

**SOAH DOCKET NO. 582-16-1301  
TCEQ DOCKET NO. 2015-0727-PST-E**

**EXECUTIVE DIRECTOR OF  
THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY,  
Petitioner**

**VS.**

**CHAPMAN INC.,  
Respondent**

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**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**EXECUTIVE DIRECTOR'S EXCEPTIONS TO THE  
ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

NOW COMES the Executive Director, by and through his attorney, Ryan Rutledge, and submits the following exceptions to the Administrative Law Judge's ("ALJ") Proposed Order:

1. The Executive Director respectfully requests that ALJ's Proposed Order be amended to correct a minor typographical error by changing all instances of the word "Stop" to "Shop" in Findings of Fact Nos. 3 and 6.
2. The Executive Director respectfully requests that Findings of Fact No. 3 be amended by inserting the word "valid" before the word "current" and adding a comma between the proposed word "valid" and "current".
3. The Executive Director respectfully requests that Findings of Fact No. 5 be revised as shown below:

"Shop N Go submitted a properly completed underground storage tank registration and self-certification form and obtained a valid, current delivery certificate on April 13, 2015."

4. The Executive Director respectfully requests that Findings of Fact No. 6 be amended to correct a minor typographical error by replacing the numeral "6" with the numeral "5" so as to read the correct date of "April 6, 2015".
5. The Executive Director respectfully requests that Findings of Fact No. 18 be amended to correct a minor typographical error by replacing the letter "A" with the letter "O" in Respondent's President's last name so as to correctly read as "Olmstead".

## PRAYER

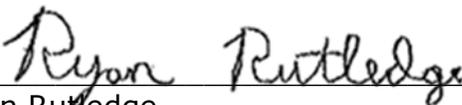
To the extent that the Administrative Law Judge's Proposal for Decision is inconsistent with these exceptions and recommended modifications, the Executive Director Exceptions to the Proposal for Decision. Copies of the Proposed Order with the recommended modifications are attached. Attachment "A" is the redline/strikeout version which clearly delineates the recommended modifications. Attachment "B" is a copy of the Proposed Order incorporating the Executive Director's recommended changes.

Respectfully submitted,  
Texas Commission on Environmental Quality

Richard A. Hyde, P.E.  
Executive Director

Caroline M. Sweeney, Deputy Director  
Office of Legal Services

Kathleen C. Decker, Director  
Litigation Division

By  \_\_\_\_\_

Ryan Rutledge  
State Bar of Texas No. 24064502  
Litigation Division, MC 175  
P.O. Box 13087  
Austin, Texas 78711-3087  
(512) 239-3400  
(512) 239-3434 (FAX)  
Ryan.Rutledge@tceq.texas.gov

## CERTIFICATE OF SERVICE

I hereby certify that on this 29<sup>th</sup> day of June, 2016, the original of the foregoing "Executive Director's Exceptions to the Administrative Law Judge's Proposed Order" ("Exceptions") were filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

I further certify that on this day true and correct copies of the foregoing Exceptions were sent to the following persons by the method of service indicated:

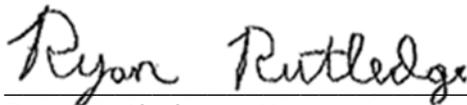
Andrew W. Olmstead, President  
CHAPMAN INC.  
622 East Lamar St. (P.O. BOX 1298)  
Sherman, TX 75090 USA

Via First Class Mail and  
Via Certified Mail,  
Article No. 7004 1350 0002 7545  
5332

The Honorable Sarah Starnes  
State Office of Administrative Hearings  
William P. Clements Building  
300 West 15th Street, Suite 502  
P.O. Box 13025  
Austin, Texas 78711-3025

Electronically Filed

I further certify that on this day a true and correct copy of the foregoing Exceptions were electronically submitted Mr. Rudy Calderon, Office of the Public Interest Counsel, Texas Commission on Environmental Quality, Austin, Texas.



Ryan Rutledge, Attorney  
Litigation Division  
Texas Commission on Environmental Quality

**ATTACHMENT A**

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



## **AN ORDER ASSESSING ADMINISTRATIVE PENALTIES AGAINST CHAPMAN, INC. TCEQ DOCKET NO. 2015-0727-PST-E SOAH DOCKET NO. 582-16-1301**

On \_\_\_\_\_, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's Preliminary Report and Petition (EDPRP) recommending that the Commission enter an enforcement order assessing administrative penalties against Chapman, Inc. (Respondent). Sarah Starnes, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted an evidentiary hearing on this matter on April 21, 2016, in Austin, Texas, and presented the proposal for decision.

The following are parties to the proceeding: The Respondent, the Commission's Executive Director (ED), and the Office of Public Interest Counsel.

After considering the ALJ's proposal for decision, the Commission adopts the following findings of fact and conclusions of law.

### **I. FINDINGS OF FACT**

1. Respondent is an oil and gas distributor in Sherman, Texas.
2. One of Respondent's customers is Shop N Go No. 6 (Shop N Go), a gas station in Sherman, Texas where fuel is stored in underground storage tanks.

3. On April 10, 2015, a TCEQ investigator conducted a routine inspection of ~~Stop~~ Shop N Go and discovered that the gas station did not have a valid, current delivery certificate as required by TCEQ regulations.
4. Shop N Go's delivery certificate had expired on the last day of September 2012.
5. ~~Shop N Go corrected this violation immediately by filling out the required form to obtain a current delivery certificate on the same date as the inspection.~~ Shop N Go submitted a properly completed underground storage tank registration and self-certification form and obtained a valid, current delivery certificate on April 13, 2015.
6. Respondent made 144 fuel deliveries to ~~Stop~~ Shop N Go between April 12, 2014, and April 6, ~~2016~~2015, while the delivery certificate was expired.
7. On April 30, 2015, the ED issued a Notice of Enforcement to Respondent.
8. Promptly after learning of the violation, Respondent implemented new procedures to ensure that fuel deliveries are only made to customers with valid, current delivery certificates for their underground storage tanks.
9. Respondent has made good-faith efforts to correct the violations and comply in the future.
10. On September 21, 2015, the ED issued his EDPRP.
11. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective April 1, 2014.
12. The ED recommends the imposition of an administrative penalty in the amount of \$14,735, and corrective action to bring Respondent into compliance.
13. The ALJ recommends reducing the proposed penalty by \$1,625 to adjust for Respondent's good-faith compliance efforts, for a total proposed penalty of \$13,110.
14. On October 13, 2015, Respondent requested a contested case hearing on the allegations in the EDPRP.
15. On November 23, 2015, the case was referred to SOAH for a hearing.
16. On December 4, 2015, the Commission's Chief Clerk issued notice of the preliminary hearing to all parties, which included the date, time, and place of the hearing, the legal authority under which the hearing was being held, and the violations asserted.
17. ALJ Sarah Starnes convened the hearing on the merits on April 21, 2016, in SOAH's hearing rooms in Austin, Texas.

18. The ED was represented by staff attorney Ryan Rutledge, and Respondent appeared through its President, Andrew ~~Almstead~~Olmstead. The Office of Public Interest Counsel did not appear.
19. The record closed at the end of the hearing on April 21, 2016.

## II. CONCLUSIONS OF LAW

1. The Commission may assess an administrative penalty of up to \$25,000 a day for each violation against a person who violates a provision of the Texas Water Code within the Commission's jurisdiction or of any rule, order, or permit adopted or issued thereunder. Tex. Water Code § 7.051.
2. Respondent is subject to the Commission's enforcement authority. Tex. Water Code § 7.002.
3. Respondent was notified of the EDPRP and of the opportunity to request a hearing on the alleged violations, and the penalties and the corrective action proposed therein. Tex. Water Code § 7.055; 30 Tex. Admin. Code §§ 1.11, 70.104.
4. Respondent was properly notified of the hearing on the alleged violations and the proposed penalties and corrective action. Tex. Gov't Code §§ 2001.051, .052; Tex. Water Code § 7.058; 1 Tex. Admin. Code § 155.401; 30 Tex. Admin. Code §§ 1.11, 1.12, 39.25, 80.6.
5. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
6. The ED has the burden of proof by a preponderance of the evidence in an enforcement proceeding. 30 Tex. Admin. Code § 80.17(c).
7. As shown by the findings of fact, Respondent violated Texas Water Code § 26.3467(d) and 30 Texas Administrative Code § 334.5(b)(1)(A) by delivering fuel into an underground storage tank when the owner or operator did not have a valid, current delivery certificate.
8. In determining the amount of an administrative penalty, Texas Water Code § 7.053 requires the Commission to consider several factors, including the history and extent of previous violations by the violator; the violator's degree of culpability, good faith, and economic benefit gained through the violation; the amount necessary to deter future violations; and any other matters that justice may require.
9. Based on consideration of the above findings of fact and conclusions of law, the factors set out in Texas Water Code § 7.053 and the Commission's Penalty Policy, a total

administrative penalty of \$13,110 is justified and should be assessed against Respondent, and the Respondent should be required to implement the corrective action set out below.

**NOW, THEREFORE, IT IS ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:**

1. Chapman, Inc. is assessed an administrative penalty in the amount of \$13,110 for violation of Texas Water Code § 26.3467(d) and 30 Texas Administrative Code § 334.5(b)(1)(A). The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order will completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective action or penalties for other violations that are not raised here. All checks submitted to pay the penalty assessed by this Order shall be made out to "Texas Commission on Environmental Quality." Administrative penalty payments shall be sent with the notation "Re: Chapman, Inc.; Docket No. 2015-0727-PST-E" to:

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

2. Within 30 days after the effective date of this Order, Respondent shall develop and implement training procedures for fuel delivery personnel to verify that the owner and operator of a underground storage tank system possesses a valid, current, TCEQ delivery certificate prior to depositing fuel in the underground storage tank system, in accordance with 30 Texas Administrative Code § 334.5.
3. Within 45 days after the effective date of this Order, Respondent shall submit written certification of compliance with Ordering Provision No. 2. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by Respondent, 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  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

and

Waste Section Manager  
Dallas/Fort Worth Regional Office  
Texas Commission on Environmental Quality  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

4. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas 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 Commission Order.
5. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
6. The effective date of this Order is the date the Order is final, as provided by 30 Texas Administrative Code § 80.273 and Texas Government Code § 2001.144.
7. As required by Texas Water Code § 7.059, the Commission’s Chief Clerk shall forward a copy of this Order to Respondent.
8. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

Issue Date:

**TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

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**Bryan W. Shaw, Ph.D., Chairman for the Commission**

**ATTACHMENT B**

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



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2. One of Respondent's customers is Shop N Go No. 6 (Shop N Go), a gas station in Sherman, Texas where fuel is stored in underground storage tanks.

3. On April 10, 2015, a TCEQ investigator conducted a routine inspection of Shop N Go and discovered that the gas station did not have a valid, current delivery certificate as required by TCEQ regulations.
4. Shop N Go's delivery certificate had expired on the last day of September 2012.
5. Shop N Go submitted a properly completed underground storage tank registration and self-certification form and obtained a valid, current delivery certificate on April 13, 2015.
6. Respondent made 144 fuel deliveries to Shop N Go between April 12, 2014, and April 6, 2015, while the delivery certificate was expired.
7. On April 30, 2015, the ED issued a Notice of Enforcement to Respondent.
8. Promptly after learning of the violation, Respondent implemented new procedures to ensure that fuel deliveries are only made to customers with valid, current delivery certificates for their underground storage tanks.
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8. In determining the amount of an administrative penalty, Texas Water Code § 7.053 requires the Commission to consider several factors, including the history and extent of previous violations by the violator; the violator's degree of culpability, good faith, and economic benefit gained through the violation; the amount necessary to deter future violations; and any other matters that justice may require.
9. Based on consideration of the above findings of fact and conclusions of law, the factors set out in Texas Water Code § 7.053 and the Commission's Penalty Policy, a total administrative penalty of \$13,110 is justified and should be assessed against Respondent, and the Respondent should be required to implement the corrective action set out below.

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

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Enforcement Division, MC 149A  
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and

Waste Section Manager  
Dallas/Fort Worth Regional Office  
Texas Commission on Environmental Quality  
2309 Gravel Drive  
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4. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas 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 Commission Order.
5. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
6. The effective date of this Order is the date the Order is final, as provided by 30 Texas Administrative Code § 80.273 and Texas Government Code § 2001.144.
7. As required by Texas Water Code § 7.059, the Commission's Chief Clerk shall forward a copy of this Order to Respondent.
8. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

Issue Date:

**TEXAS COMMISSION ON  
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**Bryan W. Shaw, Ph.D., Chairman for the Commission**