EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-2012-PST-E **TCEQ ID:** RN102349396 **CASE NO.:** 31773

RESPONDENT NAME: Jalisco, Ltd. dba Fiesta

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	X PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Fiesta, 140 East Edinburg Avenue, Elsa, Hidalgo County

TYPE OF OPERATION: Convenience store with retail sales of gasoline

SMALL BUSINESS: __X__ **Yes** ____ **No**

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on April 30, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Ms. Judy Kluge, Enforcement Division, Enforcement Team 6, MC R-04, (817) 588-5825; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896
TCEQ Central Office Investigator: Mr. Rob Norris, Financial Administration Division, Revenue Section, MC 184, (512) 239-6239
Respondent: Mr. Jose Quiroga, Vice President, Jalisco, Ltd., P.O. Box 2899, Edinburg, Texas 78540
Ms. Julie Crockett Graham, Registered Agent, Jalisco, Ltd., 2300 West Pike Boulevard, Suite 300, Weslaco, Texas 78596
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint __ Routine __ Enforcement Follow-up _X_ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** November 2, 2006 **Date of NOE Relating to this Case:** November 14, 2006 (NOE) **Background Facts:** This was a routine record review. One violation was documented. **WASTE** 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"). Specifically, one of the four USTs at the Facility did not have insurance coverage [30 TEX. ADMIN. CODE § 37.815(a) and (b)].	**Total Assessed:** $1,000 **Total Deferred:** $200 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid (Due) to General Revenue:** $100 (remaining $700 to be paid in 7 monthly payments of $100 each) **Site Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Person Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that Jalisco has obtained financial assurance for all USTs at the Facility as of January 5, 2007.

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision November 15, 2006*

TCEQ

DATES					
Assigned	20-Nov-2006				
PCW	22-Jan-2007	Screening	21-Nov-2006	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Jalisco, Ltd. dba Fiesta		
Reg. Ent. Ref. No.	RN102349396		
Facility/Site Region	15-Harlingen	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	31773	No. of Violations	1
Docket No.	2006-2012-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Patricia Chawla
Multi-Media		EC's Team	EnforcementTeam 7
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* $1,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

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

Notes: No adjustment for compliance history.

Culpability — No — 0% Enhancement — *Subtotal 4* $0

Notes: The respondent does not meet the culpability criteria.

Good Faith Effort to Comply — 0% Reduction — *Subtotal 5* $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.

0% Enhancement* — *Subtotal 6* $0

**Capped at the Total EB $ Amount*

Total EB Amounts	$683
Approx. Cost of Compliance	$650

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $1,000

OTHER FACTORS AS JUSTICE MAY REQUIRE — *Adjustment* $0

Reduces or enhances the Final Subtotal by the indicated percentage. *(Enter number only; e.g. -30 for -30%.)*

Notes:

Final Penalty Amount $1,000

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $1,000

DEFERRAL — 20% Reduction — *Adjustment* -$200

Reduces the Final Assessed Penalty by the indicted percentage. *(Enter number only; e.g. 20 for 20% reduction.)*

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY $800

Screening Date	21-Nov-2006	Docket No. 2006-2012-PST-E	PCW
Respondent	Jalisco, Ltd. dba Fiesta		Policy Revision 2 (September 2002)
Case ID No.	31773		PCW Revision November 15, 2006
Reg. Ent. Reference No.	RN102349396		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Patricia Chawla		

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which notices were submitted*)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%
		Please Enter Yes or No	
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes: No adjustment for compliance history.

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

Screening Date	21-Nov-2006	**Docket No.** 2006-2012-PST-E	**PCW**
Respondent	Jalisco, Ltd. dba Fiesta		*Policy Revision 2 (September 2002)*
Case ID No.	31773		*PCW Revision November 15, 2006*
Reg. Ent. Reference No.	RN102349396		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Patricia Chawla		

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 37.815(a) and (b)

Violation Description 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. Specifically, one of the four USTs at the Facility did not have insurance coverage.

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: 1

256 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $1,000

One single event (one event per tank) is recommended based on documentation of the violation during the November 2, 2006 record review date.

Economic Benefit (EB) for this violation

Estimated EB Amount $683

Statutory Limit Test

Violation Final Penalty Total $1,000

This violation Final Assessed Penalty (adjusted for limits) $1,000

Economic Benefit Worksheet

Respondent: Jalisco, Ltd. dba Fiesta
Case ID No.: 31773
Reg. Ent. Reference No.: RN102349396
Media: Petroleum Storage Tank
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	$0	$0	$0
Buildings				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Engineering/construction				0.0	$0	$0	$0
Land				0.0	$0	n/a	$0
Record Keeping System				0.0	$0	n/a	$0
Training/Sampling				0.0	$0	n/a	$0
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs				0.0	$0	n/a	$0
Other (as needed)				0.0	$0	n/a	$0
Notes for DELAYED costs							
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	$0	$0	$0
Personnel				0.0	$0	$0	$0
Inspection/Reporting/Sampling				0.0	$0	$0	$0
Supplies/equipment				0.0	$0	$0	$0
Financial Assurance [2]	$650	24-Apr-2006	5-Jan-2007	1.0	$33	$650	$683
ONE-TIME avoided costs [3]				0.0	$0	$0	$0
				0.0	$0	$0	$0
Notes for AVOIDED costs	Estimated cost to provide financial assurance for one petroleum UST ($650 per tank). The Date Required is the date of ownership change and the Final Date is the compliance date.						
Approx. Cost of Compliance	$650				TOTAL	$683	

Compliance History

Customer/Respondent/Owner-Operator:	CN602680902	Jalisco, Ltd.	Classification: AVERAGE BY DEFAULT	Rating: 3.01
Regulated Entity:	RN102349396	FIESTA	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	18425	
Location:	140 E EDINBURG AVE, ELSA, TX, 78543		Rating Date: September 01 06	Repeat Violator: NO
TCEQ Region:	REGION 15 - HARLINGEN			
Date Compliance History Prepared:	November 30, 2006			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	November 30, 2001 to November 30, 2006			

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

Name: Patricia Chawla Phone: 512-239-0739

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? Yes
3. If Yes, who is the current owner? Jalisco, Ltd.
4. if Yes, who was/were the prior owner(s)? FFP Operating Partners, L.P.
5. When did the change(s) in ownership occur? 04/24/2006

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

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

N/A

C. Chronic excessive emissions events.

N/A

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

1 11/14/2006 (518262)

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

N/A

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
JALISCO, LTD. DBA FIESTA	§	
RN102349396	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2006-2012-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Jalisco, Ltd. dba Fiesta ("Jalisco") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Jalisco appear before the Commission and together stipulate that:

1. Jalisco owns and operates a convenience store with retail sales of gasoline at 140 East Edinburg Avenue in Elsa, Hidalgo County, Texas (the "Facility").

2. Jalisco's four underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.

3. The Commission and Jalisco agree that the Commission has jurisdiction to enter this Agreed Order, and that Jalisco is subject to the Commission's jurisdiction.

4. Jalisco received notice of the violation alleged in Section II ("Allegations") on or about November 19, 2006.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Jalisco of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of One Thousand Dollars ($1,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Jalisco has paid One Hundred Dollars ($100) of the administrative penalty and Two Hundred Dollars ($200) is deferred contingent upon Jalisco's timely and satisfactory compliance with all the terms of this

Agreed Order. If Jalisco fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require Jalisco to pay all or part of the deferred penalty.

The remaining amount of Seven Hundred Dollars ($700) of the administrative penalty shall be payable in seven monthly payments of One Hundred Dollars ($100) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If Jalisco fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of Jalisco to meet the payment schedule of this Agreed Order constitutes the failure by Jalisco to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

8. The Executive Director of the TCEQ and Jalisco have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. The Executive Director recognizes that Jalisco has obtained financial assurance for all USTs at the Facility as of January 5, 2007.

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

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

12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, Jalisco is alleged to have 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), as documented during a record review conducted on November 2, 2006. Specifically, one of the four USTs at the Facility did not have insurance coverage.

III. DENIALS

Jalisco generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Jalisco pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Jalisco's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Jalisco, Ltd. dba Fiesta, Docket No. 2006-2012-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. The provisions of this Agreed Order shall apply to and be binding upon Jalisco. Jalisco is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

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

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

5. This Agreed Order, issued by the Commission, shall not be admissible against Jalisco in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

6. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Jalisco, or three days after the date on which the Commission mails notice of the Order to Jalisco, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

For the Executive Director

Date 6/4/07

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Signature

Date 1-29-07

Jase Orozco

Name (Printed or typed)
Authorized Representative of
Jahsco, Ltd. dba Fiesta

Vice President

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order