

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 46545
DARLENE CHAPPELL DBA BIG RED BARN
RN102063575
Docket No. 2013-0630-PST-E

Order Type:

Default Shutdown Order

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

781 Reagan Street, Barnhart, Irion County

Type of Operation:

convenience store with retail sales of gasoline

Other Significant Matters:

Additional Pending Enforcement Actions: 2013-1336-PST-E (pending publication)

Past-Due Penalties: None

Past-Due Fees: None

Other: Respondent filed a petition for bankruptcy relief pursuant to Chapter 13 of the United States Code. So long as Respondent's bankruptcy case is not dismissed, the TCEQ will not seek to execute upon any monetary judgment obtained without first approaching the United States Bankruptcy Court where Respondent's bankruptcy case is pending as necessary.

Interested Third-Parties: None

Texas Register Publication Date: February 14, 2014

Comments Received: None

Penalty Information

Total Penalty Assessed: \$17,211

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$0

Compliance History Classifications:

Person/CN – Satisfactory

Site/RN – Satisfactory

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2011

Investigation Information

Complaint Date(s): N/A

Date(s) of Investigation: August 24, 2012; February 12, 2013

Date(s) of NOV(s): N/A

Date(s) of NOE(s): February 7, 2013

Violation Information

1. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].
2. Failed to provide corrosion protection for the UST system [TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(a)(1)].
3. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A)].
4. Failed to provide release detection for the pressurized piping associated with the UST system [TEX. WATER CODE § 26.3475(a) and 30 TEX. ADMIN. CODE § 334.50(b)(2)].
5. Failed to maintain UST records and make them immediately available for inspection 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 financial assurance, release detection, and corrosion protection violations have been corrected and Respondent obtains a new fuel delivery certificate for the Facility.
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 set forth in the Order, including payment of the administrative penalty.
4. Immediately upon the effective date of this Order, Respondent shall cease accepting fuel at the Facility 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 to the TCEQ.
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 retail sales of gasoline:
 - a. Begin maintaining all UST records and ensure they are made immediately available for inspection upon request by agency personnel;
 - b. Demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum UST;

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 46545
DARLENE CHAPPELL DBA BIG RED BARN
RN102063575
Docket No. 2013-0630-PST-E

- c. Implement a release detection method for all USTs at the Facility and conduct the annual piping tightness test;
 - d. Install a corrosion protection system and test the system; and
 - e. 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: July 22, 2013
Date Green Card(s) Signed: July 25, 2013
Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Steven M. Fishburn, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Garrett Arthur, Public Interest Counsel, (512) 239-6363
TCEQ Enforcement Coordinator: Steven Van Landingham, Enforcement Division, (512) 239-5717
TCEQ Regional Contact: Christopher Mayben, San Angelo Regional Office, (325) 659-6704
Respondent Contact: Darlene Chappell, P. O. Box 42, Barnhart, Texas 76930
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	19-Feb-2013		
	PCW	11-Jun-2013	Screening	12-Mar-2013
			EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Darlene Chappell dba Big Red Barn		
Reg. Ent. Ref. No.	RN102063575		
Facility/Site Region	8-San Angelo	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	46545	No. of Violations	4
Docket No.	2013-0630-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Andrea Park
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$12,500
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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	20.0% Enhancement	Subtotals 2, 3, & 7	\$2,500
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Notes	Enhancement for one order containing a denial of liability.
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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	\$2,843	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$10,098	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$15,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	14.7%	Adjustment	\$2,211
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Recommended enhancement to capture the avoided cost of compliance associated with violation nos. 1 and 3.
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Final Penalty Amount	\$17,211
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$17,211
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DEFERRAL	0.0% Reduction	Adjustment	\$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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PAYABLE PENALTY	\$17,211
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Screening Date 12-Mar-2013

Docket No. 2013-0630-PST-E

PCW

Respondent Darlene Chappell dba Big Red Barn

Policy Revision 3 (September 2011)

Case ID No. 46545

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102063575

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Andrea Park

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	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%
<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)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

Enhancement for one order containing a denial of liability.

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

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100%

Screening Date 12-Mar-2013 **Docket No.** 2013-0630-PST-E **PCW**
Respondent Darlene Chappell dba Big Red Barn *Policy Revision 3 (September 2011)*
Case ID No. 46545 *PCW Revision August 3, 2011*
Reg. Ent. Reference No. RN102063575
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Andrea Park

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0.0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="5.0%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

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

Violation Base Penalty

Good Faith Efforts to Comply Reduction

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

Notes

Violation Subtotal

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

Estimated EB Amount **Violation Final Penalty Total**

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Darlene Chappell dba Big Red Barn
Case ID No. 46545
Reg. Ent. Reference No. RN102063575
Media 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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]	\$1,980	12-Feb-2012	12-Feb-2013	1.00	\$99	\$1,980	\$2,079
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to provide financial assurance for three USTs (\$660 per UST). The date required is one year prior to the record review date, and the final date is the record review date.

Approx. Cost of Compliance \$1,980

TOTAL \$2,079

Screening Date 12-Mar-2013

Docket No. 2013-0630-PST-E

PCW

Respondent Darlene Chappell dba Big Red Barn

Policy Revision 3 (September 2011)

Case ID No. 46545

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102063575

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Andrea Park

Violation Number 2

Rule Cite(s)

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

Violation Description

Failed to provide corrosion protection for the UST system.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	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

28 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 based on documentation of the violation during the February 12, 2013 record review to the March 12, 2013 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

Statutory Limit Test

Estimated EB Amount \$512

Violation Final Penalty Total \$5,163

This violation Final Assessed Penalty (adjusted for limits) \$5,163

Economic Benefit Worksheet

Respondent Darlene Chappell dba Big Red Barn
Case ID No. 46545
Reg. Ent. Reference No. RN102063575
Media Violation No. Petroleum Storage Tank
 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment	\$6,000	24-Aug-2012	12-Nov-2013	1.22	\$24	\$488	\$512
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 install a corrosion protection system and test the system. The date required is the investigation date, and the final date is the expected 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

\$512

Screening Date 12-Mar-2013

Docket No. 2013-0630-PST-E

PCW

Respondent Darlene Chappell dba Big Red Barn

Policy Revision 3 (September 2011)

Case ID No. 46545

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102063575

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Andrea Park

Violation Number 3

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 Respondent had not conducted the annual piping tightness test.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	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

28 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 based on documentation of the violation during the February 12, 2013 record review to the March 12, 2013 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

Statutory Limit Test

Estimated EB Amount \$224

Violation Final Penalty Total \$5,163

This violation Final Assessed Penalty (adjusted for limits) \$5,163

Economic Benefit Worksheet

Respondent Darlene Chappell dba Big Red Barn
Case ID No. 46545
Reg. Ent. Reference No. RN102063575
Media Violation No. Petroleum Storage Tank
 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	24-Aug-2012	12-Nov-2013	1.22	\$91	n/a	\$91

Notes for DELAYED costs Estimated cost to monitor the USTs for releases. The date required is the investigation date, and the final date is the expected 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	24-Aug-2011	12-Feb-2013	2.39	\$14	\$118	\$132
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs Estimated avoided cost to conduct the annual piping tightness test. The date required is one year before the investigation date, and the final date is the record review date.

Approx. Cost of Compliance \$1,618

TOTAL \$224

Screening Date 12-Mar-2013

Docket No. 2013-0630-PST-E

PCW

Respondent Darlene Chappell dba Big Red Barn

Policy Revision 3 (September 2011)

Case ID No. 46545

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102063575

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Andrea Park

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code § 334.10(b)

Violation Description

Failed to maintain UST records and make them immediately available for inspection 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

28 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

Statutory Limit Test

Estimated EB Amount \$28

Violation Final Penalty Total \$1,721

This violation Final Assessed Penalty (adjusted for limits) \$1,721

Economic Benefit Worksheet

Respondent Darlene Chappell dba Big Red Barn
Case ID No. 46545
Reg. Ent. Reference No. RN102063575
Media Violation No. 4
Media Petroleum Storage Tank

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

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	24-Aug-2012	12-Oct-2013	1.13	\$28	n/a	\$28
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 expected 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

\$28



Compliance History Report

PUBLISHED Compliance History Report for CN603526146, RN102063575, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator:	CN603526146, Darlene Chappell	Classification:	SATISFACTORY	Rating:	37.50
Regulated Entity:	RN102063575, BIG RED BARN	Classification:	SATISFACTORY	Rating:	37.50
Complexity Points:	3	Repeat Violator:	NO		
CH Group:	14 - Other				
Location:	781 REAGAN STREET, BARNHART, TX 76930, IRION COUNTY				
TCEQ Region:	REGION 08 - SAN ANGELO				
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 7623				

Compliance History Period:	September 01, 2007 to August 31, 2012	Rating Year:	2012	Rating Date:	09/01/2012
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Date Compliance History Report Prepared:	March 27, 2013
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Agency Decision Requiring Compliance History:	Enforcement
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Component Period Selected:	March 27, 2008 to March 27, 2013
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TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Andrea Park

Phone: (713) 422-8970

Site and Owner/Operator History:

- 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 for #2, who is the current owner/operator? CHAPPELL, DARLENE
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? CHAPPELL, ARTHUR
T&C Wholesale LLC
- 5) If YES, when did the change(s) in owner or operator occur? 1/4/2011

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

1 **Effective Date:** 04/25/2010 **ADMINORDER** 2009-1594-PST-E (1660 Order-Agreed Order With Denial)

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(d)

30 TAC Chapter 334, SubChapter C 334.49(c)(2)(C)

Description: Failure to inspect the cathodic system every 60 days.

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.50(d)(9)(A)(iii)

Description: Failure to perform release protection.

Classification: Minor

Citation: 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(C)

Description: Failure to properly identify the underground storage tanks.

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)(1)(B)

Description: Failure to provide records upon request.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

N/A

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



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

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT AND SHUTDOWN ORDER

DOCKET NO. 2013-0630-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 shut down and remove from service the underground storage tanks ("USTs") located at 781 Reagan Street in Barnhart, Irion County, Texas. The respondent made the subject of this Order is Darlene Chappell d/b/a Big Red Barn ("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 781 Reagan Street in Barnhart, Irion County, Texas (Facility ID No. 7623) (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 August 24, 2012, and a record review conducted on February 12, 2013, a UT Arlington PST Program investigator documented that Respondent:
 - a. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs;
 - b. Failed to provide corrosion protection for the UST system;
 - c. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring);
 - d. Failed to provide release detection for the pressurized piping associated with the UST system. Specifically, Respondent had not conducted the annual piping tightness test; and
 - e. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel.

3. By letter dated February 12, 2013, the UT Arlington PST Program 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, corrosion protection, and/or financial assurance requirements if the violations were 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 Darlene Chappell d/b/a Big Red Barn" (the "EDPRP") in the TCEQ Chief Clerk's office on July 22, 2013.
5. By letter dated July 22, 2013, sent to Respondent's last known address via certified mail, return receipt requested, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to USPS.com "Track & Confirm" delivery confirmation records, Respondent signed the certified mail "green card" on July 25, 2013.
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 January 10, 2014, 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 financial assurance, 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 financial assurance, release detection, and corrosion protection violations alleged in Findings of Fact Nos. 2.a. through 2.d. have been corrected.
9. The USTs at the Facility do not have financial assurance, release detection, and corrosion protection as required by TEX. WATER CODE § 26.3475(a), (c)(1) and (d) and 30 TEX. ADMIN. CODE §§ 37.815(a) and (b); 334.49(a)(1); 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.
10. On or about February 1, 2014, Respondent filed a petition for bankruptcy relief pursuant to Chapter 13 of the United States Code.

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 demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to provide corrosion protection for the UST system, in violation of TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(a)(1).
4. As evidenced by Finding of Fact No. 2.c., 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), in violation of TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A).

5. As evidenced by Finding of Fact No. 2.d., Respondent failed to provide release detection for the pressurized piping associated with the UST system, in violation of TEX. WATER CODE § 26.3475(a) and 30 TEX. ADMIN. CODE § 334.50(b)(2).
6. As evidenced by Finding of Fact No. 2.e., Respondent failed to maintain UST records and make them immediately available for inspection upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 334.10(b).
7. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(b)(1).
8. As evidenced by Finding of Fact No. 6, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
9. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
10. An administrative penalty in the amount of seventeen thousand two hundred eleven dollars (\$17,211.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
11. As evidenced by Finding of Fact No. 10, Respondent filed a petition for bankruptcy relief pursuant to Chapter 13 of the United States Code. The Automatic Stay imposed by the Bankruptcy Code (specifically, 11 USC § 362(a)) does not apply to the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power, by virtue of the exception set out at 11 USC § 362(b)(4). Accordingly, TCEQ (a governmental unit as defined under 11 USC § 101(27)) is expressly excepted from the automatic stay in pursuing enforcement of the State's environmental protection laws, and in seeking to liquidate its damages for such violations. So long as Respondent's bankruptcy case is not dismissed, the TCEQ will, however, not seek to execute upon any monetary judgment obtained without first approaching the United States Bankruptcy Court where Respondent's bankruptcy case is pending as necessary.
12. As evidenced by Findings of Fact Nos. 2.a. through 2.d., 3, 7, and 8, Respondent failed to correct documented violations of Commission financial assurance, 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.
13. 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 overflow protection for tanks, corrosion protection for tanks and/or piping, and/or acceptable financial assurance.
14. 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.

15. 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.
16. Good cause for revocation of the Facility's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2 and 4 through 6, and Conclusions of Law Nos. 2 through 8.
17. 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. Secure the dispensers to prevent access;
 - 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(e) and 26.352(i) 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 financial assurance, release detection, and corrosion protection violations noted in Conclusions of Law Nos. 2, 3, 4, and 5 have been corrected and Respondent obtains a new fuel delivery certificate for the Facility.
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 at the Facility 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 seventeen thousand two hundred eleven dollars (\$17,211.00) for violations of state statutes and rules of the TCEQ. The assessment 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. All checks submitted to pay the penalty assessed by this Order shall be made out to "Texas Commission on Environmental Quality" and sent with the notation "Re: Darlene Chappell d/b/a Big Red Barn; Docket No. 2013-0630-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. Demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum UST, in accordance with 30 TEX. ADMIN. CODE § 37.815;
 - c. Implement a release detection method for all USTs at the Facility and conduct the annual piping tightness test, in accordance with 30 TEX. ADMIN. CODE § 334.50;
 - d. Install a corrosion protection system and test the system, in accordance with 30 TEX. ADMIN. CODE § 334.49; and
 - e. 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:

Christopher Mayben, P.G., Waste Section Manager
Texas Commission on Environmental Quality
San Angelo Regional Office
622 S. Oakes, Suite K
San Angelo, Texas 76903-7035

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 STEVEN M. FISHBURN

STATE OF TEXAS

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COUNTY OF TRAVIS

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"My name is Steven M. Fishburn. 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 Darlene Chappell d/b/a Big Red Barn" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on July 22, 2013.

The EDPRP was mailed to Respondent's last known address on July 22, 2013, via certified mail, return receipt requested, postage prepaid. According to USPS.com "Track & Confirm" delivery confirmation records, Respondent signed the certified mail "green card" on July 25, 2013.

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 March 11, 2014, sent via first class mail and certified mail, return receipt requested article no. 70041350000275468684, 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 financial assurance, release detection, and corrosion protection were not corrected within 30 days of Respondent's receipt of the letter. According to USPS.com "Track & Confirm" delivery confirmation records, Respondent signed the certified mail "green card" on March 18, 2014.

As of the date of this affidavit, I am not aware of any evidence that indicates that Respondent has corrected the financial assurance, release detection, and corrosion protection violations noted during the August 24, 2012, investigation."

Steven M. Fishburn, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Steven M. Fishburn, 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 24th day of March, A.D. 2014.

Notary Signature



Notary without Bond