

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 46880  
Paradise Management, Inc. d/b/a Zarzamora Express  
RN101767598  
Docket No. 2013-0972-PST-E

**Order Type:**

Default Order

**Media:**

PST

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

1719 South Zarzamora Street, San Antonio, Bexar County

**Type of Operation:**

convenience store with retail sales of gasoline

**Other Significant Matters:**

Additional Pending Enforcement Actions: None  
Past-Due Penalties: \$9,103 (2013-0791-PST-E)  
Past-Due Fees: None  
Other: None  
Interested Third-Parties: None

**Texas Register Publication Date:** January 16, 2015

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$10,959

**Total Paid to General Revenue:** \$0

**Total Due to General Revenue:** \$10,959

**Compliance History Classifications:**

Person/CN –Unclassified

Site/RN – Unclassified

**Major Source:** No

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** September 2011

**Investigation Information**

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** January 29, 2013  
**Date(s) of NOV(s):** N/A  
**Date(s) of NOE(s):** June 14, 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 petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].
2. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A)].
3. 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)].
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)].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**

Respondent no longer operates the Facility as of October 1, 2013.

**Technical Requirements:**

N/A

**Litigation Information**

**Date Petition(s) Filed:** October 3, 2013; December 12, 2013  
**Date Green Card(s) Signed:** Unclaimed; December 16, 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:** Rebecca Boyett, Enforcement Division, (512) 239-2503

**TCEQ Regional Contact:** Cameron Lopez, San Antonio Regional Office, (210) 403-4044

**Respondent Contact:** Mohammad Adil, Director, Paradise Management, Inc., 2600 Southwest Freeway, Suite 1000, Houston, Texas 77098

**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

<b>DATES</b>	<b>Assigned</b>	15-Apr-2013	<b>Screening</b>	22-Apr-2013	<b>EPA Due</b>	
	<b>PCW</b>	19-Aug-2013				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Paradise Management, Inc. dba Zarzamora Express		
<b>Reg. Ent. Ref. No.</b>	RN101767598		
<b>Facility/Site Region</b>	13-San Antonio	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	46880	<b>No. of Violations</b>	3
<b>Docket No.</b>	2013-0972-PST-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Brianna Carlson
		<b>EC's Team</b>	Enforcement Team 7
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$8,750
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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>	0.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$0
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<b>Notes</b>	No adjustment for compliance history.
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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	\$2,303	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$4,098	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$8,750
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	25.2%	<b>Adjustment</b>	\$2,209
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	Enhancement for avoided costs of compliance associated with violation nos. 1 and 2.
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<b>Final Penalty Amount</b>	\$10,959
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$10,959
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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>	Deferral not offered for non-expedited settlement.
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<b>PAYABLE PENALTY</b>	\$10,959
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**Screening Date** 22-Apr-2013

**Docket No.** 2013-0972-PST-E

**PCW**

**Respondent** Paradise Management, Inc. dba Zarzamora Express

Policy Revision 3 (September 2011)

**Case ID No.** 46880

PCW Revision August 3, 2011

**Reg. Ent. Reference No.** RN101767598

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** Brianna Carlson

### 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> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of 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**

No adjustment for compliance history.

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

>> **Final Compliance History Adjustment**

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

<b>Screening Date</b>	22-Apr-2013	<b>Docket No.</b>	2013-0972-PST-E	<b>PCW</b>
<b>Respondent</b>	Paradise Management, Inc. dba Zarzamora Express		Policy Revision 3 (September 2011)	
<b>Case ID No.</b>	46880	PCW Revision August 3, 2011		
<b>Reg. Ent. Reference No.</b>	RN101767598			
<b>Media [Statute]</b>	Petroleum Storage Tank			
<b>Enf. Coordinator</b>	Brianna Carlson			
<b>Violation Number</b>	1			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 37.815(a) and (b)			
<b>Violation Description</b>	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 petroleum underground storage tanks ("USTs").			
<b>Base Penalty</b>	\$25,000			
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
<b>OR</b>	<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor
	Actual			
	Potential			
				<b>Percent</b> 0.0%
<b>&gt;&gt; Programmatic Matrix</b>				
	Falsification	Major	Moderate	Minor
		x		
				<b>Percent</b> 5.0%
<b>Matrix Notes</b>	100% of the rule requirement was not met.			
				<b>Adjustment</b> \$23,750
\$1,250				
<b>Violation Events</b>				
	Number of Violation Events	3	365	Number of violation days
<i>mark only one with an x</i>	daily			
	weekly			
	monthly			
	quarterly			
	semiannual			
	annual			
	single event		x	
				<b>Violation Base Penalty</b> \$3,750
	Three single events are recommended for the three USTs at the Facility.			
<b>Good Faith Efforts to Comply</b>				
		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.		
				<b>Violation Subtotal</b> \$3,750
<b>Economic Benefit (EB) for this violation</b>				
<b>Statutory Limit Test</b>				
	Estimated EB Amount	\$2,079	Violation Final Penalty Total	\$4,697
<b>This violation Final Assessed Penalty (adjusted for limits)</b>				\$4,697

# Economic Benefit Worksheet

**Respondent** Paradise Management, Inc. dba Zarzamora Express  
**Case ID No.** 46880  
**Reg. Ent. Reference No.** RN101767598  
**Media Violation No.** 1

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]	\$1,980	29-Jan-2012	29-Jan-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 cost to provide financial assurance for three petroleum USTs (\$660 per tank). The date required is one year prior to the investigation date, and the final date is the investigation date.

Approx. Cost of Compliance \$1,980

**TOTAL** \$2,079

Screening Date 22-Apr-2013

Docket No. 2013-0972-PST-E

PCW

Respondent Paradise Management, Inc. dba Zarzamora Express

Policy Revision 3 (September 2011)

Case ID No. 46880

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101767598

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Brianna Carlson

Violation Number 2

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

Violation Description

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

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

83 Number of violation days

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

Violation Base Penalty \$3,750

One quarterly event is recommended based on documentation of the violation during the January 29, 2013 investigation to the April 22, 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 \$201

Violation Final Penalty Total \$4,697

This violation Final Assessed Penalty (adjusted for limits) \$4,697

# Economic Benefit Worksheet

**Respondent** Paradise Management, Inc. dba Zarzamora Express  
**Case ID No.** 46880  
**Reg. Ent. Reference No.** RN101767598  
**Media Violation No.** 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				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	29-Jan-2013	10-Jan-2014	0.95	\$71	n/a	\$71

Notes for DELAYED costs

Estimated delayed cost of conducting monthly inventory control and reconciliation. The date required is the investigation date, and the final date is the estimated compliance date.

### 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)	\$118	29-Jan-2012	13-Feb-2013	1.96	\$12	\$118	\$130

Notes for AVOIDED costs

Estimated avoided cost of conducting the annual line leak detector and line tightness tests. The date required is one year prior to the investigation date, and the final date is the date of compliance.

Approx. Cost of Compliance

\$1,618

**TOTAL**

\$201

Screening Date 22-Apr-2013

Docket No. 2013-0972-PST-E

PCW

Respondent Paradise Management, Inc. dba Zarzamora Express

Policy Revision 3 (September 2011)

Case ID No. 46880

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101767598

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Brianna Carlson

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 334.10(b)

Violation Description

Failed to maintain UST records and make them immediately available for 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

83 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 based on documentation of the violation during the January 29, 2013 investigation.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

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

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$24

Violation Final Penalty Total \$1,566

This violation Final Assessed Penalty (adjusted for limits) \$1,566

# Economic Benefit Worksheet

**Respondent** Paradise Management, Inc. dba Zarzamora Express  
**Case ID No.** 46880  
**Reg. Ent. Reference No.** RN101767598  
**Media Violation No.** 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	\$500	29-Jan-2013	10-Jan-2014	0.95	\$24	n/a	\$24
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 date of the investigation, and the final date is the estimated date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

**TOTAL**

\$24

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 CN603553223, RN101767598, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

**Customer, Respondent, or Owner/Operator:** CN603553223, Paradise Management, Inc.      **Classification:** UNCLASSIFIED      **Rating:** -----

**Regulated Entity:** RN101767598, ZARZAMORA EXPRESS      **Classification:** UNCLASSIFIED      **Rating:** -----

**Complexity Points:** 3      **Repeat Violator:** N/A

**CH Group:** 14 - Other

**Location:** 1719 S ZARZAMORA ST SAN ANTONIO, TX 78207-7451, BEXAR COUNTY

**TCEQ Region:** REGION 13 - SAN ANTONIO

**ID Number(s):** **PETROLEUM STORAGE TANK REGISTRATION**      REGISTRATION 18230

**Compliance History Period:** September 01, 2007 to August 31, 2012      **Rating Year:** 2012      **Rating Date:** 09/01/2012

**Date Compliance History Report Prepared:** April 26, 2013

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** April 26, 2008 to April 26, 2013

**TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.**

**Name:** Rebecca Boyett      **Phone:** (512) 239-2503

## 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? NO
- 3) If YES for #2, who is the current owner/operator? N/A
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If YES, when did the change(s) in owner or operator occur? N/A

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

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

N/A

### **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  
PARADISE MANAGEMENT, INC.  
DBA ZARZAMORA EXPRESS;  
RN101767598**

§  
§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2013-0972-PST-E**

On \_\_\_\_\_, 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. The respondent made the subject of this Order is Paradise Management, Inc. d/b/a Zarzamora Express ("Respondent").

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

### **FINDINGS OF FACT**

1. Respondent operated, as defined in 30 TEX. ADMIN. CODE § 334.2(70), an underground storage tank ("UST") system and a convenience store with retail sales of gasoline located at 1719 South Zarzamora Street in San Antonio, Bexar County, Texas (Facility ID No. 18230) (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 or contained a regulated petroleum substance as defined in the rules of the TCEQ.
2. During an investigation conducted on January 29, 2013, an 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 petroleum USTs;
  - b. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring);
  - c. Failed to provide release detection for the pressurized piping associated with the UST system. Specifically, Respondent did not conduct the line leak detector and piping tightness tests; and
  - d. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel.
3. The Executive Director recognizes that Respondent no longer operates the Facility as of October 1, 2013.
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 Paradise Management, Inc. d/b/a Zarzamora Express" (the "EDPRP") in the TCEQ Chief Clerk's office on October 3, 2013.

5. The EDPRP was mailed to Respondent's last known address on October 3, 2013, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed."
6. The Executive Director re-filed the EDPRP in the TCEQ Chief Clerk's office on December 12, 2013.
7. By letter dated December 12, 2013, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on December 16, 2013, as evidenced by the signature on the card.
8. 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.

#### **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 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 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 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).
4. As evidenced by Finding of Fact No. 2.c., 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).
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).
6. As evidenced by Findings of Fact Nos. 4 through 7, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
7. As evidenced by Finding of Fact No. 8, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
8. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within 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 ten thousand nine hundred fifty-nine dollars (\$10,959.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

10. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

### ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of ten thousand nine hundred fifty-nine dollars (\$10,959.00) for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondent's compliance with all the requirements set forth in this Order resolve only 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 violations which are not raised here.
2. The penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to TCEQ and shall be sent with the notation "Re: Paradise Management, Inc. d/b/a Zarzamora Express; Docket No. 2013-0972-PST-E" to:  

Financial Administration Division, Revenue Operations Section  
Texas Commission on Environmental Quality  
Attention: Cashier's Office, MC 214  
P.O. Box 13088  
Austin, Texas 78711-3088
3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Respondent.
5. 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.
6. 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.
7. 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.
8. 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.
9. The Chief Clerk shall provide a copy of this fully executed Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

**S I G N A T U R E   P A G E**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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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 ("TCEQ"), 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 Paradise Management, Inc. d/b/a Zarzamora Express" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on October 3, 2013.

The EDPRP was mailed to Respondent's last known address on October 3, 2013, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed."

On behalf of the Executive Director of the TCEQ, the EDPRP was re-filed in the TCEQ Chief Clerk's office on December 12, 2013.

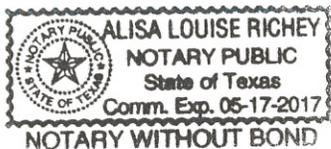
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More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."

\_\_\_\_\_  
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.

Subscribed and sworn to before me on this 16<sup>th</sup> day of December, A.D. 2014.



Alisa Louise Richey  
Notary Public, State of Texas