

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO. 2009-1521-PST-E TCEQ ID RN102370806 CASE NO. 38389**  
**RESPONDENT NAME: MANUEL GARCIA III DBA LAST CHANCE DRIVE IN**

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

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

**SITE WHERE VIOLATION OCCURRED:** 1607 State Highway 16, Zapata, Zapata County

**TYPE OF OPERATION:** convenience store with one inactive underground storage tank

**SMALL BUSINESS:**  Yes  No

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

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

**COMMENTS RECEIVED:** The *Texas Register* comment period expired April 12, 2010. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Mr. Marshall Coover, Litigation Division, MC 175, (512) 239-3400  
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

**TCEQ Enforcement Coordinator:** Mr. Tate Barrett, Waste Enforcement Section, MC R-12, (713) 676-3500

**TCEQ Regional Contact:** Ms. Rose Luna-Pirtle, Laredo Regional Office, MC R-16, (956) 753-4052

**Respondent:** Mr. Manuel Garcia III, Owner, Last Chance Drive In, P.O. Box 2813, Zapata, Texas 78076-2813

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

<b>VIOLATION SUMMARY CHART:</b>		
<b>VIOLATION INFORMATION</b>	<b>PENALTY CONSIDERATIONS</b>	<b>CORRECTIVE ACTIONS TAKEN/REQUIRED</b>
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> September 10, 2009</p> <p><b>Date of NOE Relating to this Case:</b> October 20, 2009</p> <p><b>Background Facts:</b> The EDPRP was filed on January 7, 2010, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. On January 27, 2010, the United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Current Compliance Status:</b> The Respondent has not yet submitted documentation to certify compliance with the technical requirements. The Respondent does not have a delivery certificate.</p> <p><b>PST:</b> 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 [30 TEX. ADMIN. CODE § 334.54(b)(2)].</p>	<p><b>Total Assessed:</b> \$625</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$625</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this order.</p> <p><b>Site Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Respondent's UST fuel delivery certificate is revoked immediately. The Respondent may submit an application for a new delivery certificate only after the Respondent has complied with all the requirements of the order.</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. Immediately, begin maintaining all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured and protected manner.</li> <li>2. Within 30 days, submit written certification demonstrating compliance.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	14-Sep-2009	<b>Screening</b>	15-Sep-2009	<b>EPA Due</b>	
	<b>PCW</b>	21-Dec-2009				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Manuel Garcia III dba Last Chance Drive In				
<b>Reg. Ent. Ref. No.</b>	RN102370806				
<b>Facility/Site Region</b>	16-Laredo	<b>Major/Minor Source</b>	Minor		

## CASE INFORMATION

<b>Enf./Case ID No.</b>	38389	<b>No. of Violations</b>	1
<b>Docket No.</b>	2009-1521-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>	Tate Barrett
		<b>EC's Team</b>	Enforcement Team 7
<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>	\$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>	25.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$125
Notes	Enhancement for one 1660 order and one NOV with same or similar violations.		
<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>
Notes	The Respondent does not meet the culpability criteria.		
<b>Good Faith Effort to Comply Total Adjustments</b>		<b>Subtotal 5</b>	\$0
<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
Total EB Amounts	\$15	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$450		

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$625
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes		<b>Final Penalty Amount</b>	\$625
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$625
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement.		
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<b>PAYABLE PENALTY</b>	\$625
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**Screening Date** 15-Sep-2009

**Docket No.** 2009-1521-PST-E

**PCW**

**Respondent** Manuel Garcia III dba Last Chance Drive In

*Policy Revision 2 (September 2002)*

**Case ID No.** 38389

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN102370806

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** Tate Barrett

### 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 <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>	1	20%
	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%

*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)** 25%

**>> 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 1660 order and one NOV with same or similar violations.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 25%

Screening Date 15-Sep-2009

Docket No. 2009-1521-PST-E

PCW

Respondent Manuel Garcia III dba Last Chance Drive In

Policy Revision 2 (September 2002)

Case ID No. 38389

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102370806

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Tate Barrett

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 334.54(b)(2)

Violation Description

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. Specifically, the riser caps have no locks.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			x

Percent 5%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

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

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 1

5 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$500

One single event is recommended based on documentation of the violation during the September 10, 2009 investigation.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$15

Violation Final Penalty Total \$625

This violation Final Assessed Penalty (adjusted for limits) \$625

# Economic Benefit Worksheet

**Respondent** Manuel Garcia III dba Last Chance Drive In  
**Case ID No.** 38389  
**Req. Ent. Reference No.** RN102370806  
**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)	\$450	10-Sep-2009	10-May-2010	0.66	\$15	n/a	\$15

Notes for DELAYED costs

Estimated cost to reinstall protective covering on the dispenser and to lock all riser caps. The date required is the investigation date 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

\$450

**TOTAL**

\$15

# Compliance History Report

Customer/Respondent/Owner-Operator: CN601240518 Garcia III, Manuel Classification: AVERAGE Rating: 14.33  
Regulated Entity: RN102370806 Last Chance Drive In Classification: AVERAGE Site Rating: 14.33  
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 74960  
REGISTRATION  
Location: 1607 STATE HIGHWAY 16, ZAPATA, TX, 78076  
TCEQ Region: REGION 16 - LAREDO  
Date Compliance History Prepared: September 15, 2009  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: September 15, 2004 to September 15, 2009  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:  
Name: Tate Barrett Phone: 713-422-8968

## 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.  
**Effective Date: 06/19/2008** ADMINORDER 2006-0927-PST-E  
Classification: Major  
Citation: 30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)  
Description: FC - Failure to provide release detection
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- |   |            |          |
|---|------------|----------|
| 1 | 07/10/2006 | (485425) |
| 2 | 08/14/2006 | (508709) |
| 3 | 03/22/2007 | (554731) |
| 4 | 02/13/2008 | (618473) |
| 5 | 02/20/2009 | (710284) |
| 6 | 09/11/2009 | (775987) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |              |  |                          |
|--------------|--|--------------------------|
| Date:        | 02/20/2009   | (710284)                 |
| Self Report? | NO   | Classification: Moderate |
| Citation:    | 30 TAC Chapter 334, SubChapter C 334.50(a)<br>30 TAC Chapter 334, SubChapter C 334.54(c)(2)<br>30 TAC Chapter 334, SubChapter C 334.54(d)(2) |                          |
| Description: | Failure to perform the temporary removal of a UST in compliance with release detection requirements.   |                          |
| Self Report? | NO   | Classification: Moderate |
| Citation:    | 30 TAC Chapter 334, SubChapter C 334.54(b)(2)  |                          |
| Description: | Failure to properly secure USTs against tampering or vandalism.  |                          |
- 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  
MANUEL GARCIA III DBA LAST  
CHANCE DRIVE IN;  
RN102370806**

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**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER  
DOCKET NO. 2009-1521-PST-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, (“Commission” or “TCEQ”) considered the Executive Director’s Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty, corrective action of the respondent, and revocation of the respondent’s fuel delivery certificate. The respondent made the subject of this Order is Manuel Garcia III dba Last Chance Drive In (“Mr. Garcia”).

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

**FINDINGS OF FACT**

1. Mr. Garcia owns and operates a convenience store with one inactive underground storage tank (“UST”) located at 1607 State Highway 16 in Zapata, Zapata County, Texas (the “Facility”).
2. Mr. Garcia’s one underground storage tank (“UST”) is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Garcia’s UST contains a regulated substance as defined in the rules of the Commission.
3. During an investigation conducted on September 10, 2009, a TCEQ Laredo Regional Office investigator documented that Mr. Garcia 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. Specifically, the riser caps have no locks.
4. Mr. Garcia received notice of the violation on or about October 25, 2009.

5. The Executive Director filed the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Manuel Garcia III dba Last Chance Drive In” (the “EDPRP”) in the TCEQ Chief Clerk’s office on January 7, 2010.
6. By letter dated January 7, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Garcia with notice of the EDPRP. On February 3, 2010, the United States Postal Service returned the wrapper sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Mr. Garcia received notice of the EDPRP.
7. More than 20 days have elapsed since Mr. Garcia received notice of the EDPRP provided by the Executive Director. Mr. Garcia failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Garcia is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7 and 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Garcia failed to maintain all piping, pump, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or other secured manner to prevent access, tampering, or vandalism by unauthorized persons, in violation of 30 TEX. ADMIN. CODE § 334.54(b)(2).
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. Garcia with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
4. As evidenced by Finding of Fact No. 7, Mr. Garcia 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 Mr. Garcia and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Garcia 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.

6. An administrative penalty in the amount of six hundred twenty-five dollars (\$625.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. 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.
8. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Mr. Garcia's UST fuel delivery certificate if the Commission finds that good cause exists.
9. Good cause for revocation of Mr. Garcia's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2 through 3 and 5 through 7, and Conclusions of Law Nos. 2 through 4.

### **ORDERING PROVISIONS**

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

1. Mr. Garcia is assessed an administrative penalty in the amount of six hundred twenty-five dollars (\$625.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Mr. Garcia'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. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Manuel Garcia, III dba Last Chance Drive In; Docket No. 2009-1521-PST-E" to:

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

2. Mr. Garcia's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Mr. Garcia may submit an application for a new fuel delivery certificate only after Mr. Garcia has complied with all of the requirements of this Order.

3. Within 10 days after the effective date of this Order, Mr. Garcia shall send his UST fuel delivery certificate to:

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

4. Mr. Garcia shall undertake the following technical requirements:

- a. Immediately upon the effective date of this Order, Mr. Garcia shall begin maintaining all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured and protected manner, in accordance with 30 TEX. ADMIN. CODE § 334.54.
- b. Within 30 days after the effective date of this Order, Mr. Garcia shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision No. 4.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

Mr. Garcia shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision No. 4.a. 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:

Ms. Rose Luna-Pirtle, Waste Section Manager  
Texas Commission on Environmental Quality  
Laredo Regional Office  
707 E. Calton Rd., Ste. 304  
Laredo, TX 78041-3887

5. All relief not expressly granted in this Order is denied.
6. The provisions of this Order shall apply to and be binding upon Mr. Garcia. Mr. Garcia is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
7. If Mr. Garcia 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, Mr. Garcia's failure to comply is not a violation of this Order. Mr. Garcia shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Garcia shall notify the Executive Director within seven days after Mr. Garcia becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
8. 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 Mr. Garcia shall be made in writing to the Executive Director. Extensions are not effective until Mr. Garcia receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
9. 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 Mr. Garcia if the Executive Director determines that Mr. Garcia has not complied with one or more of the terms or conditions in this Order.
10. 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.
11. 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.

Manuel Garcia III dba Last Chance Drive In  
Docket No. 2009-1521-PST-E  
Page 6

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF MARSHALL COOVER**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Marshall Coover. 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 Manuel Garcia III dba Last Chance Drive In” (the “EDPRP”) was filed with the Office of the Chief Clerk on January 7, 2010.

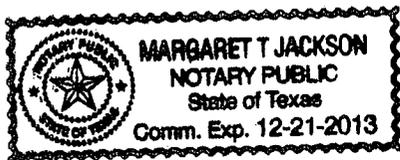
The EDPRP was mailed to Mr. Garcia at his last known address on January 7, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. On February 3, 2010, the United States Postal Service returned the wrapper sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Mr. Garcia received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

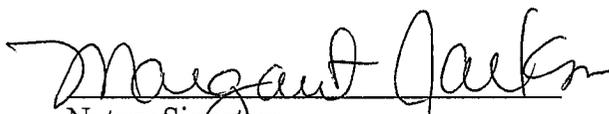
More than 20 days have elapsed since Mr. Garcia received notice of the EDPRP. Mr. Garcia failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.”

  
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Marshall Coover, Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 18<sup>th</sup> day of March, A.D., 2010.



  
\_\_\_\_\_  
Notary Signature