# EXECUTIVE SUMMARY - ENFORCEMENT MATTER



**DOCKET NO.: 2007-0942-PST-E TCEQ ID: RN104213053 CASE NO.: 33639**

**RESPONDENT NAME: NEL-MARK PROPERTIES, LLC DBA ANJALO FOOD MART**

| ORDER TYPE: | | |
|---|---|---|
| __1660 AGREED ORDER | __FINDINGS AGREED ORDER | __FINDINGS ORDER FOLLOWING SOAH HEARING |
| _X_FINDINGS DEFAULT ORDER | _X_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**: 7118 S. New Braunfels Ave., San Antonio, Bexar County

**TYPE OF OPERATION:** Retail service station with 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.

**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 March 24, 2008. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Ms. Anna M. Cox, Litigation Division, MC 175, (512) 239-0974
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019
**TCEQ Enforcement Coordinator:** Mr. John Shelton, Waste Enforcement Section, MC-128, (512) 239-2563
**TCEQ Regional Contact:** Mr. Tom Haberle, San Antonio Regional Office, MC R-13, (210) 403-4050
**Respondent:** Mr. Nelson Collazo, Member, Nel-Mark Properties, LLC, 2307 Rigsby Avenue, San Antonio, Texas 78222
**Respondent's Attorney:** Not represented by counsel.

## VIOLATION SUMMARY CHART:

| VIOLATION INFORMATION | PENALTY CONSIDERATIONS | CORRECTIVE ACTIONS TAKEN/REQUIRED |
|---|---|---|
| **Type of Investigation:**<br><br>__ Complaint<br>_X_ Routine<br>__ Enforcement Follow-up<br>__ Records Review<br><br>**Date of Complaint Relating to this Case:**<br>None<br><br>**Dates of Investigation Relating to this Case:**<br>February 13, 2007 and May 22, 2007<br><br>**Date of NOE Relating to this Case:**<br>May 8, 2007<br><br>**Background Facts:**<br><br>This case was referred to the Litigation Division on July 24, 2007. The EDPRP was filed on September 7, 2007. The EDFARP was filed on September 25, 2007. The Respondent failed to file an answer to the EDPRP or EDFARP, failed to request a hearing, and failed to schedule a settlement conference. By letters dated January 16, 2008, and July 16, 2008, the Respondent was given notice of TCEQ's intent to order the Facility shutdown.<br><br>**Current Compliance Status:**<br>A follow-up investigation conducted on September 5, 2008, revealed that the Facility has been closed/abandoned.<br><br>**PST:**<br><br>1. Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components were operating properly, and failed to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years [30 TEX. ADMIN. CODE § 334.49(c)(2)(C) and (c)(4) and TEX. WATER CODE § 26.3475(d)].<br><br>2. Failed to have a release detection method capable of detecting a release from any portion of the UST system which contained regulated substances including the tanks, piping, and other ancillary equipment [30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)]. | **Total Assessed:** $14,200<br><br>**Total Deferred:** $0<br>___ Expedited Order<br>___ Financial Inability to Pay<br>___SEP Conditional Offset<br><br>**Total Due to General Revenue:** $14,200<br><br>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.<br><br>**Site Compliance History Classification:**<br>__ High _X_ Average __ Poor<br><br>**Person Compliance History Classification:**<br>__ High _X_ Average __ Poor<br><br>**Major Source:** __ Yes _X_ No<br><br>**Applicable Penalty Policy:** September 2002 | **Ordering Provisions:**<br><br>The Respondent's UST delivery certificate is revoked immediately. The Respondent may submit an application for a new delivery certificate only after the Respondent has complied with all of the requirements of this order.<br><br>The Respondent shall undertake the following technical requirements:<br><br>1. Immediately, take the following steps to shut down operations of the non-compliant UST systems at the Station:<br><br>a. Cease dispensing fuel from the USTs;<br>b. Cease receiving deliveries of regulated substances into the USTs;<br>c. Padlock the dispensers;<br>d. Empty the USTs of all regulated substances; and<br>e. Temporarily remove the UST system from<br><br>2. Within 10 days, send its UST delivery certificate to TCEQ.<br><br>3. Within 15 days, submit a written report documenting the steps taken to comply with Ordering Provision Nos. 1 and 2 above.<br><br>4. If elected to permanently remove from service any UST systems at the Station:<br><br>a. Permanently remove those UST systems; and<br>b. Within 15 days, submit to the TCEQ a written report documenting compliance with such laws.<br><br>5. Prior to resuming retail sales of gasoline:<br><br>a. Inspect the rectifier and other components of the impressed current cathodic protection system and ensure that the rectifier is functioning as designed, and conduct triennial testing of the cathodic protection system;<br>b. Install and implement a release detection method for all USTs at the Station; and<br>c. Submit documentation of 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. |

| | | |
|---|---|---|
| 3. Failed to make available legible copies of all required UST records for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b)].<br><br>4. Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the UST Registration and Self-Certification Form [30 TEX. ADMIN. CODE § 334.8(c)(5)(C)].<br><br>5. 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)].<br><br>6. Failed to pay outstanding UST fees and associated late fees for TCEQ Financial Administration Account No. 0065740U for fiscal year 2007 [30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702]. | | 6. Prior to receiving deliveries of gasoline:<br><br>a. Begin maintaining all records pertaining to the UST system;<br>b. Submit payment for all outstanding fees, including any associated penalties and interest to TCEQ;<br>c. Appropriately mark the top of each fill tube or to a nonremovable point in the immediate area of the fill tube of each UST; and<br>d. Obtain a new delivery certificate from the TCEQ.<br><br>7. Within 10 days of resuming service of the USTs, submit written certification demonstrating compliance with Ordering Provision Nos. 5 and 6.<br><br>8. Upon obtaining a new delivery certificate, post in a location where the document is clearly visible at all times. |

# Penalty Calculation Worksheet (PCW)

*Policy Revision 2 (September 2002)* — *PCW Revision May 25, 2007*

TCEQ

| DATES | | | | | |
|---|---|---|---|---|---|
| Assigned | 14-May-2007 | | | | |
| PCW | 2-Dec-2008 | Screening | 14-May-2007 | EPA Due | |

| RESPONDENT/FACILITY INFORMATION | | | |
|---|---|---|---|
| Respondent | Nel-Mark Properties, LLC dba Anjalo Food Mart | | |
| Reg. Ent. Ref. No. | RN104213053 | | |
| Facility/Site Region | 13-San Antonio | Major/Minor Source | Minor |

| CASE INFORMATION | | | |
|---|---|---|---|
| Enf./Case ID No. | 33639 | No. of Violations | 6 |
| Docket No. | 2007-0942-PST-E | Order Type | 1660 |
| Media Program(s) | Petroleum Storage Tank | Enf. Coordinator | John Shelton |
| Multi-Media | | EC's Team | EnforcementTeam 6 |
| Admin. Penalty $ Limit Minimum | $0 | Maximum | $10,000 |

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** — *Subtotal 1* **$10,000**

**ADJUSTMENTS (+/-) TO SUBTOTAL 1**

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

**Compliance History** — 42% Enhancement — *Subtotals 2, 3, & 7* **$4,200**

Notes: Enhancement for one Notice of Violation with same or similar violations, one Notice of Violation without same or similar violations, one Default Order, and Poor 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 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 | $3,344 |
| Approx. Cost of Compliance | $5,150 |

**SUM OF SUBTOTALS 1-7** — *Final Subtotal* **$14,200**

**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* **$14,200**

**STATUTORY LIMIT ADJUSTMENT** — *Final Assessed Penalty* **$14,200**

**DEFERRAL** — 0% Reduction — *Adjustment* **$0**

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

Notes: Deferral not offered for non-expedited settlement.

**PAYABLE PENALTY** **$14,200**

**Screening Date** 14-May-2007 **Docket No.** 2007-0942-PST-E **PCW**

**Respondent** Nel-Mark Properties, LLC dba Anjalo Food Mart *Policy Revision 2 (September 2002)*

**Case ID No.** 33639 *PCW Revision May 25, 2007*

**Reg. Ent. Reference No.** RN104213053

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** John Shelton

# 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*) | 1 | 5% |
| | Other written NOVs | 1 | 2% |
| 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 | 1 | 25% |
| 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)*** 32%

## >> Repeat Violator (Subtotal 3)

No

***Adjustment Percentage (Subtotal 3)*** 0%

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

Poor Performer

***Adjustment Percentage (Subtotal 7)*** 10%

## >> Compliance History Summary

**Compliance History Notes**

Enhancement for one Notice of Violation with same or similar violations, one Notice of Violation without same or similar violations, one Default Order, and Poor Performer Classification.

***Total Adjustment Percentage (Subtotals 2, 3, & 7)*** 42%

**Screening Date** 14-May-2007 **Docket No.** 2007-0942-PST-E **PCW**

**Respondent** Nel-Mark Properties, LLC dba Anjalo Food Mart *Policy Revision 2 (September 2002)*

**Case ID No.** 33639 *PCW Revision May 25, 2007*

**Reg. Ent. Reference No.** RN104213053

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** John Shelton

**Violation Number** 1

**Rule Cite(s)** 30 Tex. Admin. Code § 334.49(c)(2)(c) and (c)(4), and Tex. Water Code § 26.3475(d)

**Violation Description** Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components were operating properly. Also, the respondent failed to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years.

**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** 0%

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

**Adjustment** $7,500

$2,500

## Violation Events

Number of Violation Events 1 — 90 Number of violation days

*mark only one with an x*

| | |
|---|---|
| daily | |
| monthly | |
| quarterly | x |
| semiannual | |
| annual | |
| single event | |

**Violation Base Penalty** $2,500

One quarterly event is recommended based on documentation of the violation during the February 13, 2007 investigation date to the May 14, 2007 screening date.

## Economic Benefit (EB) for this violation — Statutory Limit Test

**Estimated EB Amount** $1,219 **Violation Final Penalty Total** $3,550

**This violation Final Assessed Penalty (adjusted for limits)** $3,550

# Economic Benefit Worksheet

**Respondent** Nel-Mark Properties, LLC dba Anjalo Food Mart
**Case ID No.** 33639
**Reg. Ent. Reference No.** RN104213053
**Media** Petroleum Storage Tank
**Violation No.** 1

| Percent Interest | Years of Depreciation |
|---|---|
| 5.0 | 15 |

| Item Description | Item Cost (No commas or $) | 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) | $500 | 13-Feb-2007 | 13-Jan-2008 | 0.9 | $23 | n/a | $23 |
| Notes for DELAYED costs | Estimated costs to inspect the rectifier and other components of the impressed current cathodic protection system. The Date Required is the investigation date 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 | | | | 0.0 | $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) | $1,000 | 13-Feb-2004 | 13-Feb-2007 | 3.9 | $196 | $1,000 | $1,196 |
| Notes for AVOIDED costs | Avoided cost for completing the triennial test. The Date Required is three years before the investigation date and the Final Date is the investigation date. | | | | | | |

Approx. Cost of Compliance: $1,500

TOTAL: $1,219

**PCW**

*Policy Revision 2 (September 2002)*

*PCW Revision May 25, 2007*

**Screening Date** 14-May-2007 **Docket No.** 2007-0942-PST-E

**Respondent** Nel-Mark Properties, LLC dba Anjalo Food Mart

**Case ID No.** 33639

**Reg. Ent. Reference No.** RN104213053

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** John Shelton

**Violation Number** 2

**Rule Cite(s)** 30 Tex. Admin. Code § 334.50(a)(1)(A) and Tex. Water Code § 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 contained regulated substances including the tanks, piping, and other ancillary equipment.

**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** 0%

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

**Adjustment** $7,500

$2,500

## Violation Events

Number of Violation Events 1

90 Number of violation days

*mark only one with an x*

| | |
|---|---|
| daily | |
| monthly | |
| quarterly | x |
| semiannual | |
| annual | |
| single event | |

**Violation Base Penalty** $2,500

One quarterly event is recommended based on documentation of the violation during the February 13, 2007 investigation date to the May 14, 2007 screening date.

## Economic Benefit (EB) for this violation

**Estimated EB Amount** $69

## Statutory Limit Test

**Violation Final Penalty Total** $3,550

**This violation Final Assessed Penalty (adjusted for limits)** $3,550

# Economic Benefit Worksheet

**Respondent** Nel-Mark Properties, LLC dba Anjalo Food Mart
**Case ID No.** 33639
**Reg. Ent. Reference No.** RN104213053
**Media** Petroleum Storage Tank
**Violation No.** 2

| Percent Interest | Years of Depreciation |
|---|---|
| 5.0 | 15 |

| Item Description | Item Cost (No commas or $) | 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) | $1,500 | 13-Feb-2007 | 13-Jan-2008 | 0.9 | $69 | n/a | $69 |
| Notes for DELAYED costs | Estimated cost to provide release detection for the USTs at the Facility. 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 | | | | 0.0 | $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 $69

**Screening Date** 14-May-2007 **Docket No.** 2007-0942-PST-E **PCW**

**Respondent** Nel-Mark Properties, LLC dba Anjalo Food Mart *Policy Revision 2 (September 2002)*

**Case ID No.** 33639 *PCW Revision May 25, 2007*

**Reg. Ent. Reference No.** RN104213053

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** John Shelton

**Violation Number** 3

**Rule Cite(s)** 30 Tex. Admin. Code § 334.10(b)

**Violation Description** Failed to make available legible copies of all required UST records for inspection upon request by agency personnel.

**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

90 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 is recommended based on documentation of the violation during the February 13, 2007 investigation date.

## Economic Benefit (EB) for this violation

**Estimated EB Amount** $4

## Statutory Limit Test

**Violation Final Penalty Total** $1,420

**This violation Final Assessed Penalty (adjusted for limits)** $1,420

# Economic Benefit Worksheet

**Respondent** Nel-Mark Properties, LLC dba Anjalo Food Mart
**Case ID No.** 33639
**Reg. Ent. Reference No.** RN104213053
**Media** Petroleum Storage Tank
**Violation No.** 3

| Percent Interest | Years of Depreciation |
|---|---|
| 5.0 | 15 |

| Item Description | Item Cost (No commas or $) | 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 | $100 | 13-Feb-2007 | 13-Dec-2007 | 0.8 | $4 | n/a | $4 |
| 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 | Estimated cost to maintain the required 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 | | | | 0.0 | $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** $100

**TOTAL** $4

**Screening Date** 14-May-2007 **Docket No.** 2007-0942-PST-E **PCW**

**Respondent** Nel-Mark Properties, LLC dba Anjalo Food Mart *Policy Revision 2 (September 2002)*

**Case ID No.** 33639 *PCW Revision May 25, 2007*

**Reg. Ent. Reference No.** RN104213053

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** John Shelton

**Violation Number** 4

**Rule Cite(s)** 30 Tex. Admin. Code § 334.8(c)(5)(C)

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

**Base Penalty** $10,000

## >> Environmental, Property and Human Health Matrix

OR

| Release | Harm: Major | Moderate | Minor |
|---|---|---|---|
| Actual | | | |
| Potential | | | |

**Percent** 0%

## >>Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---|---|---|---|
| | x | | |

**Percent** 10%

Matrix Notes: 100% of the rule requirement was not met.

**Adjustment** $9,000

$1,000

## Violation Events

Number of Violation Events 1 — 90 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 is recommended based on documentation of the violation during the February 13, 2007 investigation date.

## Economic Benefit (EB) for this violation — Statutory Limit Test

**Estimated EB Amount** $5 **Violation Final Penalty Total** $1,420

**This violation Final Assessed Penalty (adjusted for limits)** $1,420

# Economic Benefit Worksheet

**Respondent** Nel-Mark Properties, LLC dba Anjalo Food Mart
**Case ID No.** 33639
**Reg. Ent. Reference No.** RN104213053
**Media** Petroleum Storage Tank
**Violation No.** 4

| Percent Interest | Years of Depreciation |
|---|---|
| 5.0 | 15 |

| Item Description | Item Cost (No commas or $) | 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) | $100 | 13-Feb-2007 | 13-Jan-2008 | 0.9 | $5 | n/a | $5 |
| Notes for DELAYED costs | Estimated cost to label the tank fill ports. 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 | | | | 0.0 | $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: $100

TOTAL: $5

**Screening Date** 14-May-2007 **Docket No.** 2007-0942-PST-E **PCW**

**Respondent** Nel-Mark Properties, LLC dba Anjalo Food Mart *Policy Revision 2 (September 2002)*

**Case ID No.** 33639 *PCW Revision May 25, 2007*

**Reg. Ent. Reference No.** RN104213053

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** John Shelton

**Violation Number** 5

**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.

**Base Penalty** $10,000

## >> Environmental, Property and Human Health Matrix

| Release | Harm: Major | Moderate | Minor |
|---|---|---|---|
| Actual | | | |
| Potential | | | |

OR

**Percent** 0%

## >>Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---|---|---|---|
| | x | | |

**Percent** 10%

Matrix Notes: 100% of the rule requiement was not met.

**Adjustment** $9,000

$1,000

## Violation Events

Number of Violation Events 3 365 Number of violation days

*mark only one with an x*

| | |
|---|---|
| daily | |
| monthly | |
| quarterly | |
| semiannual | |
| annual | |
| single event | x |

**Violation Base Penalty** $3,000

Three single events (one event per tank) are recommended based on documentation of the violation during the February 13, 2007 investigation date.

## Economic Benefit (EB) for this violation

**Estimated EB Amount** $2,048

## Statutory Limit Test

**Violation Final Penalty Total** $4,260

**This violation Final Assessed Penalty (adjusted for limits)** $4,260

# Economic Benefit Worksheet

**Respondent** Nel-Mark Properties, LLC dba Anjalo Food Mart
**Case ID No.** 33639
**Reg. Ent. Reference No.** RN104213053
**Media** Petroleum Storage Tank
**Violation No.** 5

| Percent Interest | Years of Depreciation |
|---|---|
| 5.0 | 15 |

| Item Description | 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] | $1,950 | 13-Feb-2006 | 13-Feb-2007 | 1.0 | $98 | $1,950 | $2,048 |
| ONE-TIME avoided costs [3] | | | | 0.0 | $0 | $0 | $0 |
| Other (as needed) | | | | 0.0 | $0 | $0 | $0 |
| Notes for AVOIDED costs | Estimated cost to provide financial assurance for three petroleum USTs ($650 per tank). The Date Required is one year prior to the investigation. The Final Date is the date of the investigation. | | | | | | |

**Approx. Cost of Compliance** $1,950

**TOTAL** $2,048

**Screening Date** 14-May-2007 **Docket No.** 2007-0942-PST-E **PCW**

**Respondent** Nel-Mark Properties, LLC dba Anjalo Food Mart *Policy Revision 2 (September 2002)*

**Case ID No.** 33639 *PCW Revision May 25, 2007*

**Reg. Ent. Reference No.** RN104213053

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** John Shelton

**Violation Number** 6

**Rule Cite(s)** 30 Tex. Admin. Code § 334.22(a) and Tex. Water Code § 5.702

**Violation Description** Failed to pay outstanding UST fees and associated late fees for TCEQ Financial Administration Account No. 0065740U for fiscal year 2007, as documented during a record review conducted on May 22, 2007.

**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 |
|---|---|---|---|
| | | | |

**Percent** 0%

Matrix Notes

**Adjustment** $10,000

$0

## Violation Events

Number of Violation Events

Number of violation days

*mark only one with an x*

| | |
|---|---|
| daily | |
| monthly | |
| quarterly | |
| semiannual | |
| annual | |
| single event | |

**Violation Base Penalty** $0

No additional administrative penalty was calculated for this violation as penalties and interest will be assessed on the next fee billing.

## Economic Benefit (EB) for this violation

**Estimated EB Amount** $0

## Statutory Limit Test

**Violation Final Penalty Total** $0

**This violation Final Assessed Penalty (adjusted for limits)** $0

# Economic Benefit Worksheet

**Respondent** Nel-Mark Properties, LLC dba Anjalo Food Mart
**Case ID No.** 33639
**Reg. Ent. Reference No.** RN104213053
**Media** Petroleum Storage Tank
**Violation No.** 6

| Percent Interest | Years of Depreciation |
|---|---|
| 5.0 | 15 |

| Item Description | Item Cost (No commas or $) | 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 | Not Applicable | | | | | | |
| **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 | Not Applicable | | | | | | |

Approx. Cost of Compliance: $0

TOTAL: $0

# Compliance History

| | | | | |
|---|---|---|---|---|
| Customer/Respondent/Owner-Operator: | CN603137688 | Nel-Mark Properties, LLC | Classification: POOR | Rating: 51.17 |
| Regulated Entity: | RN104213053 | ANJALO FOOD MART | Classification: POOR | Site Rating: 51.17 |
| ID Number(s): | PETROLEUM STORAGE TANK REGISTRATION | REGISTRATION | 2387 | |
| Location: | 7118 S NEW BRAUNFELS AVE, SAN ANTONIO, TX, 78223 | Rating Date: September 01 06 | Repeat Violator: NO | |
| TCEQ Region: | REGION 13 - SAN ANTONIO | | | |
| Date Compliance History Prepared: | June 20, 2007 | | | |
| Agency Decision Requiring Compliance History: | Enforcement | | | |
| Compliance Period: | June 20, 2002 to June 20, 2007 | | | |

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

Name: Shontay Wilcher Phone: (512) 239-2136

## 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? Nel-Mark Properties, LLC
4. If Yes, who was/were the prior owner(s)? Anjalo Food Mart; Collazo, Nelson A
5. When did the change(s) in ownership occur? 08/10/2005; 06/15/2005

**Components (Multimedia) for the Site :**

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

Effective Date: 05/05/2006 ADMINORDER 2004-0490-PST-E

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(b)
2D TWC Chapter 26, SubChapter A 26.3475(c)(1)
30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)
30 TAC Chapter 334, SubChapter C 334.50(b)(2)

Description: Failure to provide a method of release detection for all tanks and piping in the Underground Storage Tank (UST) system.

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(d)
30 TAC Chapter 334, SubChapter C 334.49(a)(2)

Description: Failure to operate and maintain the corrosion protection system in a manner that will ensure that corrosion protection will be continuously provided to all underground metal components of the UST system.

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(1)(B)
30 TAC Chapter 334, SubChapter A 334.7(d)(3)

Description: Failure to provide written notice to the Commission within 30 days of any changes regarding the operational status of the tank system. Specifically, the Respondent failed to notify the Commission that the tanks had changed from "in use" to "out of service" within 30 days after the facility was shut down.

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.54(b)(2)

Description: Failure to secure all UST fill tubes when the USTs have been temporarily removed from service. Specifically, the fill lids for the tank fills were not locked so as to prevent vandalism and tampering by unauthorized persons.

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 08/09/2002 (7333)

2 05/07/2003 (35117)
3 07/18/2003 (143067)
4 11/03/2003 (252531)
5 08/19/2004 (288411)
6 05/02/2007 (556055)
7 05/08/2007 (541477)

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

Date: 05/05/2003 (35117)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)

Description: The property owner has not ammended the registration to show tanks are out of service.

Date: 07/16/2003 (143067)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)

Description: The property owner has not ammended the registration to show tanks are out of service.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)(1)(A)

Description: Failure to provide records to document compliance with registration/tank status, release detection, corrosion protection and financial assurance.

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 CONCERNING NEL-MARK PROPERTIES, LLC DBA ANJALO FOOD MART; RN104213053** | §<br>§<br>§<br>§<br>§<br>§ | **BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY** |

**DEFAULT AND SHUTDOWN ORDER**
**DOCKET NO. 2007-0942-PST-E**

At its _____ agenda, 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. 5, 7, and 26, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty, corrective action of the respondent, and revocation of the respondent's fuel delivery certificate. The Commission also considered the Executive Director's Motion requesting entry of an Order requiring the respondent, Nel-Mark Properties, LLC dba Anjalo Food Mart ("Nel-Mark or Respondent"), to shutdown or remove from service the Underground Storage Tanks ("USTs") at the Nel-Mark Station Anjalo Food Mart, located at 7118 South New Braunfels Avenue, San Antonio, Bexar County, Texas.

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

## FINDINGS OF FACT

1. Nel-Mark owns a retail service station with sales of gasoline, located at 7118 South New Braunfels Avenue, San Antonio, Bexar County, Texas (the "Station").

2. The USTs at the Station contain regulated substances as defined in the Commission's rules. The USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.

3. During an inspection on February 13, 2007, a TCEQ San Antonio Regional Office investigator documented that Nel-Mark:

a. Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components were operating properly, and failed to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years;

b. Failed to have a release detection method capable of detecting a release from any portion of the UST system which contained regulated substances including the tanks, piping, and other ancillary equipment;

c. Failed to make available legible copies of all required UST records for inspection upon request by agency personnel;

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

e. 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.

4. During a record review conducted on May 22, 2007, TCEQ Financial Administration Division Staff documented that Nel-Mark failed to pay outstanding UST fees and associated late fees for TCEQ Financial Administration Account No. 0065740U for fiscal year 2007.

5. By letter dated May 8, 2007, the TCEQ San Antonio Regional Office provided Nel-Mark with notice of the violations and the TCEQ's authority to shut down and remove from service USTs not in compliance with release detection, spill and/or overfill prevention, and corrosion protection regulations if the violations were not corrected.

6. Nel-Mark received notice of the violations in paragraph 3 on or about May 13, 2007.

7. Nel-Mark received notice of the violations in paragraph 4 on or about September 15, 2007 and September 30, 2007.

8. 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 Nelson

Collazo ("Mr. Collazo") dba Anjalo Food Mart" (the "EDPRP") in the TCEQ Chief Clerk's office on September 7, 2007.

9. By letter dated September 7, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Nel-Mark with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Nel-Mark received notice of the EDPRP.

10. The Executive Director filed the "Executive Director's First Amended 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 Nel-Mark Properties, LLC dba Anjalo Food Mart" (the "EDFARP") in the TCEQ Chief Clerk's office on September 25, 2007.

11. By letter dated September 25, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Nel-Mark with notice of the EDFARP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed". The first class mail has not been returned, indicating that Nel-Mark received notice of the EDFARP.

12. More than 20 days have elapsed since Nel-Mark received notice of the EDPRP and the EDFARP, provided by the Executive Director. Nel-Mark failed to file an answer to either the EDPRP or the EDFARP, failed to request a hearing, and failed to schedule a settlement conference.

13. By letters dated January 16, 2008 and July 16, 2008, TCEQ provided Nel-Mark with notice of TCEQ's intent to order the USTs at the Station shut down and removed from service if Nel-Mark failed to correct the release detection and corrosion protection violation and had failed to demonstrate acceptable financial assurance within 30 days after Nel-Mark's receipt of the notice.

14. As of the date of entry of this Order, Nel-Mark has not submitted acceptable financial assurance and has not corrected the release detection and corrosion protection violations noted during the February 13, 2007 investigation.

15. The USTs at the Station do not have release detection and corrosion protection as required by 30 TEX. ADMIN. CODE § 334.49 and 334.50 and may be releasing petroleum products to the

environment without the knowledge of the tank owner or operator. Therefore, conditions at the Station constitute an imminent peril to public health, safety, and welfare.

## CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Nel-Mark's USTs are subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 5, 7 and 26, and the rules of the Commission.

2. As evidenced by Finding of Fact No. 3.a., Nel-Mark failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components were operating properly, and failed to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years, in violation of 30 TEX. ADMIN. CODE § 334.49(c)(2)(C) and (c)(4) and TEX. WATER CODE § 26.3475(d).

3. As evidenced by Finding of Fact No. 3.b., Nel-Mark failed to have a release detection method capable of detecting a release from any portion of the UST system which contained regulated substances including the tanks, piping, and other ancillary equipment, in violation of 30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475(c)(1).

4. As evidenced by Finding of Fact No. 3.c., Nel-Mark failed to make available legible copies of all required UST records for inspection upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 334.10(b).

5. As evidenced by Finding of Fact No. 3.d., Nel-Mark failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the UST registration and self-certification form, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(C).

6. As evidenced by Finding of Fact No. 3.e., Nel-Mark 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).

7. As evidenced by Finding of Fact No. 4, Nel-Mark failed to pay outstanding UST fees and associated late fees for TCEQ Financial Administration Account No. 0065740U for fiscal year 2007, in violation of 30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702.

8. As evidenced by Finding of Fact Nos. 8 and 9, the Executive Director has timely served Mr. Collazo with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).

9. As evidenced by Finding of Fact Nos. 10 and 11, the Executive Director has timely served Nel-Mark with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2)

10. As evidenced by Finding of Fact No. 12, Nel-Mark has failed to file a timely answer to either the EDPRP or the EDFARP, 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 Nel-Mark and assess the penalty recommended by the Executive Director.

11. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Nel-Mark for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

12. An administrative penalty in the amount of fourteen thousand two hundred dollars ($14,200.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

13. As evidenced by Finding of Fact No. 14, Nel-Mark failed to correct documented violations of Commission requirements within 30 days after Nel-Mark received notice of the violations and notice of the Executive Director's intent to shut down the Station.

14. TEX. WATER CODE §§ 26.3475(e) and 26.352(i) authorizes the Commission to order a UST owner or operator to shut down a UST system if, within 30 days after receiving notice of the violations, the owner or operator fails to correct violations of Commission regulatory requirements relating to release detection for tanks and/or piping, spill and overfill protection for tanks, and/or corrosion protection for tanks and piping, or fails to submit adequate documentation of acceptable financial assurance.

15. 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.

16. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Nel-Mark's UST delivery certificate if the Commission finds that good cause exists.

17. Good cause for revocation of Nel-Mark's UST delivery certificate exists as justified by Findings of Fact Nos. 3 through 15 and Conclusions of Law Nos. 2 through 10, and 13.

18. As evidenced by Finding of Fact No. 15, current conditions at the Station constitute an imminent peril to public health, safety and welfare. Therefore, pursuant to the Administrative Procedure Act, TEX. GOV'T CODE § 2001.144(a)(3), this Order is final and effective on the date rendered.

## ORDERING PROVISIONS

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALTIY that:

1. Immediately upon the effective date of this Order, Nel-Mark shall take the following steps to shut down operations of all USTs at the Station:

    a. Cease dispensing fuel from the USTs;

    b. Cease receiving deliveries of regulated substances into the USTs;

    c. Padlock the dispensers;

    d. Empty the USTs of all regulated substances in accordance with 30 TEX. ADMIN. CODE § 334.54(d); and

    e. Temporarily remove the USTs from service in accordance with 30 TEX. ADMIN. CODE § 334.54.

2. Nel-Mark's UST delivery certificate is revoked immediately upon the effective date of this Order. Nel-Mark may submit an application for a new delivery certificate only after Nel-Mark has complied with Ordering Provisions 1, 3, 4, 6, 8, and 9.

3. Within 10 days after the effective date of this Order, Nel-Mark shall send its UST delivery certificate to:

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

4. Within 15 days after the effective date of this Order, Nel-Mark shall submit to the Executive Director a detailed written report documenting the steps it has taken to comply with Ordering Provision Nos. 1.a. through 1.e. and 3. Nel-Mark shall submit the report to:

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

   and

   Tom Haberle, Waste Section Manager
   San Antonio Regional Office
   Texas Commission on Environmental Quality
   14250 Judson Road
   San Antonio, Texas 78233-4480

5. If Nel-Mark elects to permanently remove from service any USTs at the Station, Nel-Mark shall immediately and permanently remove the UST system in accordance with 30 TEX. ADMIN. CODE § 334.55. If Nel-Mark permanently removes any portion of the UST system from service, Nel-Mark shall, within 15 days after the effective date of this order, submit to the Commission a written report documenting compliance with 30 TEX. ADMIN. CODE § 334.55. Nel-Mark shall submit the written report to:

   Petroleum Storage Tank Registration Team, MC 138
   Texas Commission on Environmental Quality
   P.O. Box 13087
   Austin, Texas 78711-3087

6. Nel-Mark is assessed an administrative penalty in the amount of fourteen thousand two hundred dollars ($14,200.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Nel-Mark's compliance with all the terms and conditions set forth in this Order completely 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 other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Nel-Mark Properties, LLC dba Anjalo Food Mart; Docket No. 2007-0942-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

7. Nel-Mark's USTs shall remain out of service, pursuant to TEX. WATER CODE § 26.3475 and as directed by Ordering Provision Nos. 1.a. through 1.e., until such time as Nel-Mark demonstrates to the satisfaction of the Executive Director that it has corrected the violations noted in Finding of Fact Nos. 3.a through 3.e and Conclusion of Law Nos. 2 through 7 as listed herein.

8. Prior to resuming retail sales of gasoline, Nel-Mark shall:

   a. Inspect the rectifier and other components of the impressed current cathodic protection system and ensure that the rectifier is functioning as designed, and conduct triennial testing of the cathodic protection system, in accordance with 30 TEX. ADMIN. CODE § 334.49;

   b. Install and implement a release detection method for all USTs at the Station, in accordance with 30 TEX. ADMIN. CODE § 334.50; and

   c. Submit documentation that demonstrates 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 accordance with the 30 TEX. ADMIN. CODE § 37.815 to:

Mr. Rob Norris, Senior Financial Analyst
Financial Assurance Unit, MC 184
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

9. Prior to receiving deliveries of gasoline, Nel-Mark shall:

   a. Begin maintaining all records pertaining to the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.10;

   b. Submit payment for all outstanding fees, including any associated penalties and interest and with the notation, "Nel-Mark Properties, LLC dba Anjalo Food Mart, TCEQ Financial Administration Account No. 0065740U," 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

   c. Appropriately mark the top of each fill tube or to a nonremovable point in the immediate area of the fill tube of each UST, in accordance with 30 TEX. ADMIN. CODE § 334.8; and

   d. Obtain a new delivery certificate from the TCEQ.

10. Within 10 days of resuming retail sales of gasoline, Nel-Mark shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 8 and 9. The written 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

and

Tom Haberle, Waste Section Manager
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Road
San Antonio, Texas 78233-4480

11. Upon obtaining a new delivery certificate, Nel-Mark shall post the delivery certificate in a location where the document is clearly visible at all times, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii).

12. All relief not expressly granted in this Order is denied.

13. The provisions of this Order shall apply to and be binding upon Nel-Mark, and Nel-Mark is ordered to give notice of this Order to personnel who maintain day to day control of the USTs at the Station.

14. 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 Nel-Mark if the Executive Director determines that Nel-Mark is noncompliant with or in violation of any of the terms and conditions set forth in this Order.

15. This Order shall terminate five years from its effective date or when Nel-Mark demonstrates to the satisfaction of the Executive Director that it has corrected all of the violations noted herein.

16. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order is the date this decision was rendered, pursuant to TEX. GOV'T CODE § 2001.144(a)(3).

**AFFIDAVIT OF ANNA M. COX**

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

"My name is Anna M. Cox. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Nelson Collazo dba Anjalo Food Mart" (the "EDPRP") was filed with the Office of the Chief Clerk on September 7, 2007.

The EDPRP was mailed to Mr. Collazo at his last known address on September 7, 2007, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicated the respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the "Executive Director's First Amended 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 Nel-Mark Properties, LLC dba Anjalo Food Mart" (the "EDPRP") with the Office of the Chief Clerk on September 25, 2007.

The EDFARP was mailed to Nel-Mark at its last known address on September 25, 2007, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicated the respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

More than 20 days have elapsed since Nel-Mark received notice of the EDPRP and the EDFARP. Nel-Mark failed to file an answer to either the EDPRP or the EDFARP, failed to request a hearing, and failed to schedule a settlement conference.

By letter dated January 16, 2008 (Article No. 7004 2510 0003 9117 9836) and July 16, 2008 (Article No. 91 7108 2133 3935 1952 8008) sent via first class mail and certified mail, return receipt

requested, TCEQ provided Nel-Mark with notice of the TCEQ's intent to order the USTs at the Station shut down and removed from service if the violations pertaining to release detection, spill and overfill prevention equipment, corrosion protection, and/or financial assurance were not corrected within 30 days of Nel-Mark's receipt of the letter.

As of the date of this affidavit, I am not aware of any evidence that indicates that Nel-Mark has corrected the violations noted during the February 13, 2007, investigation."

Anna Cox

Anna M. Cox, Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Anna M. Cox, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 24th day of Sept., A.D., 2008.

Linda Boenig
Notary Public
State of Texas
My Commission Expires
NOVEMBER 16, 2009

Linda Boenig

Notary Signature