EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 43959
FASS INC. d/b/a Bunnys CT
RN101871572
Docket No. 2012-0795-PST-E

Order Type:
Default Shutdown Order

Findings Order Justification:
N/A

Media:
PST

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
1208 West Panola Street, Carthage, Panola County

Type of Operation:
convenience store with retail sales of gasoline

Other Significant Matters:

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

Texas Register Publication Date:	December 21, 2012
Comments Received:	None

Penalty Information

Total Penalty Assessed:	$8,882
Total Paid to General Revenue:	$0
Total Due to General Revenue:	$8,882

Compliance History Classifications:
Person/CN – Average
Site/RN – Average by Default

Major Source:	No
Statutory Limit Adjustment:	None
Applicable Penalty Policy:	September 2011

Investigation Information

Complaint Date(s):	N/A
Date(s) of Investigation:	September 29, 2011; March 27, 2012
Date(s) of NOV(s):	N/A
Date(s) of NOE(s):	March 27, 2012

Violation Information

1. Failed to provide proper corrosion protection for the UST system [TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(a)].
2. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and failed to provide release detection for the pressurized piping associated with the UST system [TEX. WATER CODE § 26.3475(a) and (c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and (b)(2)].
3. Failed to maintain UST records and make them immediately available for review upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Immediately shut down operations of all USTs at the Facility:
   a. Cease dispensing fuel from the USTs;
   b. Cease receiving deliveries of regulated substances into the USTs;
   c. Padlock the dispensers;
   d. Empty the USTs of all regulated substances; and
   e. Temporarily remove the USTs from service.
2. The USTs shall remain out of service until such time as Respondent demonstrates to the satisfaction of the Executive Director that the release detection, corrosion protection, and leak detection violations have been corrected.
3. The Facility's UST fuel delivery certificate is revoked immediately. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements.
4. Immediately upon the effective date of this Order, Respondent shall cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ.
5. Within 10 days, Respondent shall surrender the Facility's UST fuel delivery certificate.
6. Within 15 days, submit a detailed written report documenting the steps taken to comply with Technical Requirements Nos. 1, 4 and 5.
7. Prior to receiving deliveries of gasoline and resuming sales of gasoline:
   a. Begin maintaining all UST records and ensure they are made immediately available for inspection upon request by agency personnel;
   b. Install and implement a corrosion protection system for the UST system at the Facility;
   c. Implement release detection methods for the USTs and the piping associated with the UST system at the Facility; and
   d. Obtain a new fuel delivery certificate.
8. Upon obtaining a new fuel delivery certificate, post the fuel delivery certificate in a location at the Facility where the delivery certificate is clearly visible at all times.
9. Within 10 days of resuming sales of gasoline, submit written certification to demonstrate compliance with Technical Requirements Nos. 7 and 8.

Litigation Information

Date Petition(s) Filed: August 30, 2012

Date Green Card(s) Signed: September 1, 2012

Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Jacquelyn Boutwell, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Amy Swanholm, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Margarita Dennis, Enforcement Division, 512 239-2578

TCEQ Regional Contact: Mike Brashear, Tyler Regional Office, (903) 535-5176

Respondent: Tajuddin Jawani, President, FASS INC, 1811 Frostwood Drive, Tyler, Texas 75703

Respondent's Attorney: N/A

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Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011) *PCW Revision August 3, 2011*

TCEQ

DATES					
Assigned	2-Apr-2012				
PCW	27-Jul-2012	Screening	11-Apr-2012	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	FASS INC. dba Bunnys CT		
Reg. Ent. Ref. No.	RN101871572		
Facility/Site Region	5-Tyler	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	43959	No. of Violations	3
Docket No.	2012-0795-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Margarita Dennis
		EC's Team	Enforcement Team 7

Admin. Penalty $ Limit Minimum $0 Maximum $25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* $8,750

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 0.0% Enhancement *Subtotals 2, 3, & 7* $0

Notes: No adjustment for compliance history.

Culpability No 0.0% Enhancement *Subtotal 4* $0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments *Subtotal 5* $0

Economic Benefit 0.0% Enhancement* *Subtotal 6* $0

Total EB Amounts $802
Approx. Cost of Compliance $8,118

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 *Final Subtotal* $8,750

OTHER FACTORS AS JUSTICE MAY REQUIRE 1.5% *Adjustment* $132

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to capture avoided cost of compliance associated with violation no. 2.

Final Penalty Amount $8,882

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* $8,882

DEFERRAL 0.0% Reduction *Adjustment* $0

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.

PAYABLE PENALTY $8,882

Screening Date	11-Apr-2012	**Docket No.** 2012-0795-PST-E	**PCW**
Respondent	FASS INC. dba Bunnys CT		*Policy Revision 3 (September 2011)*
Case ID No.	43959		*PCW Revision August 3, 2011*
Reg. Ent. Reference No.	RN101871572		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Margarita Dennis		

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (*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)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

>> Final Compliance History Adjustment

Final Adjustment Percentage ****capped at 100%*** 0%

Screening Date	11-Apr-2012	**Docket No.**	2012-0795-PST-E	**PCW**
Respondent	FASS INC. dba Bunnys CT			*Policy Revision 3 (September 2011)*
Case ID No.	43959			*PCW Revision August 3, 2011*
Reg. Ent. Reference No.	RN101871572			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Margarita Dennis			

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.49(a) and Tex. Water Code § 26.3475(d)

Violation Description Failed to provide proper corrosion protection for the underground storage tank ("UST") system.

Base Penalty $25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Major	Harm: Moderate	Minor
Actual			
Potential	x		

Percent 15.0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

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 $21,250

$3,750

Violation Events

Number of Violation Events: 1 | 15 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $3,750

One monthly event is recommended from the March 27, 2012 record review date to the April 11, 2012 screening date.

Good Faith Efforts to Comply

0.0% Reduction — $0

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

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

Violation Subtotal $3,750

Economic Benefit (EB) for this violation

Estimated EB Amount $541

Statutory Limit Test

Violation Final Penalty Total $3,807

This violation Final Assessed Penalty (adjusted for limits) $3,807

Economic Benefit Worksheet

Respondent FASS INC. dba Bunnys CT
Case ID No. 43959
Reg. Ent. Reference No. RN101871572
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment	$6,000	29-Sep-2011	11-Jan-2013	1.29	$26	$515	$541
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 provide corrosion protection for the UST system. 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 $6,000

TOTAL $541

Screening Date	11-Apr-2012	**Docket No.** 2012-0795-PST-E	**PCW**
Respondent	FASS INC. dba Bunnys CT		*Policy Revision 3 (September 2011)*
Case ID No.	43959		*PCW Revision August 3, 2011*
Reg. Ent. Reference No.	RN101871572		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Margarita Dennis		

Violation Number 2

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

Violation Description Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Also, failed to provide release detection for the pressurized piping associated with the UST system. Specifically, the piping tightness and line leak detector tests had not been conducted.

Base Penalty $25,000

>> Environmental, Property and Human Health Matrix

	Release	Harm: Major	Moderate	Minor
OR	Actual			
	Potential	x		

Percent 15.0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

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 $21,250

$3,750

Violation Events

Number of Violation Events: 1

15 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $3,750

One monthly event is recommended from the March 27, 2012 record review date to the April 11, 2012 screening date.

Good Faith Efforts to Comply

0.0% Reduction — $0

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

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

Violation Subtotal $3,750

Economic Benefit (EB) for this violation

Estimated EB Amount $229

Statutory Limit Test

Violation Final Penalty Total $3,807

This violation Final Assessed Penalty (adjusted for limits) $3,807

Economic Benefit Worksheet

Respondent FASS INC. dba Bunnys CT
Case ID No. 43959
Reg. Ent. Reference No. RN101871572
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)	$1,500	29-Sep-2011	11-Jan-2013	1.29	$97	n/a	$97

Notes for DELAYED costs: Estimated cost to provide release detection for the USTs at the Facility. 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]	$118	29-Sep-2010	27-Mar-2012	2.41	$14	$118	$132
Other (as needed)				0.00	$0	$0	$0

Notes for AVOIDED costs: Estimated cost to conduct the piping tightness and line leak detector tests. The Date Required is one year prior to the investigation date and the Final Date is the record review date.

Approx. Cost of Compliance $1,618

TOTAL $229

Screening Date	11-Apr-2012	**Docket No.** 2012-0795-PST-E	**PCW**
Respondent	FASS INC. dba Bunnys CT		*Policy Revision 3 (September 2011)*
Case ID No.	43959		*PCW Revision August 3, 2011*
Reg. Ent. Reference No.	RN101871572		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Margarita Dennis		

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.10(b)

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

Base Penalty $25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

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

Adjustment $23,750

$1,250

Violation Events

Number of Violation Events: 1

15 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $1,250

One single event is recommended.

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 $1,250

Economic Benefit (EB) for this violation

Estimated EB Amount $32

Statutory Limit Test

Violation Final Penalty Total $1,269

This violation Final Assessed Penalty (adjusted for limits) $1,269

Economic Benefit Worksheet

Respondent FASS INC. dba Bunnys CT
Case ID No. 43959
Reg. Ent. Reference No. RN101871572
Media Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	29-Sep-2011	11-Jan-2013	1.29	$32	n/a	$32
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. 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 $500

TOTAL $32

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603964065	FASS INC.	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN101871572	Bunnys CT	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK		REGISTRATION	71898

Location: 1208 West Panola Street, Carthage, Texas, 75633

TCEQ Region: REGION 05 - TYLER

Date Compliance History Prepared: April 12, 2012

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: April 11, 2007 to April 11, 2012

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

Name: Margarita Dennis Phone: (512) 239-2578

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? FASS INC., OWNER OPERATOR since 10/30/2010
4. If **YES**, who was/were the prior owner(s)/operator(s)? Kashi Enterprises, Inc., OWNER OPERATOR, 4/27/2010 to 10/30/2010
5. If **YES**, when did the change(s) in owner or operator occur? 10/30/2010
6. Rating Date: 9/1/2011 Repeat Violator: NO

Components (Multimedia) for the Site:

A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
N/A

B. Any criminal convictions of the state of Texas and the federal government.
N/A

C. Chronic excessive emissions events.
N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 03/27/2012 (975361)

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

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN	**§**	**BEFORE THE**
ENFORCEMENT ACTION	**§**	
CONCERNING	**§**	**TEXAS COMMISSION ON**
FASS INC. D/B/A BUNNYS CT;	**§**	
RN101871572	**§**	**ENVIRONMENTAL QUALITY**

DEFAULT AND SHUTDOWN ORDER

DOCKET NO. 2012-0795-PST-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition, filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty, corrective action of the respondent, and revocation of the Facility's fuel delivery certificate. The Commission also considered the Executive Director's Motion requesting the entry of an Order requiring the respondent to shutdown and remove from service the underground storage tanks ("USTs") located at 1208 West Panola Street in Carthage, Panola County, Texas. The respondent made the subject of this Order is FASS INC. d/b/a Bunnys CT ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns and operates, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), a UST system and a convenience store with retail sales of gasoline located at 1208 West Panola Street in Carthage, Panola County, Texas (Facility ID No. 71898) (the "Facility"). The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contain a regulated petroleum substance as defined in the rules of the TCEQ.

2. During an investigation conducted on September 29, 2011, and a record review conducted on March 27, 2012, a UT Arlington Petroleum Storage Tank investigator (TCEQ contractor) documented that Respondent:

   a. Failed to provide proper corrosion protection for the UST system;

   b. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and failed to provided relase detection for the pressurized piping associated with the UST system. Specifically, the piping tightness and line leak detector tests had not been conducted; and

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

3. By letter dated March 27, 2012, UT Arlington provided Respondent with notice of the violations and of TCEQ's authority to shut down and remove from service USTs not in compliance with release detection, spill and/or overfill prevention, corrosion protection, and/or financial assurance requirements if the violations are not corrected.

4. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of FASS INC. d/b/a Bunnys CT" (the "EDPRP") in the TCEQ Chief Clerk's office on August 30, 2012.

5. By letter dated August 30, 2012, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on September 1, 2012, as evidenced by the signature on the card.

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

7. By letter dated October 10, 2012, the Executive Director provided Respondent with notice of TCEQ's intent to order the USTs at the Facility to be shut down and removed from service if Respondent failed to correct the release detection and corrosion protection violations within 30 days after Respondent's receipt of the notice.

8. As of the date of entry of this Order, Respondent has not provided the Executive Director with documentation demonstrating that the release detection and corrosion protection violations alleged in Findings of Fact Nos. 2.a. and 2.b. have been corrected.

9. The USTs at the Facility do not have release detection and corrosion protection as required by TEX. WATER CODE § 26.3475(a), (c)(1), and (d) and 30 TEX. ADMIN. CODE §§ 334.49(a) and 334.50(b)(1)(A) and (b)(2); and may be releasing petroleum products to the environment. Therefore, conditions at the Facility constitute an imminent peril to public health, safety, and welfare.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the Commission.

2. As evidenced by Finding of Fact No. 2.a., Respondent failed to provide proper corrosion protection for the UST system, in violation of TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(a).

3. As evidenced by Finding of Fact No.2.b., Respondent failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and failed to provide release detection for the pressurized piping associated with the UST system, in violation of TEX. WATER CODE § 26.3475(a) and (c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and (b)(2).

4. As evidenced by Finding of Fact No. 2.c., Respondent failed to maintain UST records and make them immediately available for review upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 334.10(b).

5. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).

6. As evidenced by Finding of Fact No. 6, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to

TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.

7. 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.

8. An administrative penalty in the amount of eight thousand eight hundred eighty-two dollars ($8,882.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

9. As evidenced by Findings of Fact Nos. 2, 3, 7, and 8, Respondent failed to correct documented violations of Commission release detection and corrosion protection requirements within 30 days after Respondent received notice of the violations and notice of the Executive Director's intent to shut down the USTs at the Facility.

10. TEX. WATER CODE §§ 26.3475(e) and 26.352(i) authorize the Commission to order a UST owner or operator to shut down a UST system if, within 30 days after receiving notice of the violations, the owner or operator fails to correct violations of Commission regulatory requirements relating to release detection for tanks and/or piping, spill and/or overfill protection for tanks, corrosion protection for tanks and/or piping, and/or acceptable financial assurance.

11. 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.

12. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke the Facility's UST fuel delivery certificate if the Commission finds that good cause exists.

13. Good cause for revocation of the Facility's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2 and 4 through 6 and Conclusions of Law Nos. 2 through 6.

14. As evidenced by Findings of Fact Nos. 8 and 9, current conditions at the Facility constitute an imminent peril to public health, safety, and welfare. Therefore, pursuant to the Administrative Procedure Act, TEX. GOV'T CODE § 2001.144(a)(3), this Order is final and effective on the date rendered.

ORDERING PROVISIONS

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

1. Immediately upon the effective date of this Order, Respondent shall take the following steps to shut down operations of all USTs at the Facility:

   a. Cease dispensing fuel from the USTs;

   b. Cease receiving deliveries of regulated substances into the USTs;

   c. Padlock the dispensers;

   d. Empty the USTs of all regulated substances in accordance with 30 TEX. ADMIN. CODE § 334.54(d); and

   e. Temporarily remove the USTs from service in accordance with 30 TEX. ADMIN. CODE § 334.54.

2. The USTs at the Facility shall remain out of service, pursuant to TEX. WATER CODE § 26.3475 and as directed by Ordering Provisions Nos. 1.a. through 1.e., until such time as Respondent demonstrates to the satisfaction of the Executive Director that the release detection and corrosion protection violations noted in Conclusions of Law Nos. 2 and 3 have been corrected.

3. If Respondent elects to permanently remove from service any portion of the UST system at the Facility, Respondent shall, immediately upon the effective date of this Order, permanently remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.55, and within 15 days after the effective date of this Order, shall submit a written report documenting compliance with 30 TEX. ADMIN. CODE § 334.55 to:

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

4. The Facility's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements set forth in this Order.

5. Immediately upon the effective date of this Order, Respondent shall cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ in accordance with 30 TEX. ADMIN. CODE §§ 334.7 and 334.8.

6. Within 10 days after the effective date of this Order, Respondent shall send the Facility's UST fuel delivery certificate to:

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

7. Within 15 days after the effective date of this Order, Respondent shall submit a detailed written report, in accordance with Ordering Provision No. 13, below, documenting the steps taken to comply with Ordering Provisions Nos. 1.a. through 1.e., 5 and 6.

8. Respondent is assessed an administrative penalty in the amount of eight thousand eight hundred eighty-two dollars ($8,882.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here.

9. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: FASS INC. d/b/a Bunnys CT; Docket No. 2012-0795-PST-E" to:

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

10. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline, Respondent shall undertake the following technical requirements:

    a. Begin maintaining all UST records and ensure they are made immediately available for inspection upon request by agency personnel, in accordance with 30 TEX. ADMIN. CODE § 334.10;

    b. Install and implement a corrosion protection system for the UST system at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.49;

    c. Implement a release detection method for the USTs and the piping associated with the UST system at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.50; and

    d. Obtain a new fuel delivery certificate from the TCEQ.

11. Upon obtaining a new fuel delivery certificate, Respondent shall post the fuel delivery certificate in a location at the Facility where the delivery certificate is clearly visible at all times, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii).

12. Within 10 days of resuming retail sales of gasoline, Respondent shall submit written certification, in accordance with Ordering Provision No. 13, below, to demonstrate compliance with Ordering Provisions Nos. 10 and 11.

13. The certifications required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall include the following certification language:

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

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

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

    and:

Mike Brashear, Waste Section Manager
Texas Commission on Environmental Quality
Tyler Regional Office
2916 Teague Drive
Tyler, TX 75701-3734

14. All relief not expressly granted in this Order is denied.

15. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.

16. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

17. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

18. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.

19. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.

20. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date this Order was rendered, pursuant to TEX. GOV'T CODE § 2001.144(a)(3).

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

AFFIDAVIT OF JACQUELYN BOUTWELL

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

"My name is Jacquelyn Boutwell. 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 FASS INC. d/b/a Bunnys CT" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on August 30, 2012.

The EDPRP was mailed to Respondent's last known address on August 30, 2012, 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 September 1, 2012, as evidenced by the signature on the card. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

By letter dated October 10, 2012, sent via first class mail and certified mail, return receipt requested article nos. 70110470000129159429 and 70110470000129159436, I provided Respondent with notice of the TCEQ's intent to order the USTs at the Facility be shut down and removed from service if the violations pertaining to release detection; corrosion protection; leak detection was/were not corrected within 30 days of Respondent's receipt of the letter. According to the return receipt "green card," Respondent received the notice on October 18, 2012 As of the date of this affidavit, I am not aware of any evidence that indicates that Respondent has corrected the shutdown violations noted during the September 29, 2011, investigation."

Jacquelyn Boutwell, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jacquelyn Boutwell, 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 8th day of January, A.D. 2013.

Notary Signature

Cheryl Arredondo
Notary Public
State of Texas
My Commission Expires
August 11, 2013