

Executive Summary – Enforcement Matter – Case No. 39955

PATRICIA FULLER

RN101789758

Docket No. 2010-1072-PST-E

Order Type:

Default Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

N/A

Location(s) Where Violation(s) Occurred:

Northeast corner of the intersection of Highway 287 and FM 1125, Bowie, Montague County

Type of Operation:

inactive UST system

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: February 18, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed: \$ 3,675

Amount Deferred for Expedited Settlement: N/A

Amount Deferred for Financial Inability to Pay: N/A

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$3,675

SEP Conditional Offset: N/A

Compliance History Classifications:

Person/CN – Not yet rated

Site/RN – Average

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

**PATRICIA FULLER
RN101789758
Docket No. 2010-1072-PST-E**

Investigation Information

Complaint Date: N/A
Complaint Information: N/A
Dates of Investigation: June 1, 2010; November 9, 2010
Date of NOV: November 25, 2009
Date of NOE: August 5, 2010

Violation Information

1. Failed to ensure that a corrosion protection system is designed, installed, operated, and maintained in a manner that will ensure continuous corrosion protection to all metal components of the UST system [TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE §§ 334.49(a) and 334.54(c)(1)].
2. Failed to maintain all vent lines open and functioning, and all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access [30 TEX. ADMIN. CODE § 334.54(b)(1) and (b)(2)].
3. Failed to maintain UST records demonstrating compliance with temporary removal from service requirements [30 TEX. ADMIN. CODE § 334.54(e)(4)].
4. Failed to notify the agency of any change or addition within 30 days of the occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)].

Corrective Actions/Technical Requirements

Corrective Action Completed:

N/A

Technical Requirements:

1. Immediately, begin maintaining all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked and/or otherwise secured manner.
2. Within 30 days, permanently remove the UST system from service
3. Within 45 days:
 - a. Submit an amended registration to indicate the current ownership and operational status of the UST system; and
 - b. Submit written certification demonstrating compliance.

Litigation Information

Date Petition Filed: November 22, 2010
Date Green Card Signed: November 24, 2010
Date Answer Filed: N/A
SOAH Referral Date: N/A
Hearing Date:
Preliminary hearing: N/A
Evidentiary hearing: N/A

PATRICIA FULLER

RN101789758

Docket No. 2010-1072-PST-E

Contact Information

TCEQ Attorneys: Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-3400

Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ SEP Coordinator: N/A

TCEQ Enforcement Coordinator: Phillip Aldridge, Waste Enforcement Section, (512) 239-0855

TCEQ Regional Contact: Mike Taylor, Abilene Regional Office, MC R-3, (325) 698- 6125

Respondent: Patricia Fuller, 1206 Anetta Street, Bowie, Texas 76230

Respondent's Attorney: N/A

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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	14-Jun-2010	Screening	21-Jun-2010	EPA Due	
	PCW	9-Nov-2010				

RESPONDENT/FACILITY INFORMATION			
Respondent	Patricia Fuller		
Reg. Ent. Ref. No.	RN101789758		
Facility/Site Region	3-Abilene	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	39955	No. of Violations	2
Docket No.	2010-1072-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Philip Aldridge
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$3,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	5.0% Enhancement	Subtotals 2, 3, & 7	\$175
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Notes	Enhancement for one previous NOV with same/similar violations.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$14,662	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$24,600	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,675
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$3,675
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,675
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$3,675
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Screening Date 21-Jun-2010

Docket No. 2010-1072-PST-E

PCW

Respondent Patricia Fuller

Case ID No. 39955

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101789758

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Philip Aldridge

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>)	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</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)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one previous NOV with same/similar violations.

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

Screening Date 21-Jun-2010

Docket No. 2010-1072-PST-E

PCW

Respondent Patricia Fuller

Policy Revision 2 (September 2002)

Case ID No. 39955

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101789758

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Philip Aldridge

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 334.49(a) and 334.54(b)(1), (b)(2), (c)(1) and (e)(4) and Tex. Water Code § 26.3475(d)

Violation Description Failed to ensure that a corrosion protection system is designed, installed, operated, and maintained in a manner that will ensure continuous corrosion protection to all metal components of the underground storage tank ("UST") system. Specifically, the UST system was not being supplied with corrosion protection. Failed to maintain all vent lines open and functioning, and all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons. Failed to maintain UST records demonstrating compliance with temporary removal from service requirements.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (25%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and 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 20

Table for event frequency: daily, weekly, monthly (marked with x), quarterly, semiannual, annual, single event.

Violation Base Penalty \$2,500

One monthly event is recommended based on documentation of the violation during the June 1, 2010 record review to the June 21, 2010 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (marked 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 \$14,655

Violation Final Penalty Total \$2,625

This violation Final Assessed Penalty (adjusted for limits) \$2,625

Economic Benefit Worksheet

Respondent Patricia Fuller
Case ID No. 39955
Req. Ent. Reference No. RN101789758
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	\$500	1-Jun-2010	1-Mar-2011	0.75	\$19	n/a	\$19
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$24,000	22-Dec-1998	1-Mar-2011	12.20	\$14,637	n/a	\$14,637
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 (\$500) and permanently remove from service four USTs (\$24,000) with a combined capacity of 24,000 gallons at \$1.00 per gallon (two 8,000 gallon tanks and two 4,000 gallon tanks). The Dates Required are the record review date and the date when the Respondent was required to upgrade the UST system. The Final Dates are the estimated dates 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

\$24,500

TOTAL

\$14,655

Screening Date 21-Jun-2010

Docket No. 2010-1072-PST-E

PCW

Respondent Patricia Fuller

Policy Revision 2 (September 2002)

Case ID No. 39955

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101789758

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Phillip Aldridge

Violation Number 2

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

Violation Description Failed to notify the agency of any change or addition within 30 days from the date of the occurrence of the change or addition, or within 30 days from the date on which the owner or operator first became aware of the change or addition. Specifically, the registration was not updated to reflect the correct ownership and operator information.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR Release Actual Potential Major Moderate Minor Harm Percent 0%

>> Programmatic Matrix

Falsification Major Moderate Minor Percent 10%

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 232 Number of violation days

daily weekly monthly quarterly semiannual annual single event 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

Extraordinary Ordinary N/A Before NOV NOV to EDPRP/Settlement Offer

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 \$1,050

This violation Final Assessed Penalty (adjusted for limits) \$1,050

Economic Benefit Worksheet

Respondent Patricia Fuller
Case ID No. 39955
Req. Ent. Reference No. RN101789758
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)	\$100	1-Dec-2009	1-Mar-2011	1.25	\$6	n/a	\$6

Notes for DELAYED costs

Estimated cost to submit an amended UST registration form to the TCEQ. The Date Required is 30 days after the date of ownership change and the Final Date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$6

Compliance History Report

Customer/Respondent/Owner-Operator: CN603658295 Patricia Fuller Classification: Rating:
Regulated Entity: RN101789758 JERKY STATION Classification: AVERAGE Site Rating: 3.01
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 23896
Location: HWY 287 HWY 1125
TCEQ Region: REGION 03 - ABILENE
Date Compliance History Prepared: July 28, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: June 16, 2005 to June 16, 2010
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Philip Aldridge Phone: (512) 239 - 0855

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? OWN OPR Patricia Fuller
4. If Yes, who was/were the prior owner(s)/operator(s)? OWNOPR Jerky Station Incorporated
5. When did the change(s) in owner or operator occur? 11/07/2009
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 11/25/2009 (783552)
2 03/24/2010 (796017)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 11/25/2009 (783552) CN603658295
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)
30 TAC Chapter 334, SubChapter C 334.54(b)(2)
Description: Failure to properly secure USTs against tampering or vandalism.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.54(b)(1)
Description: Failure to ensure vent lines have been kept open and are functioning.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)(1)(B)
Description: Failure to have records available for investigation.
Self Report? NO Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(d)
30 TAC Chapter 334, SubChapter C 334.49(a)
Description: Failure to have corrosion protection for the UST system.
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A
- J. Early compliance.
N/A
- Sites Outside of Texas
N/A

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
PATRICIA FULLER;
RN101789758**

**§
§
§
§
§**

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2010-1072-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 and corrective action of the respondent. The respondent made the subject of this Order is Patricia Fuller ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns, as defined in 30 TEX. ADMIN. CODE § 334.2(73), an inactive underground storage tank ("UST") system located on the northeast corner of the intersection of Highway 287 and FM 1125 in Bowie, Montague County, Texas (the "Facility"). Respondent's USTs 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 a record review conducted on June 1, 2010, a TCEQ Abilene Regional Office investigator documented that Respondent:
 - a. Failed to ensure that a corrosion protection system is designed, installed, operated, and maintained in a manner that will ensure continuous corrosion protection to all metal components of the UST system. Specifically, the UST system was not being supplied with corrosion protection;
 - b. Failed to maintain all vent lines open and functioning, and all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; and
 - c. Failed to maintain UST records demonstrating compliance with temporary removal from service requirements.
3. During a record review conducted on November 9, 2010, a TCEQ Austin Central Office staff member documented that Respondent failed to notify the agency of any change or addition within 30 days from the date of the occurrence of the change or addition, or within 30 days from the date on which the owner or operator first became aware of the change or addition. Specifically, the registration was not updated to reflect the correct ownership and operator information.

4. Respondent received notice of the violations in Findings of Fact Nos. 2.a. through 2.c. on or about August 10, 2010.
5. Respondent received notice of the violation in Finding of Fact No. 3 on or about November 24, 2010.
6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Patricia Fuller" (the "EDPRP") in the TCEQ Chief Clerk's office on November 22, 2010.
7. By letter dated November 22, 2010, 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. According to the return receipt "green card," Respondent received notice of the EDPRP on November 24, 2010, as evidenced by the signature on the card. The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.
8. More than 20 days have elapsed since Respondent received notice of the EDPRP, provided by the Executive Director. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.

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 ch. 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to ensure that a corrosion protection system is designed, installed, operated, and maintained in a manner that will ensure continuous corrosion protection to all metal components of the UST system, in violation of 30 TEX. ADMIN. CODE §§ 334.49(a), 334.54(c)(1), and TEX. WATER CODE § 26.3475(d).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to maintain all vent lines open and functioning, and all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons, in violation of 30 TEX. ADMIN. CODE § 334.54(b)(1) and (b)(2).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to maintain UST records demonstrating compliance with temporary removal from service requirements, in violation of 30 TEX. ADMIN. CODE § 334.54(e)(4).
5. As evidenced by Finding of Fact No. 3, Respondent failed to notify the agency of any change or addition within 30 days from the date of the occurrence of the change or addition, or within 30 days from the date on which the owner or operator first became aware of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3).

6. As evidenced by Findings of Fact Nos. 6 and 7, 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(a).
7. As evidenced by Finding of Fact No. 8, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
8. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of 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.
9. An administrative penalty in the amount of three thousand six hundred seventy-five dollars (\$3,675.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
10. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of three thousand six hundred seventy-five dollars (\$3,675.00) 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.
2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Patricia Fuller; Docket No. 2010-1072-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

3. Respondent shall undertake the following technical requirements:
- a. Immediately upon the effective date of this Order, Respondent shall begin maintaining all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked and/or otherwise secured manner, in accordance with 30 TEX. ADMIN. CODE § 334.54.
 - b. Within 30 days after the effective date of this Order, Respondent shall permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55.
 - c. Within 45 days after the effective date of this Order, Respondent shall:
 - i. Submit an amended registration to indicate the current ownership and operational status of the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.7, to:

Registration and Reporting Section
Permitting & Remediation Support Division, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- ii. Submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision Nos. 3.a., 3.b. and 3.c.i. 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."

Respondent shall submit the written certification and copies of 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

with a copy to:

Mike Taylor, Waste Section Manager
Texas Commission on Environmental Quality
Abilene Regional Office
1977 Industrial Blvd.
Abilene TX 79602-7833

4. All relief not expressly granted in this Order is denied.
5. 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.
6. 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.
7. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by 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.
8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
9. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
10. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF KARI L. GILBRETH

STATE OF TEXAS

§

COUNTY OF TRAVIS

§

"My name is Kari L. Gilbreth. 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 Patricia Fuller," (the "EDPRP") was filed in the TCEQ Chief Clerk's office on November 22, 2010.

The EDPRP was mailed to Respondent's last known address on November 22, 2010 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on November 24, 2010, as evidenced by the signature on the card. 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).

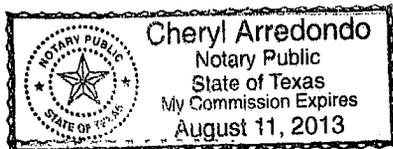
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference



Kari L. Gilbreth, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Kari L. Gilbreth, 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 27th day of January, A.D. 2011.



Notary Signature