

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 38483  
DARLENE CHAPPELL DBA BIG RED BARN  
RN102063575  
Docket No. 2013-1336-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: None

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.

Interested Third-Parties: None

**Texas Register Publication Date:** February 14, 2014

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$86,015

**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 2002

**Investigation Information**

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** April 24, 2013  
**Date(s) of NOV(s):** N/A  
**Date(s) of NOE(s):** June 21, 2013

**Violation Information**

1. Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly [TEX. WATER CODE § 26.3475(d), 30 TEX. ADMIN. CODE § 334.49(c)(2)(C), and TCEQ Agreed Order Docket No. 2009-1594-PST-E, Ordering Provision No. 2.a.i.].
2. Failed to perform release detection for the UST system [30 TEX. ADMIN. CODE § 334.50(d)(9)(A)(iii), and TCEQ Agreed Order Docket No. 2009-1594-PST-E, Ordering Provision No. 2.a.ii.].
3. Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the UST registration and self-certification form [30 TEX. ADMIN. CODE § 334.8(c)(5)(C) and TCEQ Agreed Order Docket No. 2009-1594-PST-E, Ordering Provision No. 2.a.iii.].
4. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b)(1)(B) and TCEQ Agreed Order Docket No. 2009-1594-PST-E, Ordering Provision No. 2.a.iv.].

**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 corrosion protection and release detection 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.

**EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 38483**  
**DARLENE CHAPPELL DBA BIG RED BARN**  
**RN102063575**  
**Docket No. 2013-1336-PST-E**

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. Begin conducting bimonthly inspections of the cathodic protection system to ensure that the rectifier and other system components are functioning as designed;
  - c. Develop and implement improvement to the submittal practices that address the late submittal of Inventory Control Reconciliation records to the Statistical Inventory Reconciliation provider;
  - d. Permanently apply or affix tags, labels, or markings to the UST fill tubes with an identification number that matches the number listed on the UST registration and self-certification form; and
  - 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:** December 4, 2013  
**Date Green Card(s) Signed:** December 16, 2013  
**Date Answer(s) Filed:** N/A

**Contact Information**

**TCEQ Attorneys:** Mike Fishburn, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
Isabel Segarra Treviño, Public Interest Counsel, (512) 239-6363  
**TCEQ Enforcement Coordinator:** Keith Frank, Enforcement Division, (512) 239-1203  
**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:** Dana Ehrlich, Bankruptcy Attorney, P. O. Box 1831, San Angelo, Texas 76902

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# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	8-Jul-2013	<b>Screening</b>	15-Jul-2013	<b>EPA Due</b>	
	<b>PCW</b>	17-Jul-2013				

## RESPONDENT/FACILITY INFORMATION

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

## CASE INFORMATION

<b>Enf./Case ID No.</b>	38483	<b>No. of Violations</b>	4
<b>Docket No.</b>	2013-1336-PST-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Keith Frank
		<b>EC's Team</b>	Enforcement Team 7
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$71,500
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## ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	20.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$14,300
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<b>Notes</b>	Enhancement for one previous order with denial of liability.
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<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$387	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$880	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$85,800
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.3%	<b>Adjustment</b>	\$215
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	Recommended enhancement to capture the avoided cost of compliance associated with violation no. 1.
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<b>Final Penalty Amount</b>	\$86,015
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$86,015
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>Notes</b>	No deferral is recommended for Findings Orders.
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<b>PAYABLE PENALTY</b>	\$86,015
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Screening Date 15-Jul-2013

Docket No. 2013-1336-PST-E

PCW

Respondent Darlene Chappell dba Big Red Barn

Policy Revision 2 (September 2002)

Case ID No. 38483

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102063575

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Keith Frank

### Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written 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) 20%

#### >> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

#### >> Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

#### >> Compliance History Summary

Compliance History Notes

Enhancement for one previous order with denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 20%

**Screening Date** 15-Jul-2013 **Docket No.** 2013-1336-PST-E **PCW**  
**Respondent** Darlene Chappell dba Big Red Barn *Policy Revision 2 (September 2002)*  
**Case ID No.** 38483 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN102063575  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Keith Frank

**Violation Number** 1

**Rule Cite(s)** 30 Tex. Admin. Code § 334.49(c)(2)(C), Tex. Water Code § 26.3475(d), and TCEQ Agreed Order Docket No. 2009-1594-PST-E, Ordering Provision No. 2.a.i.

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

**Base Penalty** \$10,000

>> **Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				25%
	Potential	x			

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
					0%

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

**Adjustment** \$7,500

\$2,500

**Violation Events**

Number of Violation Events 13 1177 Number of violation days

<i>mark only one with an x</i>	daily	
	weekly	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

**Violation Base Penalty** \$32,500

Thirteen quarterly events are recommended based on documentation of the violation from the April 25, 2010 effective date of the Agreed Order to the July 15, 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** \$32,500

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount** \$215

**Violation Final Penalty Total** \$39,098

**This violation Final Assessed Penalty (adjusted for limits)** \$39,098

# Economic Benefit Worksheet

**Respondent** Darlene Chappell dba Big Red Barn  
**Case ID No.** 38483  
**Reg. Ent. Reference No.** RN102063575  
**Media Violation No.** 1  
**Media** Petroleum Storage Tank

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				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]				0.00	\$0	\$0	\$0
<b>ONE-TIME avoided costs [3]</b>	\$180	25-Apr-2010	24-Apr-2013	3.92	\$35	\$180	\$215
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct bimonthly inspections of the rectifier and other components of the cathodic protection system. Date Required is the effective date of the Agreed Order. Final Date is the record review date.

Approx. Cost of Compliance \$180

**TOTAL** \$215

Screening Date 15-Jul-2013

Docket No. 2013-1336-PST-E

PCW

Respondent Darlene Chappell dba Big Red Barn

Policy Revision 2 (September 2002)

Case ID No. 38483

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102063575

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Keith Frank

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.50(d)(9)(A)(iii) and TCEQ Agreed Order Docket No. 2009-1594-PST-E, Ordering Provision No. 2.a.ii.

Violation Description

Failed to perform release detection for the underground storage tank ("UST") system. Specifically, the Respondent did not provide the Inventory Control Reconciliation ("ICR") records to the Statistical Inventory Reconciliation ("SIR") provider within 15 days following the last day of the calendar month in which the analysis was performed.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 13

1177 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$13,000

Thirteen quarterly events are recommended based on documentation of the violation from the April 25, 2010 effective date of the Agreed Order to the July 15, 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 \$13,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$23

Violation Final Penalty Total \$15,639

This violation Final Assessed Penalty (adjusted for limits) \$15,639

# Economic Benefit Worksheet

**Respondent** Darlene Chappell dba Big Red Barn  
**Case ID No.** 38483  
**Reg. Ent. Reference No.** RN102063575  
**Media Violation No.** Petroleum Storage Tank  
 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	13-Aug-2009	4-Apr-2014	4.64	\$23	n/a	\$23

**Notes for DELAYED costs**  
 Estimated cost to submit ICR records to the SIR provider. Date Required is the initial investigation date.  
 Final Date is the estimated date of compliance.

### Avoided Costs

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

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** \$23

Screening Date 15-Jul-2013

Docket No. 2013-1336-PST-E

PCW

Respondent Darlene Chappell dba Big Red Barn

Policy Revision 2 (September 2002)

Case ID No. 38483

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102063575

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Keith Frank

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(C) and TCEQ Agreed Order Docket No. 2009-1594-PST-E, Ordering Provision No. 2.a.iii.

Violation Description

Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the UST registration and self-certification form.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 13

1177 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$13,000

Thirteen quarterly events are recommended based on documentation of the violation from the April 25, 2010 effective date of the Agreed Order to the July 15, 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 \$13,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$33

Violation Final Penalty Total \$15,639

This violation Final Assessed Penalty (adjusted for limits) \$15,639

# Economic Benefit Worksheet

**Respondent** Darlene Chappell dba Big Red Barn  
**Case ID No.** 38483  
**Reg. Ent. Reference No.** RN102063575  
**Media Violation No.** 3  
**Media** Petroleum Storage Tank

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	\$100	13-Aug-2009	4-Apr-2014	4.64	\$2	\$31	\$33
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

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

### Avoided Costs

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

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** \$33

Screening Date 15-Jul-2013

Docket No. 2013-1336-PST-E

PCW

Respondent Darlene Chappell dba Big Red Barn

Policy Revision 2 (September 2002)

Case ID No. 38483

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102063575

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Keith Frank

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 334.10(b)(1)(B) and TCEQ Agreed Order Docket No. 2009-1594-PST-E, Ordering Provision No. 2.a.iv.

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

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			x		

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 13 Number of violation days 1177

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$13,000

Thirteen quarterly events are recommended based on documentation of the violation from the April 25, 2010 effective date of the Agreed Order to the July 15, 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 \$13,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$116

Violation Final Penalty Total \$15,639

This violation Final Assessed Penalty (adjusted for limits) \$15,639

# Economic Benefit Worksheet

**Respondent** Darlene Chappell dba Big Red Barn  
**Case ID No.** 38483  
**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
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	13-Aug-2009	4-Apr-2014	4.64	\$116	n/a	\$116
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

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

### Avoided Costs

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

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**

\$116

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



# 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

**Date Compliance History Report Prepared:** July 15, 2013

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** July 15, 2008 to July 15, 2013

**TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.**  
**Name:** Keith Frank **Phone:** (512) 239-1203

## 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; OWNER OPERATOR since 1/4/2011
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? Chappell, Arthur; OWNER OPERATOR, 4/7/2009 to 1/3/2011  
T&C Wholesale LLC; OWNER OPERATOR, 9/30/2006 to 4/6/2009
- 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

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# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



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

**§  
§  
§  
§  
§  
§**

**BEFORE THE  
  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **DEFAULT AND SHUTDOWN ORDER**

**DOCKET NO. 2013-1336-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 TCEQ, and contain a regulated petroleum substance as defined in the rules of the TCEQ.
2. During a record review conducted on April 24, 2013, a TCEQ Central Office investigator documented that Respondent:
  - a. Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly;
  - b. Failed to perform release detection for the UST system. Specifically, Respondent did not provide the Inventory Control Reconciliation ("ICR") records to the Statistical Inventory Reconciliation ("SIR") provider within 15 days following the last day of the calendar month in which the analysis was performed;
  - c. Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the UST registration and self-certification form; and
  - d. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel.

3. By letter dated June 21, 2013, the TCEQ Central Office 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 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 December 4, 2013.
5. By letter dated December 4, 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 December 16, 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 March 11, 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 cathodic protection and release detection 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 cathodic protection and release detection violations alleged in Findings of Fact Nos. 2.a. and 2.b. have been corrected.
9. The USTs at the Facility do not have cathodic protection and release detection as required by TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(c)(2)(C) and § 334.50(d)(9)(A)(iii), 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 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 TCEQ.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly, in violation of TEX. WATER CODE § 26.3475(d), 30 TEX. ADMIN. CODE § 334.49(c)(2)(C), and TCEQ Agreed Order Docket No. 2009-1594-PST-E, Ordering Provision No. 2.a.i.
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to perform release detection for the UST system, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(9)(A)(iii), and TCEQ Agreed Order Docket No. 2009-1594-PST-E, Ordering Provision No. 2.a.ii.
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of

- the fill tube according to the UST registration and self-certification form, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(C) and TCEQ Agreed Order Docket No. 2009-1594-PST-E, Ordering Provision No. 2.a.iii.
5. As evidenced by Finding of Fact No. 2.d., 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)(1)(B) and TCEQ Agreed Order Docket No. 2009-1594-PST-E, Ordering Provision No. 2.a.iv.
  6. 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).
  7. 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.
  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 TCEQ'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 eighty-six thousand fifteen dollars (\$86,015.00) 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. 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 not seek to execute upon any monetary judgment obtained without first approaching the United States Bankruptcy Court where the Respondent's bankruptcy case is pending as necessary.
  11. As evidenced by Findings of Fact Nos. 2.a. and 2.b., 3, 7, and 8, Respondent failed to correct documented violations of TCEQ cathodic protection and release detection 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.
  12. 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 TCEQ regulatory requirements relating to release detection for tanks and/or piping, spill and/or overfill protection for tanks, cathodic protection for tanks and/or piping, and/or acceptable financial assurance.
  13. 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.

14. 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.
15. 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 7.
16. 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 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 corrosion protection and release detection violations noted in Conclusions of Law Nos. 2 and 3 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 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.
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 in accordance with 30 TEX. ADMIN. CODE §§ 334.7 and 334.8.
5. 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
6. 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., 4 and 5.

7. 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
8. Respondent is assessed an administrative penalty as set forth in Conclusions of Law Nos. 9 and 10, above, 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. 2013-1336-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. Begin conducting bimonthly inspections of the cathodic protection system to ensure that the rectifier and other system components are functioning as designed, in accordance with 30 TEX. ADMIN. CODE § 334.49;
  - c. Develop and implement improvement to the submittal practices that address the late submittal of ICR to the SIR provider, in accordance with 30 TEX. ADMIN. CODE § 334.50;
  - d. Permanently apply or affix tags, labels, or markings to the UST fill tubes with an identification number that matches the number listed on the UST registration and self-certification form, in accordance with 30 TEX. ADMIN. CODE § 334.8; and
  - 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

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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 December 4, 2013.

The EDPRP was mailed to Respondent's last known address on December 4, 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 December 16, 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. 70041350000275469070, 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 cathodic protection and release detection 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 March 18, 2014.

As of the date of this affidavit, I am not aware of any evidence that indicates that Respondent has corrected the cathodic protection and release detection violations noted during the April 24, 2013, record review."

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 24<sup>th</sup> day of March, A.D. 2014.

Notary Signature



Notary without Bond