

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

**DOCKET NO.: 2004-0716-PST-E TCEQ ID NOS.: RN102345097 AND 18552 CASE NO.: 15652
RESPONDENT NAME: CRUZ MENDEZ DBA NEW WAY**

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	

CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 4306 West Marshall Avenue, Longview, Gregg County

TYPE OF OPERATION: Convenience store with retail sales of gasoline

SMALL BUSINESS: Yes No

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

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 July 15, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Robert R. Mosley, Litigation Division, MC 175, (512) 239-0627
Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873

TCEQ Enforcement Coordinator: Mr. Epifanio Villarreal, Waste Section, MC R-13, (210) 490-3096

TCEQ Regional Contact: Mr. Michael Brashear, Tyler Regional Office, MC R-5, (903) 535-5176

Respondent: Mr. Cruz Mendez, Owner, New Way, 113 Avenue C, Longview, Texas 75604

Respondent's Attorney: Not represented by counsel.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Dates of Complaints Relating to this Case: None</p> <p>Dates of Investigations Relating to this Case: January 9, 2004</p> <p>Dates of NOE Relating to this Case: March 5, 2004 (NOE)</p> <p>Background Facts: An EDRP was filed December 17, 2004. The Respondent filed an answer on January 14, 2005. The case was referred to SOAH on March 8, 2005. A signed Agreed Order was received December 16, 2005.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to have a release detection method capable of detecting a release from any portion of the UST system which contains regulated substances including tanks, piping and other ancillary equipment [TEX. WATER CODE §§ 26.3475(a) and 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(a)(1)(A)]. Failed to have overfill prevention equipment for five USTs [TEX. WATER CODE § 26.3475(c)(2) and 30 TEX. ADMIN. CODE § 334.51(b)(2)(C)]. Failed to check the impressed current corrosion protection system once every 60 days [30 TEX. ADMIN. CODE § 334.49(c)(2)(C) and (c)(4)]. Failed to conduct effective manual or automatic inventory control procedures for all USTs at a retail service station [30 TEX. ADMIN. CODE § 334.48(c)]. 	<p>Initial Calculated Penalty: \$17,000</p> <p>Total Assessed: \$16,500*</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid/Due to General Revenue: \$285/\$16,215</p> <p>The Respondent has paid \$285 of the administrative penalty. The remaining amount of \$16,215 of the administrative penalty shall be payable in 47 monthly payment of \$345 each.</p> <p>Site Compliance History Classification: N/A</p> <p>Person Compliance History Classification: N/A</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>*Explanation of Initial Calculated Penalty Reduction: The proposed penalty was reduced to \$16,500 due to risk of litigation.</p>	<p>Corrective Action Taken</p> <p>The Executive Director recognizes that the Respondent obtained overfill prevention equipment in response to this enforcement action.</p> <p>Ordering Provisions</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Immediately: <ol style="list-style-type: none"> Begin conducting effective manual or automatic inventory control procedures; and Begin checking the impressed current corrosion protection system one every 60 days and recording the readings. Within 30 days, ensure that the UST system has a release detection method capable of detecting a release from any portion of the UST system which contains regulated substances including tanks, piping and other ancillary equipment. Within 90 days, submit written certification demonstrating compliance.



Penalty Calculation Worksheet (PCW)

DATES	Assigned	19-Apr-2004	Screening	14-May-2004	Priority Due	18-Jun-2004	EPA Due	
	PCW	20-Jul-2005						

RESPONDENT/FACILITY INFORMATION	
Respondent	Cruz Mendez dba New Way
Reg. Ent. Ref. No.	RN102345097
Additional ID No(s)	PST Facility ID No. 18552
Facility/Site Region	5-Tyler <input type="button" value="<"/>
Major/Minor Source	Minor Source <input type="button" value="<"/>

CASE INFORMATION			
Enf./Case ID No.	15652	No. of Violations	4
Docket No.	2004-0716-PST-E	Order Type	1660 without deferral <input type="button" value="<"/>
Case Priority	3 <input type="button" value="<"/>	Enf. Coordinator	Carolyn V. Lind
Media Program(s)	Petroleum Storage Tank <input type="button" value="<"/>	EC's Team	Enforcement Team 1 <input type="button" value="<"/>
Multi-Media			
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** \$17,000

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 **Subtotal 2, 3, & 7** \$0

Notes No change due to Average Performer classification.

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 EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with a small x)

Notes The Respondent is not yet compliant.

Economic Benefit 0% Enhancement* **Subtotal 6** \$0

Total EB Amounts	\$722	<i>*Capped at the Total EB \$ Amount</i>
Approx. Cost of Compliance	\$7,250	

SUM OF SUBTOTALS 1-7 **Final Subtotal** \$17,000

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 \$17,000

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$17,000

DEFERRAL **Reduction** **Adjustment** \$0

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

Notes

This is not an expedited case.

PAYABLE PENALTY \$17,000

Screening Date 14-May-2004

Docket No. 2004-0716-PST-E

PCW

Respondent Cruz Mendez dba New Way

Policy Revision 2 (September 2002)

Case ID No. 15652

PCW Revision December 10, 2004

Reg. Ent. Reference No. RN102345097

Additional ID No(s). PST Facility ID No. 18552

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Carolyn V. Lind

Site Address 4306 West Marshall Avenue, Longview (Gregg County), Texas

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	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%
<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) 0%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No change due to Average Performer classification.

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

Screening Date 14-May-2004

Docket No. 2004-0716-PST-E

PCW

Respondent Cruz Mendez dba New Way

Policy Revision 2 (September 2002)

Case ID No. 15652

PCW Revision December 10, 2004

Reg. Ent. Reference No. RN102345097

Additional ID No(s). PST Facility ID No. 18552

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Carolyn V. Lind

Violation Number 1

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.50(a)(1)(A)

Secondary Rule Cite(s) Tex. Water Code §§ 26.3475(a) and 26.3475(c)(1)

Violation Description

Failed to have a release detection method capable of detecting a release from any portion of the UST system which contains regulated substances including tanks, piping and other ancillary equipment, as documented during the investigation conducted on January 9, 2004.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

		Harm			
Release		Major	Moderate	Minor	
OR	Actual				Percent
	Potential				

>> Programmatic Matrix

		Falsification	Major	Moderate	Minor	
			X			Percent 10%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective by failing to have a release detection method capable of detecting a release from any portion of the UST system which contains regulated substances.

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

Violation Events

Number of Violation Events 2

mark only one use a small x	daily	
	monthly	
	quarterly	
	semiannual	X
	annual	
	single event	

Violation Base Penalty \$2,000

Two semiannual events are recommended for failing to have a release detection system, from the date of the investigation (January 9, 2004) through the end of the settlement deadline (August 23, 2004), to make the penalty commensurate with the situation.

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount \$116

Violation Final Penalty Total \$2,000

This violation Final Assessed Penalty (adjusted for limits) \$2,000

Economic Benefit Worksheet

Respondent Cruz Mendez dba New Way
Case ID No. 15652
Reg. Ent. Reference No. RN102345097
Additional ID No(s). PST Facility ID No. 18552
Media [Statute] Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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)	\$1,500	09-Jan-2004	26-Jul-2005	1.5	\$116	n/a	\$116

Notes for DELAYED costs Approximate cost to implement a release detection method capable of detecting a release from any portion of the UST system, from the inspection date (January 9, 2004) through the date of expected compliance (July 26, 2005).

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]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$1,500

TOTAL \$116

Screening Date 14-May-2004

Docket No. 2004-0716-PST-E

PCW

Respondent Cruz Mendez dba New Way

Policy Revision 2 (September 2002)

Case ID No. 15652

PCW Revision December 10, 2004

Reg. Ent. Reference No. RN102345097

Additional ID No(s). PST Facility ID No. 18552

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Carolyn V. Lind

Violation Number

2

Primary Rule Cite(s)

30 Tex. Admin. Code § 334.51(b)(2)(C)

Secondary Rule Cite(s)

Tex. Water Code § 26.3475(c)(2)

Violation Description

Failed to have overfill prevention equipment for five USTs, as documented during the investigation conducted on January 9, 2004.

Base Penalty \$10,000

Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	X		

Percent 25%

Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent

Matrix Notes

Failure to install each UST with overfill prevention equipment could result in releases that could expose human health and the environment to significant amounts of pollutants which would exceed levels that are protective of human health and environmental receptors.

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 2

mark only one use a small x	daily	
	monthly	
	quarterly	
	semiannual	X
	annual	
single event		

Violation Base Penalty \$5,000

Two semiannual events are recommended for failing to have overfill prevention on 5 USTs, from the date of the investigation (January 9, 2004) through the end of the settlement deadline (August 23, 2004), to make the penalty commensurate with the situation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$324

Violation Final Penalty Total \$5,000

This violation Final Assessed Penalty (adjusted for limits) \$5,000

Economic Benefit Worksheet

Respondent Cruz Mendez dba New Way
Case ID No. 15652
Reg. Ent. Reference No. RN102345097
Additional ID No(s). PST Facility ID No. 18552
Media [Statute] Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs

Equipment	\$3,000	09-Jan-2004	26-Jul-2005	1.5	\$15	\$309	\$324
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: The approximate cost to install 5 automatic shut off devices (overfill prevention), from the investigation date (January 9, 2004) through the date of expected compliance (July 26, 2005).

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]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$3,000

TOTAL \$324

Screening Date 14-May-2004

Docket No. 2004-0716-PST-E

PCW

Respondent Cruz Mendez dba New Way

Policy Revision 2 (September 2002)

Case ID No. 15652

PCW Revision December 10, 2004

Reg. Ent. Reference No. RN102345097

Additional ID No(s) PST Facility ID No. 18552

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Carolyn V. Lind

Violation Number 3

Primary Rule Cite(s)

30 Tex. Admin. Code § 334.49(c)(2)(C)

Secondary Rule Cite(s)

Violation Description

Failed to check the impressed current corrosion protection system once every 60 days, as documented during the investigation conducted on January 9, 2004.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

		Falsification	Major	Moderate	Minor		
						Percent	

Matrix Notes

By failing to inspect the impressed current corrosion protection system, human health or the environment will or could be exposed to significant amounts of pollutants which would exceed levels that are protective.

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 2

mark only one use a small x	daily	
	monthly	
	quarterly	
	semiannual	X
	annual	
	single event	

Violation Base Penalty \$5,000

Two semiannual events are recommended from the date of the investigation (January 9, 2004) through the end of the settlement deadline (August 23, 2004), to make the penalty commensurate with the situation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$282

Violation Final Penalty Total \$5,000

This violation Final Assessed Penalty (adjusted for limits) \$5,000

Economic Benefit Worksheet

Respondent: Cruz Mendez dba New Way
 Case ID No. 15852
 Reg. Ent. Reference No. RN102345097
 Additional ID No(s). PST Facility ID No. 18552
 Media [Statute] Petroleum Storage Tank
 Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime	EB
						Costs	Amount

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$2,250	09-Jan-2004	26-Jul-2005	1.5	\$12	\$232	\$243
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)	\$500	09-Jan-2004	26-Jul-2005	1.5	\$39	n/a	\$39

Notes for DELAYED costs

The approximate cost (\$325 per tank) for the testing and inspection of 6 USTs, from the date of the investigation (January 9, 2004) through the date of expected compliance (July 26, 2005) and the approximate cost to implement a program to check and record the impressed current corrosion protection system once every 60 days, from the date of the investigation (January 9, 2004) through the date of expected compliance (June 26, 2005).

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]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$2,750

TOTAL \$282

Screening Date 14-May-2004

Docket No. 2004-0716-PST-E

PCW

Respondent Cruz Mendez dba New Way

Policy Revision 2 (September 2002)

Case ID No. 15652

PCW Revision December 10, 2004

Reg. Ent. Reference No. RN102345097

Additional ID No(s). PST Facility ID No. 18552

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Carolyn V. Lind

Violation Number 4

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.48(c)

Secondary Rule Cite(s)

Violation Description

Failed to conduct effective manual or automatic inventory control procedures for all underground storage tank systems at retail service stations, as documented during the investigation conducted January 9, 2004.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

		Falsification	Major	Moderate	Minor	
						Percent

Matrix Notes

By failing to conduct effective manual or automatic inventory control, human health or the environment will or could be exposed to significant amounts of pollutants which would exceed levels that are protective.

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 2

mark only one use a small x	daily	
	monthly	
	quarterly	
	semiannual	X
	annual	
	single event	

Violation Base Penalty \$5,000

Two semiannual events are recommended for failing to conduct effective inventory control, from the date of the investigation (January 9, 2004) through the end of the settlement deadline (August 23, 2004), to make the penalty commensurate with the situation.

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$5,000

This violation Final Assessed Penalty (adjusted for limits) \$5,000

Economic Benefit Worksheet

Respondent Cruz Mendez dba New Way
 Case ID No. 15652
 Reg. Ent. Reference No. RN102345097
 Additional ID No(s) PST Facility ID No. 18552
 Media [Statute] Petroleum Storage Tank
 Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Notes for AVOIDED costs							

Approx. Cost of Compliance \$0

TOTAL \$0

Compliance History

Customer/Respondent/Owner-Operator:	CN602491805	MENDEZ, CRUZ	Classification:	Rating: 0.000
Regulated Entity:	RN102345097	NEW WAY	Classification:	Site Rating: 0.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	18552
Location:	4306 W MARSHALL AVE, LONGVIEW, TX, 75604			
TCEQ Region:	REGION 05 - TYLER			
Date Compliance History Prepared:	May 19, 2004			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	May 14, 1999 to May 14, 2004			

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

Name: Carolyn V. Lind Phone: (903) 535-5145

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? MENDEZ, CRUZ
MENDEZ, CRUZ
MENDEZ, CRUZ
- 4. If Yes, who was/were the prior owner(s)? FFP Operating Partners LP
- 5. When did the change(s) in ownership occur? 05/03/2004

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.)
N/A
 - 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 ENFORCEMENT ACTION
AGAINST CRUZ MENDEZ DBA
NEW WAY; PETROLEUM
STORAGE TANK FACILITY ID
NO. 18552; REGULATED ENTITY
ID NO. RN102345097**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2004-0716-PST-E**

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Cruz Mendez dba New Way ("Mr. Mendez") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Mendez, appear before the Commission and together stipulate that:

1. Mr. Mendez owns and operates a convenience store with retail sales of gasoline located at 4306 West Marshall Avenue in Longview, Gregg County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and Mr. Mendez agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Mendez is subject to the Commission's jurisdiction.
4. Mr. Mendez received notice of the violation alleged in Section II ("Allegations") on or about March 10, 2004.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Mendez of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of sixteen thousand five hundred dollars (\$16,500.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Mendez has paid two hundred eighty-five dollars (\$285.00) of the administrative penalty. The remaining balance of sixteen thousand two hundred fifteen dollars (\$16,215.00) of the administrative penalty shall be payable in forty-seven (47) monthly payments of three hundred forty-five dollars (\$345.00) each. The first monthly payment shall be paid within 30 days after the effective date of the 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 Mr. Mendez fails to timely and satisfactorily comply with the payment requirements of the Agreed Order, including the payment schedule, the Executive Director may, at his 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 Mr. Mendez to meet the payment schedule of the Agreed Order constitutes the failure by Mr. Mendez to timely and satisfactorily comply with all of the terms of the 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 Mr. Mendez 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 Mr. Mendez has implemented the following corrective measure at the Facility in response to this enforcement action: Obtained overfill prevention equipment as confirmed by documentation faxed to the TCEQ on December 15, 2005.
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 Mr. Mendez 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

1. Mr. Mendez is alleged to have violated
 - a. TEX. WATER CODE §§ 26.3475(a) and 26.3475(c)(1), and 30 TEX. ADMIN. CODE § 334.50(a)(1)(A) by failing to have a release detection method capable of detecting a release from any portion of the UST system which contains regulated substances including tanks, piping and other ancillary equipment, as documented during an investigation on January 9, 2004;
 - b. TEX. WATER CODE § 26.3475(c)(2) and 30 TEX. ADMIN. CODE § 334.51(b)(2)(C) by failing to have overfill prevention equipment for five USTs, as documented during an investigation on January 9, 2004;
 - c. 30 TEX. ADMIN. CODE § 334.49(c)(2)(C) and (c)(4) by failing to check the impressed current corrosion protection system once every 60 days, as documented during an investigation on January 9, 2004; and
 - d. 30 TEX. ADMIN. CODE § 334.48(c) by failing to conduct effective manual or automatic inventory control procedures for all USTs at a retail service station, as documented during an investigation on January 9, 2004.

III. DENIALS

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

IV. ORDER

1. It is, therefore, ordered by the TCEQ that Mr. Mendez pay an administrative penalty as set forth in Section I, Paragraph 6 above. The imposition of this administrative penalty and Mr. Mendez'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 considering requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Mr. Cruz Mendez dba New Way, Docket No. 2004-0716-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. Mr. Mendez shall undertake the following technical requirements:
 - a. Immediately upon the effective date of the Commission Order:
 - i. Begin conducting effective manual or automatic inventory control procedures, in accordance with 30 TEX. ADMIN. CODE § 334.50(d)(1)(B); and
 - ii. Begin checking the impressed current corrosion protection system once every 60 days and recording the readings, in accordance with 30 TEX. ADMIN. CODE § 334.49.
 - b. Within 30 days after the effective date of the Commission Order ensure that the UST system has a release detection method capable of detecting a release from any portion of the UST system which contains regulated substances including tanks, piping and other ancillary equipment, in accordance with 30 TEX. ADMIN. CODE § 334.50 (Release Detection); and
 - c. Within 90 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including monthly release detection records and inventory reconciliation, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a.i. through 2.a.ii. and 2.b.

The certification shall be notarized by a State of Texas Notary Public and 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.

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Mr. Mike Brashear, Manager
Waste Section
Tyler Regional Office
Texas Commission on Environmental Quality
2916 Teague Drive
Tyler, Texas 75701

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Mendez. Mr. Mendez 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.
4. If Mr. Mendez 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, Mr. Mendez's failure to comply is not a violation of this Agreed Order. Mr. Mendez shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Mendez shall notify the Executive Director within seven days after Mr. Mendez becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. 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 Mr. Mendez shall be made in writing to the Executive Director. Extensions are not effective until Mr. Mendez receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Cruz Mendez dba New Way 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.

7. 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.

8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Mr. Cruz Mendez, or three days after the date on which the Commission mails notice of the Order to Mr. Cruz Mendez, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Cruz Mendez dba New Way
DOCKET NO. 2004-0716-PST-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

[Handwritten Signature]

For the Executive Director

10/9/06

Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that 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

[Handwritten Signature]

Date

12-16-05

J. CRUZ Mendez
Name (Printed or typed)

Authorized representative of
Cruz Mendez dba New Way

OWNER
Title