

**Executive Summary – Enforcement Matter – Case No. 42596**  
**Alexis To Kik d/b/a Tobys 2**  
**RN102438835**  
**Docket No. 2011-1783-PST-E**

**Order Type:**

Default Shutdown Order

**Findings Order Justification:**

N/A

**Media:**

PST

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

2915 NW Stallings Drive, Nacogdoches, Nacogdoches County

**Type of Operation:**

convenience store with retail sales of gasoline

**Other Significant Matters:**

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

**Texas Register Publication Date:** July 20, 2012

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$13,926

**Total Paid to General Revenue:** \$0

**Total Due to General Revenue:** \$13,926

**Compliance History Classifications:**

Person/CN – Average  
Site/RN – Average

**Major Source:** No

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** September 2002

**Investigation Information**

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** April 13, 2011 and September 16, 2011  
**Date(s) of NOV(s):** September 21, 2006  
**Date(s) of NOE(s):** September 16, 2011

**Violation Information**

1. Failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date [30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)].
2. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)].
3. Failed to provide proper corrosion protection for the UST system [30 TEX. ADMIN. CODE § 334.49(a)(1) and TEX. WATER CODE § 26.3475(d)].
4. Failed to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring), and failed to provide release detection for the piping associated with the UST system [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and (b)(2) and TEX. WATER CODE § 26.3475(a) and (c)(1)].
5. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**  
None

**Technical Requirements:**

1. Immediately 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; and
  - e. Temporarily remove the USTs from service.
2. The USTs shall remain out of service until such time as Respondent demonstrates to the satisfaction of the Executive Director that the release detection and corrosion protection violations have been corrected.
3. The Facility's UST fuel delivery certificate is revoked immediately. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements.
4. 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.
5. Within 10 days, Respondent shall surrender the Facility's UST fuel delivery certificate.

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**Alexis To Kik d/b/a Tobys 2**  
**RN102438835**  
**Docket No. 2011-1783-PST-E**

6. Within 15 days, submit a detailed written report documenting the steps taken to comply with Technical Requirements Nos. 1, 4 and 5.
7. Prior to receiving deliveries of gasoline and resuming sales of gasoline:
  - a. Submit documentation that demonstrates acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs has been obtained;
  - b. Install and implement a corrosion protection method for the UST system;
  - c. Install and implement a release detection method for the USTs and the piping associated with the UST system; and
  - d. Obtain a new fuel delivery certificate.
8. Upon obtaining a new fuel delivery certificate, post the fuel delivery certificate in a location at the Facility where the delivery certificate is clearly visible at all times.
9. Within 10 days of resuming sales of gasoline, submit written certification to demonstrate compliance with Technical Requirements Nos. 7 and 8.

**Litigation Information**

**Date Petition(s) Filed:** April 18, 2012  
**Date Green Card(s) Signed:** Unclaimed  
**Date Answer(s) Filed:** N/A

**Contact Information**

**TCEQ Attorneys:** Peipey Tang, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
Garrett Arthur, Public Interest Counsel, (512) 239-6363  
**TCEQ Enforcement Coordinator:** Bridgett Lee, Enforcement Division, (512) 239- 2565  
**TCEQ Regional Contact:** Ronald Hebert, Beaumont Regional Office, (409) 898-3838  
**Respondent:** Alexis Kik, Owner, Tobys 2, 2211 East 19th Street, Signal Hill, California 90755  
**Respondent's Attorney:** N/A

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# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	19-Sep-2011	<b>Screening</b>	22-Sep-2011	<b>EPA Due</b>	
	<b>PCW</b>	15-Mar-2012				

<b>RESPONDENT/FACILITY INFORMATION</b>			
<b>Respondent</b>	Alexis To Kik dba Tobys 2		
<b>Reg. Ent. Ref. No.</b>	RN102438835		
<b>Facility/Site Region</b>	10-Beaumont	<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	42596	<b>No. of Violations</b>	5
<b>Docket No.</b>	2011-1783-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>	Bridgett Lee
		<b>EC's Team</b>	Enforcement Team 2
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$10,500
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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.

<b>Compliance History</b>	5.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$525
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<b>Notes</b>	Enhancement for one NOV with same/similar violations.
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<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$3,272	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$10,358	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$11,025
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	26.3%	<b>Adjustment</b>	\$2,901
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	Recommended enhancement for the avoided costs of compliance associated with violation nos. 4 and 5.
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<b>Final Penalty Amount</b>	\$13,926
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$13,926
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<b>DEFERRAL</b>		Reduction	<b>Adjustment</b>	
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>Notes</b>	Deferral not offered for non-expedited settlement.
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<b>PAYABLE PENALTY</b>	\$13,926
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**Screening Date** 22-Sep-2011

**Docket No.** 2011-1783-PST-E

**PCW**

**Respondent** Alexis To Kik dba Tobys 2

Policy Revision 2 (September 2002)

**Case ID No.** 42596

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN102438835

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** Bridgett Lee

### Compliance History Worksheet

**>> Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	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 ( <i>number of judgements or consent decrees meeting criteria</i> )	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 ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	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 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	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/similar violations.

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

**Screening Date** 22-Sep-2011  
**Respondent** Alexis To Kik dba Tobys 2  
**Case ID No.** 42596  
**Reg. Ent. Reference No.** RN102438835  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Bridgett Lee

**Docket No.** 2011-1783-PST-E

**PCW**

*Policy Revision 2 (September 2002)*  
*PCW Revision October 30, 2008*

**Violation Number**

**Rule Cite(s)**

**Violation Description**

**Base Penalty**

**>> Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

**>> Programmatic Matrix**

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
<input type="text" value="100% of the rule requirement was not met."/>	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input checked="" type="text" value="x"/>
	single event	<input type="text"/>

**Violation Base Penalty**

**Good Faith Efforts to Comply**

**0.0%** Reduction  
 Before NOV    NOV to EDPRP/Settlement Offer

Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	(mark with x)

**Notes**

**Violation Subtotal**

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount**

**Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** Alexis To Kik dba Tobys 2  
**Case ID No.** 42596  
**Req. Ent. Reference No.** RN102438835  
**Media** Petroleum Storage Tank  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	1-Mar-2011	1-Apr-2012	1.09	\$5	n/a	\$5

Notes for DELAYED costs

Estimated cost to renew a delivery certificate by submitting a properly completed UST Registration and Self-Certification form. The date required is 30 days prior to the date the delivery certificate expired. 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**

\$5

**Screening Date** 22-Sep-2011  
**Respondent** Alexis To Kik dba Tobys 2  
**Case ID No.** 42596  
**Reg. Ent. Reference No.** RN102438835  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Bridgett Lee

**Docket No.** 2011-1783-PST-E

**PCW**

*Policy Revision 2 (September 2002)*

*PCW Revision October 30, 2008*

**Violation Number**

**Rule Cite(s)**

**Violation Description**

**Base Penalty**

**>> Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="5%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	

**>> Programmatic Matrix**

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

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of Violation Events  Number of violation days

*mark only one with an x*

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

**Violation Base Penalty**

**Good Faith Efforts to Comply**

Reduction

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

**Notes**

**Violation Subtotal**

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount**

**Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** Alexis To Kik dba Tobys 2  
**Case ID No.** 42596  
**Req. Ent. Reference No.** RN102438835  
**Media** Petroleum Storage Tank  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

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

Notes for DELAYED costs

Economic benefit included in violation no. 1.

### 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

**Screening Date** 22-Sep-2011  
**Respondent** Alexis To Kik dba Tobys 2  
**Case ID No.** 42596  
**Reg. Ent. Reference No.** RN102438835  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Bridgett Lee

**Docket No.** 2011-1783-PST-E

**PCW**

*Policy Revision 2 (September 2002)*

*PCW Revision October 30, 2008*

**Violation Number** 3

**Rule Cite(s)**

30 Tex. Admin. Code § 334.49(a)(1) and Tex. Water Code § 26.3475(d)

**Violation Description**

Failed to provide proper corrosion protection for the UST system, as documented during an investigation conducted on April 13, 2011, and a record review conducted on September 16, 2011.

**Base Penalty** \$10,000

**>> Environmental, Property and Human Health Matrix**

**OR**

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

**Percent** 25%

**>> Programmatic Matrix**

Falsification	Major	Moderate	Minor

**Percent** 0%

**Matrix Notes**

Human health or the environment will or could be exposed to pollutants that 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

6 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 from the September 16, 2011 record review date to the September 22, 2011 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** \$291

**Violation Final Penalty Total** \$3,316

**This violation Final Assessed Penalty (adjusted for limits)** \$3,316

## Economic Benefit Worksheet

**Respondent** Alexis To Kik dba Tobys 2  
**Case ID No.** 42596  
**Req. Ent. Reference No.** RN102438835  
**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)	\$6,000	13-Apr-2011	1-Apr-2012	0.97	\$291	n/a	\$291

Notes for DELAYED costs

Estimated cost to provide corrosion protection for the UST system. The date required is the investigation date when the violation was first documented. 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

\$6,000

**TOTAL**

\$291

**Screening Date** 22-Sep-2011  
**Respondent** Alexis To Kik dba Tobys 2  
**Case ID No.** 42596  
**Reg. Ent. Reference No.** RN102438835  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Bridgett Lee

**Docket No.** 2011-1783-PST-E

**PCW**

*Policy Revision 2 (September 2002)*

*PCW Revision October 30, 2008*

**Violation Number** 4

**Rule Cite(s)** 30 Tex. Admin. Code § 334.50(b)(1)(A) and (b)(2) and Tex. Water Code § 26.3475(a) and (c)(1)

**Violation Description**

Failed to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring) and failed to provide release detection for the piping associated with the UST system, as documented during an investigation conducted on April 13, 2011, and a record review conducted on September 16, 2011.

**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 that 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 6 Number of violation days

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

**Violation Base Penalty** \$2,500

One monthly event is recommended from the September 16, 2011 record review date to the September 22, 2011 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** \$203

**Violation Final Penalty Total** \$3,316

**This violation Final Assessed Penalty (adjusted for limits)** \$3,316

## Economic Benefit Worksheet

**Respondent** Alexis To Kik dba Tobys 2  
**Case ID No.** 42596  
**Req. Ent. Reference No.** RN102438835  
**Media** Petroleum Storage Tank  
**Violation No.** 4

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	13-Apr-2011	7-Apr-2012	0.99	\$74	n/a	\$74

Notes for DELAYED costs

Estimated cost to provide release detection for the USTs. The date required is the investigation date when the violation was first documented. 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)	\$118	13-Apr-2010	13-Apr-2011	1.92	\$11	\$118	\$129

Notes for AVOIDED costs

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

Approx. Cost of Compliance

\$1,618

**TOTAL**

\$203

**Screening Date** 22-Sep-2011  
**Respondent** Alexis To Kik dba Tobys 2  
**Case ID No.** 42596  
**Reg. Ent. Reference No.** RN102438835  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Bridgett Lee

**Docket No.** 2011-1783-PST-E

**PCW**

*Policy Revision 2 (September 2002)*

*PCW Revision October 30, 2008*

**Violation Number** 5

**Rule Cite(s)** 30 Tex. Admin. Code § 37.815(a) and (b)

**Violation Description**

Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, as documented during an investigation conducted on April 13, 2011, and a record review conducted on September 16, 2011.

**Base Penalty** \$10,000

**>> Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

**>> Programmatic Matrix**

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

**Adjustment** \$9,000

\$1,000

**Violation Events**

Number of Violation Events 4      365 Number of violation days

*mark only one with an x*

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

**Violation Base Penalty** \$4,000

Four single events are recommended (one event per UST).

**Good Faith Efforts to Comply**

	Reduction	
	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** \$4,000

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount** \$2,772

**Violation Final Penalty Total** \$5,305

**This violation Final Assessed Penalty (adjusted for limits)** \$5,305

## Economic Benefit Worksheet

**Respondent** Alexis To Kik dba Tobys 2  
**Case ID No.** 42596  
**Req. Ent. Reference No.** RN102438835  
**Media** Petroleum Storage Tank  
**Violation No.** 5

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

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

Notes for DELAYED costs

### 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]	\$2,640	13-Apr-2010	13-Apr-2011	1.00	\$132	\$2,640	\$2,772
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided cost includes the estimated amount to provide financial assurance for four USTs (\$660 per tank), calculated for the one-year period prior to the date of the initial investigation.

Approx. Cost of Compliance

\$2,640

**TOTAL**

\$2,772

# Compliance History

Customer/Respondent/Owner-Operator: CN603480815 Alexis To Kik Classification: AVERAGE Rating: 2.67  
 Regulated Entity: RN102438835 TOBYS 2 Classification: AVERAGE Site Rating: 2.67  
 ID Number(s): PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 38049  
 Location: 2915 NW STALLINGS DR, NACOGDOCHES, NACOGDOCHES COUNTY, TEXAS  
 TCEQ Region: REGION 10 - BEAUMONT  
 Date Compliance History Prepared: September 20, 2011  
 Agency Decision Requiring Compliance History: Enforcement  
 Compliance Period: September 20, 2006 to September 20, 2011  
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
 Name: Bridgett Lee Phone: (512) 239 - 2565

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? Yes
3. If Yes, who is the current owner/operator? OWNOPR Alexis To Kik
4. If Yes, who was/were the prior owner(s)/operator(s)? OWNOPR KABIR, SAIDUL
5. When did the change(s) in owner or operator occur? 01/05/2008 OWNOPR KABIR, SAIDUL
6. Rating Date: 9/1/2011 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 9/26/2006 (512330)
    - 2 11/21/2006 (519038)
    - 3 9/16/2011 (919246)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 

**Date: 09/21/2006 (512330) CN603480815**

Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 37, SubChapter I 37.815(a) 30 TAC Chapter 37, SubChapter I 37.815(b)		
Description:	A financial assurance mechanism was not received.		
Self Report?	NO	Classification:	Major
Citation:	2A TWC Chapter 7, SubChapter A 7.101 Ordering Provision 2.b. ORDER		
Description:	Failure to comply with Ordering Provisions of Commission Order Docket No. 2005-1730-PST-E.		
  - F. Environmental audits.  
N/A
  - G. Type of environmental management systems (EMSs).  
N/A
  - H. Voluntary on-site compliance assessment dates.  
N/A
  - I. Participation in a voluntary pollution reduction program.  
N/A
  - J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A

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# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
ALEXIS TO KIK DBA TOBYS 2;  
RN102438835**

§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **DEFAULT AND SHUTDOWN ORDER**

**DOCKET NO. 2011-1783-PST-E**

At its \_\_\_\_\_ agenda meeting, 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 facility's fuel delivery certificate. The Commission also considered the Executive Director's Motion requesting the entry of an Order requiring the respondent to shutdown and remove from service the underground storage tanks ("USTs") located at 2915 NW Stallings Drive in Nacogdoches, Nacogdoches County, Texas. The respondent made the subject of this Order is Alexis To Kik d/b/a Tobys 2 ("Respondent").

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

### **FINDINGS OF FACT**

1. Respondent owns and operates, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), a UST system and a convenience store with retail sales of gasoline located at 2915 NW Stallings Drive in Nacogdoches, Nacogdoches County, Texas (the "Facility"). The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contain a regulated petroleum substance as defined in the rules of the TCEQ.
2. During an investigation conducted on April 13, 2011, and a record review conducted on September 16, 2011, a UT-Arlington PST investigator documented that Respondent:
  - a. Failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date. Specifically, the UST delivery certificate expired on March 31, 2011;
  - b. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs;
  - c. Failed to provide proper corrosion protection for the UST system;
  - d. Failed to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring), and failed to provide release detection for the piping associated with the UST system; and

- e. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.
3. By letter dated September 16, 2011, UT-Arlington provided Respondent with notice of the violations and of 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.
4. 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 Alexis To Kik d/b/a Tobys 2" (the "EDPRP") in the TCEQ Chief Clerk's office on April 18, 2012.
5. By letter dated April 18, 2012, sent to Respondent's last known address 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.
6. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.
7. By letter dated June 14, 2012, the Executive Director provided Respondent with notice of TCEQ's intent to order the USTs at the Facility to be shut down and removed from service if Respondent failed to correct the release detection, corrosion protection, and financial assurance violations within 30 days after Respondent's receipt of the notice.
8. 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 financial assurance violations alleged in Findings of Fact Nos. 2.c., 2.d., and 2.e. have been corrected.
9. The USTs at the Facility do not have release detection, corrosion protection, and financial assurance as required by TEX. WATER CODE § 26.3475(a), (c)(1), and (d) and 30 TEX. ADMIN. CODE §§ 37.815(a) and (b), 334.49(a)(1), 334.50(b)(1)(A) and (b)(2), 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 Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii).

3. As evidenced by Finding of Fact No. 2.b., Respondent failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs, in violation of TEX. WATER CODE § 26.3467(a) and 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to provide proper corrosion protection for the UST system, in violation of TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(a)(1).
5. As evidenced by Finding of Fact No. 2.d., Respondent failed to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring), and failed to provide release detection for the piping associated with the UST system, in violation of TEX. WATER CODE § 26.3475(a) and (c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and (b)(2).
6. As evidenced by Finding of Fact No. 2.e., Respondent failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b).
7. As evidenced by Findings of Fact Nos. 4 and 5, 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).
8. As evidenced by Finding of Fact No. 6, 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.
9. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
10. An administrative penalty in the amount of thirteen thousand nine hundred twenty-six dollars (\$13,926.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
11. As evidenced by Findings of Fact Nos. 2, 3, 7, and 8, Respondent failed to correct documented violations of Commission release detection, corrosion protection, and financial assurance requirements within 30 days after Respondent received notice of the violations and notice of the Executive Director's intent to shut down the USTs at the Facility.
12. TEX. WATER CODE §§ 26.3475(e) and 26.352(i) 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/or overfill protection for tanks, corrosion protection for tanks and/or piping, and/or acceptable financial assurance.
13. 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.

14. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke the Facility's UST fuel delivery certificate if the Commission finds that good cause exists.
15. Good cause for revocation of the Facility's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2 and 4 through 6 and Conclusions of Law Nos. 2 through 8.
16. As evidenced by Findings of Fact Nos. 8 and 9, 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, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS 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. The USTs at the Facility shall remain out of service, pursuant to TEX. WATER CODE § 26.3475 and as directed by Ordering Provisions Nos. 1.a. through 1.e., until such time as Respondent demonstrates to the satisfaction of the Executive Director that the release detection, corrosion protection, and financial assurance violations noted in Findings of Fact Nos. 2.c., 2.d., and 2.e., and Conclusions of Law Nos. 4 through 6 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, shall 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. The Facility's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. 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. 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.

6. Within 10 days after the effective date of this Order, Respondent shall send the Facility's 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
7. Within 15 days after the effective date of this Order, Respondent shall submit a detailed written report, in accordance with Ordering Provision No. 13, below, documenting the steps taken to comply with Ordering Provisions Nos. 1.a. through 1.e., 5 and 6.
8. Respondent is assessed an administrative penalty in the amount of thirteen thousand nine hundred twenty-six dollars (\$13,926.00) 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 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.
9. 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: Alexis To Kik d/b/a Tobys 2; Docket No. 2011-1783-PST-E" to:

Financial Administration Division, Revenues Section  
Texas Commission on Environmental Quality  
Attention: Cashier's Office, MC 214  
P.O. Box 13088  
Austin, Texas 78711-3088
10. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline, Respondent shall undertake the following technical requirements:
  - a. Submit documentation that demonstrates acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs has been obtained, in accordance with 30 TEX. ADMIN. CODE § 37.815 (Conclusion of Law No. 6);
  - b. Install and implement a corrosion protection method for the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.49 (Conclusion of Law No. 4);
  - c. Install and implement a release detection method for the USTs and the piping associated with the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.50 (Conclusion of Law No. 5); and
  - d. Obtain a new fuel delivery certificate from the TCEQ.
11. 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).
12. Within 10 days of resuming retail sales of gasoline, Respondent shall submit written certification, in accordance with Ordering Provision No. 13, below, to demonstrate compliance with Ordering Provisions Nos. 10 and 11.

13. The certifications required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including 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."

Respondent shall submit the written certifications and supporting documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and:

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

14. All relief not expressly granted in this Order is denied.
15. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
16. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
17. 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
18. 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 Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.

19. 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.
20. 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 this Order was rendered, pursuant to TEX. GOV'T CODE § 2001.144(a)(3).

**S I G N A T U R E   P A G E**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF PEIPEY TANG**

**STATE OF TEXAS**

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**COUNTY OF TRAVIS**

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"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 Alexis To Kik d/b/a Tobys 2" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on April 18, 2012.

The EDPRP was mailed to Respondent's last known address on April 18, 2012, 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, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

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

By letter dated June 14, 2012, sent via first class mail and certified mail, return receipt requested article no. 7002 2030 0005 7059 7124, I provided Respondent with notice of the TCEQ's intent to order the USTs at the Facility shut down and removed from service if the violations pertaining to release detection, corrosion protection, and financial assurance were not corrected within 30 days of Respondent's receipt of the letter. The United States Postal Service returned the Notice sent by certified mail as "unclaimed." The first class mail has not been returned.

As of the date of this affidavit, I am not aware of any evidence that indicates that Respondent has corrected the shutdown violations noted during the April 13, 2011, investigation."

*Peipey Tang*

Peipey Tang, (Staff Attorney)  
Office of Legal Services, Litigation Division  
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 20<sup>th</sup> day of August, A.D. 2012.

*Margaret Jackson*  
Notary Signature

