

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-1594-PST-E TCEQ ID: RN102063575 CASE NO.: 38483

RESPONDENT NAME: Darlene Chappell dba Big Red Barn

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND 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
<p>SITE WHERE VIOLATION(S) OCCURRED: Big Red Barn, 781 Reagan Street, Barnhart, Irion County</p> <p>TYPE OF OPERATION: Convenience store with retail sales of gasoline</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on March 15, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Keith Frank, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-1203; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Ms. Darlene Chappell, Owner, Big Red Barn, P.O. Box 42, Barnhart, Texas 76930 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: August 13, 2009</p> <p>Date of NOV/NOE Relating to this Case: September 25, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>1) Failure to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly [30 TEX. ADMIN. CODE § 334.49(c)(2)(C) and TEX. WATER CODE § 26.3475(d)].</p> <p>2) Failure to perform release detection for the underground storage tank ("UST") system. Specifically, the Respondent did not provide the Inventory Control Reconciliation ("ICR") records to the Statistical Inventory Reconciliation ("SIR") provider within 15 days following the last day of the calendar month in which the analysis was performed [30 TEX. ADMIN. CODE § 334.50(d)(9)(A)(iii)].</p> <p>3) Failure to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the UST registration and self-certification form [30 TEX. ADMIN. CODE § 334.8(c)(5)(C)].</p> <p>4) Failure to maintain UST records and make them immediately available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b)(1)(B)].</p>	<p>Total Assessed: \$5,055</p> <p>Total Deferred: \$1,011 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$124 (remaining \$3,920 due in 35 monthly payments of \$112 each)</p> <p>Site Compliance History Classification <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order:</p> <p>i. Begin conducting bimonthly inspections of the cathodic protection system to ensure that the rectifier and other system components are functioning as designed;</p> <p>ii. Implement improvements to submittal practices that address the late submittal of ICR to the SIR provider;</p> <p>iii. Permanently apply or affix tags, labels, or markings to the UST fill tubes with an identification number that matches the number listed on the UST registration and self-certification form; and</p> <p>iv. Begin maintaining all UST records.</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a.i. through a.iv.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	28-Sep-2009	Screening	5-Oct-2009	EPA Due	
	PCW	6-Oct-2009				

RESPONDENT/FACILITY INFORMATION			
Respondent	Darlene Chappell dba Big Red Barn		
Reg. Ent. Ref. No.	RN102063676		
Facility/Site Region	8-San Angelo	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	38483	No. of Violations	4
Docket No.	2009-1594-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Keith Frank
		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	\$5,550
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ADJUSTMENTS (+/-) TO SUBTOTAL 1			
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the Indicated percentage.</small>			
Compliance History	-10.0% Reduction	Subtotals 2, 3, & 7	-\$550

Notes: Reduction due to high performer classification.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$122	<small>*Capped at the Total EB \$ Amount</small>	
Approx. Cost of Compliance	\$400		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$4,950
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OTHER FACTORS AS JUSTICE MAY REQUIRE	2.1%	Adjustment	\$105
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Notes: Recommended enhancement to capture the avoided cost of compliance associated with violation No. 1.

Final Penalty Amount	\$5,055
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$5,055
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DEFERRAL	20.0% Reduction	Adjustment	-\$1,011
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Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY	\$4,044
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Screening Date 5-Oct-2009

Docket No. 2009-1594-PST-E

PCW

Respondent Darlene Chappell dba Big Red Barn

Policy Revision 2 (September 2002)

Case ID No. 38483

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102063575

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Keith Frank

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Reduction due to high performer classification:

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

Screening Date: 5-Oct-2009

Docket No.: 2009-1594-PST-E

PCW

Respondent: Darlene Chappell dba Big Red Barn

Policy Revision 2 (September 2002)

Case ID No.: 38483

PCW Revision October 30, 2008

Reg. Ent. Reference No.: RN102063575

Media [Statute]: Petroleum Storage Tank

Enf. Coordinator: Keith Frank

Violation Number: 1

Rule Cite(s)

30 Tex. Admin. Code § 334.49(c)(2)(C) and Tex. Water Code § 26.3475(d)

Violation Description

Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly.

Base Penalty: \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	X		

Percent: 25%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor

Percent: 0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment: \$7,500

\$2,500

Violation Events

Number of Violation Events: 1

Number of violation days: 53

mark only one with an x

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty: \$2,500

One quarterly event is recommended based on documentation of the violation from the August 13, 2009 investigation to the October 5, 2009 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Reduction	
	Before NOV	NOV to EOPRP/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: \$105

Violation Final Penalty Total: \$2,298

This violation Final Assessed Penalty (adjusted for limits): \$2,298

Economic Benefit Worksheet

Respondent: Darlene Chappell dba Big Red Barn
Case ID No.: 38483
Reg. Ent. Reference No.: RN102063575
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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$100	\$0
ONE-TIME avoided costs [3]	\$100	14-Jun-2009	13-Aug-2009	1.08	\$5	\$100	\$105
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct bimonthly inspections of the rectifier and other components of the cathodic protection system. Date Required is 60 days before the investigation date. Final Date is the investigation date.

Approx. Cost of Compliance

\$100

TOTAL

\$105

Screening Date: 5-Oct-2009 **Docket No.:** 2009-1594-PST-E **PCW**
Respondent: Darlene Chappell dba Big Red Barn *Policy Revision 2 (September 2002)*
Case ID No.: 38483 *PCW Revision October 30, 2008*
Reg. Ent. Reference No.: RN102063575
Media [Statute]: Petroleum Storage Tank
Enf. Coordinator: Kelth Frank

Violation Number: 2
Rule Cite(s): 30 Tex. Adm'n. Code § 334.50(d)(9)(A)(iii)
Violation Description: Failed to perform release detection for the underground storage tank ("UST") system. Specifically, the Respondent did not provide the Inventory Control Reconciliation ("ICR") records to the Statistical Inventory Reconciliation ("SIR") provider within 15 days following the last day of the calendar month in which the analysis was performed.
Base Penalty: \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

OR

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	X			10%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment: \$9,000

\$1,000

Violation Events

Number of Violation Events: 1 53 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.

Good Faith Efforts to Comply 0.0% Reduction \$0

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

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

Violation Subtotal: \$1,000

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount: \$5 Violation Final Penalty Total: \$919

This violation Final Assessed Penalty (adjusted for limits): \$919

Economic Benefit Worksheet

Respondent: Darlene Chappell dba Big Red Barn
Case ID No.: 38483
Reg. Ent. Reference No.: RN102063575
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. columns or 5							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	N/A	\$0
Record Keeping System				0.00	\$0	N/A	\$0
Training/Sampling				0.00	\$0	N/A	\$0
Remediation/Disposal				0.00	\$0	N/A	\$0
Permit Costs				0.00	\$0	N/A	\$0
Other (as needed)	\$100	15-Jun-2009	10-Jul-2010	1.07	\$5	N/A	\$5

Notes for DELAYED costs: Estimated cost to submit ICR records to the SIR provider. Date Required is 15 days following the last day of the calendar month for which the analysis was performed. 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
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Screening Date 5-Oct-2009 **Docket No.** 2009-1594-PST-E **PCW**
Respondent Darlene Chappell dba Big Red Barn *Policy Revision 2 (September 2002)*
Case ID No. 38483 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102063575
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Keith Frank

Violation Number 3
Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(C)
Violation Description Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the UST registration and self-certification form.
Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

OR

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
	X			10%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$9,000

Adjustment \$9,000 **Base Penalty** \$10,000

Violation Events

Number of Violation Events: 1 Number of violation days: 53

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

mark only one with an x

Violation Base Penalty \$1,000

One single event is recommended.

Good Faith Efforts to Comply 0.0% Reduction **\$0**

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

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

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$6 Violation Final Penalty Total \$919

This violation Final Assessed Penalty (adjusted for limits) \$919

Economic Benefit Worksheet

Respondent: Darlene Chappell dba Big Red Barn
Case ID No.: 38483
Reg. Ent. Reference No.: RN102083575
Media: Petroleum Storage Tank
Violation No.: 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Item Description	\$100	13-Aug-2009	10-Jul-2010	0.91	\$0	\$6	\$6
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

Estimated cost to label the tank fill pipes. Date Required is the investigation date. Final Date is the estimated date of compliance.

Avoided Costs

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

Item Description	0.00	\$0	\$0	\$0
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

\$6

Screening Date 5-Oct-2009

Docket No. 2009-1594-PST-E

PCW

Respondent Darlene Chappell dba Big Red Barn

Policy Revision 2 (September 2002)

Case ID No. 38483

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102063575

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Keith Frank

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code § 334.10(b)(1)(B)

Violation Description

Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	X		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

Number of violation days 53

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.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

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

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$5

Violation Final Penalty Total \$919

This violation Final Assessed Penalty (adjusted for limits) \$919

Economic Benefit Worksheet

Respondent: Darlene Chappell dba Blg Red Barn
Case ID No.: 38483
Reg. Ent. Reference No.: RN102063575
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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$100	13-Aug-2009	10-Jul-2010	0.91	\$5	n/a	\$5
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to maintain UST records. Date Required is the investigation date. Final Date is the estimated date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$5

Compliance History Report

Customer/Respondent/Owner-Operator: CN603526146 Chappell Darlene Classification: HIGH Rating: 0.00
Regulated Entity: RN102063575 Big Red Barn Classification: HIGH Site Rating: 0.00

ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 7623
REGISTRATION

Location: 781 REAGAN STREET, BARNHART, TX, 76930

TCEQ Region: REGION 08 - SAN ANGELO

Date Compliance History Prepared: September 29, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: September 29, 2004 to September 29, 2009

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

Name: Keith Frank Phone: (512) 239-1203

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? Chappell Darlene
4. If Yes, who was/were the prior owner(s)/operator(s) ? T & C Wholesale, Inc.
Shelton Oil & Gas Co., Inc.
5. When did the change(s) in owner or operator occur?
09/30/2006 Shelton Oil & Gas Co., Inc.
04/07/2009 T & C Wholesale, Inc.
6. Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 10/19/2007 (596656)
2 09/23/2009 (767942)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
DARLENE CHAPPELL DBA
BIG RED BARN
RN102063575

§
§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2009-1594-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Darlene Chappell dba Big Red Barn ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a convenience store with retail sales of gasoline at 781 Reagan Street in Barnhart, Irion County, Texas (the "Facility").
2. The Respondent's three underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about September 30, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Five Thousand Fifty-Five Dollars (\$5,055) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Hundred Twenty-Four Dollars (\$124) of the administrative penalty and

One Thousand Eleven Dollars (\$1,011) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Three Thousand Nine Hundred Twenty Dollars (\$3,920) of the administrative penalty shall be payable in 35 monthly payments of One Hundred Twelve Dollars (\$112) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly, in violation of 30 TEX. ADMIN. CODE § 334.49(c)(2)(C) and TEX. WATER CODE § 26.3475(d), as documented during an investigation conducted on August 13, 2009.
2. Failed to perform release detection for the UST system, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(9)(A)(iii), as documented during an investigation conducted on August 13, 2009. Specifically, the Respondent did not provide the Inventory Control Reconciliation ("ICR")

records to the Statistical Inventory Reconciliation ("SIR") provider within 15 days following the last day of the calendar month in which the analysis was performed.

3. Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the UST registration and self-certification form, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(C), as documented during an investigation conducted on August 13, 2009.
4. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 334.10(b)(1)(B), as documented during an investigation conducted on August 13, 2009.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Darlene Chappell dba Big Red Barn, Docket No. 2009-1594-PST-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order:
 - i. Begin conducting bimonthly inspections of the cathodic protection system to ensure that the rectifier and other system components are functioning as designed, in accordance with 30 TEX. ADMIN. CODE § 334.49;
 - ii. Implement improvements to submittal practices that address the late submittal of ICR to the SIR provider;
 - iii. Permanently apply or affix tags, labels, or markings to the UST fill tubes with an identification number that matches the number listed on the UST registration and self-certification form, in accordance with 30 TEX. ADMIN. CODE § 334.8; and

- iv. Begin maintaining all UST records, in accordance with 30 TEX. ADMIN. CODE § 334.10.
- b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a.i. through 2.a.iv. 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 fines and imprisonment for knowing violations."

The certification shall be submitted 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:

Waste Section Manager
San Angelo Regional Office
Texas Commission on Environmental Quality
622 South Oakes, Suite K
San Angelo, Texas 76903-7013

- 3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
- 4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
- 5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent

receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Joan Srdin
For the Executive Director

2/25/2010
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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

Darlene Chappell
Signature

12/1/09
Date

Darlene Chappell
Name (Printed or typed)
Authorized Representative of
Darlene Chappell dba Big Red Barn

owner
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.