstrating compliance.

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
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FULLER OIL CO., AND PRISSY F. KNIGHTEN D/B/A FULLER OIL CO.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>2. Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements. Respondents failed to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering or vandalism by unauthorized persons [30 TEX. ADMIN. CODE §§ 334.47(a)(2) and 334.54(b)(2)].</p> <p>3. Failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 23702731 for fiscal years 2006 through 2007 [30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702].</p>		



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	7-Dec-2009			
	PCW	2-Jun-2010	Screening	8-Dec-2009	EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent	Anna S. Fuller, Dude Fuller, and Prissy F. Knighten, d/b/a FULLER OIL CO.□				
Reg. Ent. Ref. No.	RN100532803				
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor		

CASE INFORMATION

Enf./Case ID No.	38880	No. of Violations	3		
Docket No.	2009-2055-PST-E	Order Type	1660		
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Wallace Myers		
		EC's Team	Enforcement Team 7		
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000		

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$3,500
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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	5.0% Enhancement	Subtotals 2, 3, & 7	\$175
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Notes	Enhancement for one NOV with same or similar violations.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondents 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	50.0% Enhancement*	Subtotal 6	\$1,750
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Total EB Amounts	\$26,394
Approx. Cost of Compliance	\$45,100

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$5,425
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$5,425
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$5,425
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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	\$5,425
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Screening Date 8-Dec-2009

Docket No. 2009-2055-PST-E

PCW

Respondent Anna S. Fuller, Dude Fuller, and Prissy F. Knighten, d/b/a

Policy Revision 2 (September 2002)

Case ID No. 38880

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100532803

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 8-Dec-2009

Docket No. 2009-2055-PST-E

PCW

Respondent Anna S. Fuller, Dude Fuller, and Prissy F. Knighten, d/b/a FULLER

Policy Revision 2 (September 2002)

Case ID No. 38880

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100532803

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.7(d)(3)

Violation Description Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current ownership information.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
	x			10%
Matrix Notes: 100% of the rule requirement was not met.				

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 18 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 November 20, 2009 record review.

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 Respondents 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 \$23

Violation Final Penalty Total \$1,550

This violation Final Assessed Penalty (adjusted for limits) \$1,550

Economic Benefit Worksheet

Respondent Anna S. Fuller, Dude Fuller, and Prissy F. Knighten, d/b/a FULLER OIL CO.D

Case ID No. 38880

Reg. Ent. Reference No. RN100532803

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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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	23-Mar-2006	23-Sep-2010	4.51	\$23	n/a	\$23

Notes for DELAYED costs

Estimated cost to accurately prepare and submit an updated UST registration. The date required is 30 days after dissolution of the company and the 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

\$23

Screening Date 8-Dec-2009 **Docket No.** 2009-2055-PST-E **PCW**
Respondent Anna S. Fuller, Dude Fuller, and Prissy F. Knighten, d/b/a FULLER C *Policy Revision 2 (September 2002)*
Case ID No. 38880 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN100532803
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Wallace Myers
Violation Number 2
Rule Cite(s) 30 Tex. Admin. Code §§ 334.47(a)(2) and 334.54(b)(2)
Violation Description Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements. Also, failed to maintain all piping, pump, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

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 18 **Number of violation days**

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$2,500

One monthly event is recommended based on documentation of the violation during the November 20, 2009 record review to the December 8, 2009 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 Respondents 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 \$26,371 **Violation Final Penalty Total** \$3,875

This violation Final Assessed Penalty (adjusted for limits) \$3,875

Economic Benefit Worksheet

Respondent: Anna S. Fuller, Dude Fuller, and Prissy F. Knighten, d/b/a FULLER OIL CO. □
Case ID No.: 38880
Reg. Ent. Reference No.: RN100532803
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
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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)	\$45,000	22-Dec-1998	8-Sep-2010	11.72	\$26,371	n/a	\$26,371

Notes for DELAYED costs

Estimated cost to permanently remove from service four USTs with a combined capacity of 60,000 gallons at \$0.75 per gallon. The date required is the date when the Respondent was required to upgrade the UST system and the final date is 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

\$45,000

TOTAL

\$26,371

Screening Date 8-Dec-2009

Docket No.: 2009-2055-PST-E

PCW

Respondent Anna S. Fuller, Dude Fuller, and Prissy F. Knighten, d/b/a FULLER C

Policy Revision 2 (September 2002)

Case ID No. 38880

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100532803

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 334.22(a) and Tex. Water Code § 5.702

Violation Description

Failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 23702731 for fiscal years 2006 through 2007.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

Adjustment \$10,000

\$0

Violation Events

Number of Violation Events [] Number of violation days []

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

Violation Base Penalty \$0

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

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

Violation Subtotal \$0

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$0

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

Economic Benefit Worksheet

Respondent Anna S. Fuller, Dude Fuller, and Prissy F. Knighten, d/b/a FULLER OIL CO.□

Case ID No. 38880

Reg. Ent. Reference No. RN100532803

Media Petroleum Storage Tank

Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

n/a

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

TOTAL

\$0

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603675141	Anna S. Fuller	Classification: AVERAGE	Rating: 2.25
Regulated Entity:	RN100532803	FULLER OIL CO	Classification: AVERAGE	Site Rating: 2.25
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION			6913
Location:	535 E AVENUE G, SILSBEE, TX, 77656			
TCEQ Region:	REGION 10 - BEAUMONT			
Date Compliance History Prepared:	June 01, 2010			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	December 09, 2004 to December 09, 2009			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Wallace Myers Phone: 512-239-6580

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 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	02/10/2005	(292794)
2	04/01/2005	(350865)
3	06/22/2009	(745196)
4	12/01/2009	(783477)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	05/19/2009	(745196)	CN603675141
Self Report?	NO		
Citation:	30 TAC Chapter 334, SubChapter A 334.7(d)(3)		
Description:	Failure to provide amended registration for any change or additional information regarding UST(s) within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first became aware of the change or addition, as applicable.		
Self Report?	NO		
Citation:	30 TAC Chapter 334, SubChapter C 334.47(a)(2)		
Description:	Failure to perform the permanent removal of a UST that has not met technical upgrade requirements.		
Self Report?	NO		
Citation:	30 TAC Chapter 334, SubChapter C 334.54(b)(2)		
Description:	Failure to assure that, with the exception of vent lines, all piping, pumps, man-ways, and ancillary equipment shall be capped, plugged, locked, and/or otherwise secured to prevent access, tampering, or vandalism by unauthorized persons. This shall be done beginning no later than the date on which the UST system has been out of service for a continuous period of three (3) months, regardless of whether or not regulated substances remain in the UST system.		
 - 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

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603675125 Prissy F. Knighten	Classification: AVERAGE	Rating: 2.25
Regulated Entity:	RN100532803 FULLER OIL CO	Classification: AVERAGE	Site Rating: 2.25
ID Number(s):			

PETROLEUM STORAGE TANK	REGISTRATION	6913
<hr/>		

Location:	535 E AVENUE G, SILSBEE, TX, 77656
TCEQ Region:	REGION 10 - BEAUMONT
Date Compliance History Prepared:	June 01, 2010
Agency Decision Requiring Compliance History:	Enforcement
Compliance Period:	December 09, 2004 to December 09, 2009

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Wallace Myers Phone: 512-239-6580

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 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	02/10/2005	(292794)
2	04/01/2005	(350865)
3	06/22/2009	(745196)
4	12/01/2009	(783477)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	05/19/2009	(745196)	CN603675141
Self Report?	NO		
Citation:	30 TAC Chapter 334, SubChapter A 334.7(d)(3)		
Description:	Failure to provide amended registration for any change or additional information regarding UST(s) within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first became aware of the change or addition, as applicable.		
Self Report?	NO		
Citation:	30 TAC Chapter 334, SubChapter C 334.47(a)(2)		
Description:	Failure to perform the permanent removal of a UST that has not met technical upgrade requirements.		
Self Report?	NO		
Citation:	30 TAC Chapter 334, SubChapter C 334.54(b)(2)		
Description:	Failure to assure that, with the exception of vent lines, all piping, pumps, man-ways, and ancillary equipment shall be capped, plugged, locked, and/or otherwise secured to prevent access, tampering, or vandalism by unauthorized persons. This shall be done beginning no later than the date on which the UST system has been out of service for a continuous period of three (3) months, regardless of whether or not regulated substances remain in the UST system.		
 - 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

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603677410	Dude Fuller	Classification: AVERAGE	Rating: 2.25
Regulated Entity:	RN100532803	FULLER OIL CO	Classification: AVERAGE	Site Rating: 2.25
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION			6913
Location:	535 E AVENUE G, SILSBEE, TX, 77656			
TCEQ Region:	REGION 10 - BEAUMONT			
Date Compliance History Prepared:	June 01, 2010			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	December 09, 2004 to December 09, 2009			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Wallace Myers Phone: 512-239-6580

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 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	02/10/2005	(292794)
2	04/01/2005	(350865)
3	06/22/2009	(745196)
4	12/01/2009	(783477)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	05/19/2009	(745196)	CN603675141
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 334, SubChapter A 334.7(d)(3)		
Description:	Failure to provide amended registration for any change or additional information regarding UST(s) within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first became aware of the change or addition, as applicable.		
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 334, SubChapter C 334.47(a)(2)		
Description:	Failure to perform the permanent removal of a UST that has not met technical upgrade requirements.		
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 334, SubChapter C 334.54(b)(2)		
Description:	Failure to assure that, with the exception of vent lines, all piping, pumps, man-ways, and ancillary equipment shall be capped, plugged, locked, and/or otherwise secured to prevent access, tampering, or vandalism by unauthorized persons. This shall be done beginning no later than the date on which the UST system has been out of service for a continuous period of three (3) months, regardless of whether or not regulated substances remain in the UST system.		
 - 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
AGAINST ANNA S. FULLER D/B/A
FULLER OIL CO.,
DUDE FULLER D/B/A
FULLER OIL CO., AND
PRISSY F. KNIGHTEN D/B/A
FULLER OIL CO.;
RN100532803

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER

DOCKET NO. 2009-2055-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's First Amended Report and Petition filed pursuant to TEX. WATER CODE chs. 5, 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the Respondents. The Respondents made the subject of this Order are Anna S. Fuller d/b/a FULLER OIL CO., Dude Fuller d/b/a FULLER OIL CO., and Prissy F. Knighten d/b/a FULLER OIL CO." (jointly referred to as "Respondents").

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

FINDINGS OF FACT

1. Respondents own four underground storage tanks ("USTs") and a former retail gasoline facility located at 535 East Avenue G, Silsbee, Hardin County, Texas (the "Facility").
2. Respondents' USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Respondents' USTs contain a regulated substance as defined in the rules of the Commission.
3. During a record review conducted on November 20, 2009, a TCEQ Beaumont Regional Office investigator documented that Respondents:
 - a. Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current ownership information; and
 - b. Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and failed to maintain all piping, pump, manways, tank access points, and ancillary equipment in a capped, plugged,

locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons.

4. During a record review conducted on December 18, 2009, TCEQ Central Office Staff documented that Respondents failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 23702731 for fiscal years 2006 through 2007.
5. Respondents received notice of the violations in Finding of Fact No. 3 on or about December 6, 2009.
6. 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 FULLER OIL CO., INC." ¹ (the "EDPRP") in the TCEQ Chief Clerk's office on February 12, 2010.
7. By letter dated on February 12, 2010 sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served FULLER OIL CO., INC. with notice of the EDPRP. According to the return receipt "green card," FULLER OIL CO., INC. received notice of the EDPRP on February 16, 2010, as evidenced by the signature on the card.
8. The Executive Director filed the "Executive Director's First Amended 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 Anna S. Fuller d/b/a FULLER OIL CO., INC., Dude Fuller d/b/a FULLER OIL CO., INC., and Prissy F. Knighten d/b/a FULLER OIL CO., INC." (the "EDFARP") in the TCEQ Chief Clerk's office on June 10, 2010.
9. By letter dated on June 10, 2010 sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served each Respondent with notice of the EDFARP. The United States Postal Service returned all of the EDFARPs sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondents each received notice of the EDFARP.
10. Respondents filed answers requesting a hearing on June 23 and 25, 2010, and, pursuant to 30 TEX. ADMIN. CODE § 70.109, the matter was referred to the State Office of Administrative Hearings ("SOAH") on July 29, 2010.
11. On August 23, 2010, the TCEQ Chief Clerk mailed the Notice of the September 23, 2010, preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to each Respondent. According to the return receipt "green cards," each Respondent received notice of the September 23, 2010, preliminary hearing on September 1, 2010, as evidenced by the signatures on the cards.
12. On September 23, 2010, the Administrative Law Judge ("ALJ") convened the preliminary hearing, but Respondents failed to appear. The ALJ entered a finding that Respondents were served with proper notice of the preliminary hearing, and the

¹ The corporate charter for Fuller Oil Co., Inc. was voluntarily dissolved in February 2006, however, Respondents continued to use Fuller Oil Co., Inc. as a trade name.

Executive Director requested that the matter be remanded to the Executive Director so that a Default Order may be entered and the case may be dismissed from the SOAH Docket.

13. The ALJ remanded the matter to the Executive Director by SOAH Order No. 1, Order of Dismissal and Remand, on September 27, 2010, so that TCEQ may dispose of the case on a default basis.

CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact Nos. 1 and 2, Respondents are subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 5 and 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Respondents failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3).
3. As evidenced by Finding of Fact No. 3.b., Respondents failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and failed to maintain all piping, pump, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering or vandalism by unauthorized persons, in violation of 30 TEX. ADMIN. CODE §§ 334.47(a)(2) and 334.54(b)(2).
4. As evidenced by Finding of Fact No. 4, Respondents failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 23702731 for fiscal years 2006 through 2007, in violation of 30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702.
5. As evidenced by Findings of Fact Nos. 6 and 7, the Executive Director timely served Respondents with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
6. As evidenced by Findings of Fact Nos. 8 and 9, the Executive Director timely served Respondents with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
7. As evidenced by Finding of Fact No. 10, Respondents filed an answer requesting a hearing as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105, and the matter was referred to SOAH pursuant to 30 TEX. ADMIN. CODE § 70.109.
8. As evidenced by Finding of Fact No. 11, Respondents were provided proper notice of the preliminary hearing pursuant to TEX. GOV'T CODE §§ 2001.051(1) and 2001.052,

TEX. WATER CODE § 7.058, 1 TEX. ADMIN. CODE § 155.501(c) and (e)(2), and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.425, 70.104, and 80.6(b)(3).

9. As evidenced by Findings of Fact Nos. 12 and 13, Respondents failed to appear for the preliminary hearing, and pursuant to TEX. GOV'T CODE § 2001.056, TEX. WATER CODE § 7.057, 1 TEX. ADMIN. CODE § 155.501(e)(1)(A), and 30 TEX. ADMIN. CODE § 70.106(b), the ALJ dismissed the case from the SOAH docket so that the Commission may enter a Default Order against Respondents and assess the penalty recommended by the Executive Director.
10. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondents for violations of the Texas Water 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.
11. An administrative penalty in the amount of five thousand four hundred twenty-five dollars (\$5,425.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
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.

ORDERING PROVISIONS

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

1. Respondents are assessed an administrative penalty in the amount of five thousand four hundred twenty-five dollars (\$5,425.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondents' 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.
2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Anna S. Fuller d/b/a FULLER OIL CO., Dude Fuller d/b/a FULLER OIL CO., and Prissy F. Knighten d/b/a FULLER OIL CO.; Docket No. 2009-2055-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

3. Respondents shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Order, Respondents shall:
- i. Permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55; and
 - ii. Submit payment for all outstanding fees, including any associated penalties and interest and with the notion, "Re: Anna S. Fuller d/b/a FULLER OIL CO., Dude Fuller d/b/a FULLER OIL CO., and Prissy F. Knighten d/b/a FULLER OIL CO., TCEQ Financial Administration Account No. 23702731", to:

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

- b. Within 45 days after the effective date of this Order, Respondents shall submit an amended registration to reflect the current ownership information and operational status of the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

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

- c. Within 60 days after the effective date of this Order, Respondents shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provisions 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."

Respondents shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

with a copy to:

Derek Eades, Waste Section Manager
Texas Commission on Environmental Quality
Beaumont Regional Office
3870 Eastex Freeway
Beaumont, Texas 77703-1892

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondents. Respondents are ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
6. If Respondents fail 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, Respondents' failure to comply is not a violation of this Order. Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondents shall notify the Executive Director within seven days after Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. 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 Respondents shall be made in writing to the Executive Director. Extensions are not effective until Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
8. 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 Respondents if the Executive Director determines that Respondents have not complied with one or more of the terms or conditions in this Order.
9. 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.
10. 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.

Anna S. Fuller d/b/a FULLER OIL CO., Dude Fuller d/b/a FULLER OIL CO., and
Prissy F. Knighten d/b/a FULLER OIL CO.
Docket No. 2009-2055-PST-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF SHARESAS Y. ALEXANDER

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Sharesas Y. Alexander. 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 FULLER OIL CO., INC.” (the “EDPRP”) was filed with the Office of the Chief Clerk on February 12, 2010.

The EDPRP was mailed to FULLER OIL CO., INC at its last known addresses on February 12, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” FULLER OIL CO., INC received notice of the EDPRP on February 16, 2010, as evidenced by the signature on the card.

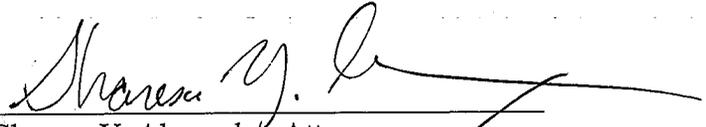
On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Anna S. Fuller d/b/a FULLER OIL CO., INC., Dude Fuller d/b/a FULLER OIL CO., INC., and Prissy F. Knighten d/b/a FULLER OIL CO., INC.” (the “EDPRP”) was filed with the Office of the Chief Clerk on June 10, 2010.

The EDFARP was mailed to Respondents at their last known addresses on June 10, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDFARP sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Respondents received notice of the EDFARP.

Respondents filed an answer requesting a hearing on June 25, 2010, and the matter was referred to the State Office of Administrative Hearings (“SOAH”) on July 29, 2010. Notice of the September 23, 2010, preliminary hearing was mailed to Respondents by the TCEQ Chief Clerk on August 23, 2010. The Notice was sent to Respondents via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green cards”, each Respondent received the Notice of the Preliminary Hearing on September 1, 2010.

Respondents failed to appear at the preliminary hearing on September 23, 2010. At that hearing, I requested and received a finding that Respondents were served with proper notice of the hearing pursuant to 1 TEX. ADMIN. CODE § 155.501(e)(2). I also requested and received a remand

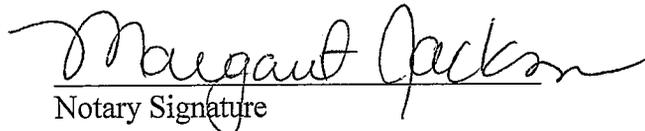
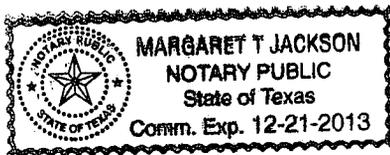
from the Administrative Law Judge pursuant to 1 TEX. ADMIN. CODE § 155.501(e)(1), which gives an ALJ the authority to remand the case back to the agency "to allow the agency to dispose of the case on a default basis under TEX. GOV'T CODE § 2001.056 and the referring agency's rules." Pursuant to TEX. GOV'T CODE § 2001.056, TEX. WATER CODE § 7.057, and 30 TEX. ADMIN. CODE § 70.106(b), the Commission may enter a Default Order against Respondents and assess the penalty recommended by the Executive Director.



Sharesa Y. Alexander, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Sharesa Y. Alexander, 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 29th day of September, A.D., 2010.



Notary Signature