

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2008-1935-PST-E TCEQ ID: RN101892982 CASE NO.: 36937**

**RESPONDENT NAME: NEW WAY ENTERPRISE INC. DBA TIME OUT FOOD MART 2**

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" 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	

<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL 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:** 1000 North Velasco Street, Angleton, Brazoria County, Texas

**TYPE OF OPERATION:** Convenience store with retail sales of gasoline

**SMALL BUSINESS:**  Yes  No

**OTHER SIGNIFICANT MATTERS:** There is one complaint, alleging failed pressure decay tests, leaking nozzles, and a broken vapor valve. There is no record of additional pending enforcement actions regarding this facility location. This Respondent owes \$1,512.50 in past-due administrative penalties (2006-1537-PST-E).

**INTERESTED PARTIES:** The complainant has not expressed a desire to protest this action or speak at agenda. No one other than the ED and the Respondent expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired October 5, 2009. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Ms. Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320  
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

**TCEQ Enforcement Coordinator:** Mr. Wallace Myers, Waste Enforcement Section, MC 128, (512) 239-6580

**TCEQ Regional Contact:** Ms. Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623

**Respondent:** Mr. Yunusali Badarpura, President, New Way Enterprise Inc., 1000 N. Velasco, Angleton, Texas 77515;  
Mr. Yunusali Badarpura, President, New Way Enterprise Inc., 13602 Heron Field Ct., Houston, Texas 77059

**Respondent's Attorney:** Not represented by counsel on this enforcement matter.

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b>                  August 22, 2008</p> <p><b>Dates of Investigation Relating to this Case:</b>                  July 14, 2008 and November 25, 2008</p> <p><b>Date of NOE Relating to this Case:</b>                  November 25, 2008</p> <p><b>Background Facts:</b>                  The EDPRP was filed May 28, 2009, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on May 30, 2009. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Current Compliance Status:</b>                  Not yet in compliance. The Respondent's delivery certificate expired in May 2009.</p> <p><b>PST:</b></p> <ol style="list-style-type: none"> <li>Failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel [30 TEX. ADMIN. CODE § 115.246(7)(A) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</li> <li>Failed to verify proper operation of the Stage II equipment at least once every 12 months and vapor space manifolding and dynamic back-pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</li> <li>Failed to upgrade the Stage II equipment to on board refueling vapor recovery ("ORVR") compatible systems [30 TEX. ADMIN. CODE § 115.242(1)(C) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</li> <li>Failed to conduct effective manual or automatic inventory control procedures for the UST system [30 TEX. ADMIN. CODE § 334.48(c) and TCEQ Agreed Order Docket No. 2006-1537-PST-E, Ordering Provision No. 2.a.]</li> </ol>	<p><b>Total Assessed:</b> \$11,276</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$11,276</p> <p>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.</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Action Taken:</b> The Executive Director recognizes that Respondent submitted documentation verifying that all Stage II records are being maintained at the Station.</p> <p><b>Ordering Provisions:</b></p> <p>The Respondent's UST fuel delivery certificate is revoked immediately. Within 10 days, the Respondent shall send its UST fuel delivery certificate to the TCEQ.</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Immediately, begin conducting proper inventory control procedures for all USTs at the Station.</li> <li>Within 30 days:                         <ol style="list-style-type: none"> <li>Conduct the required annual and triennial testing of the Stage II equipment; and</li> <li>Upgrade the Stage II equipment to ORVR compatible systems and conduct successful Stage II vapor recovery tests.</li> </ol> </li> <li>Within 45 days, submit written certification demonstrating compliance.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	Assigned	1-Dec-2008		
	PCW	22-May-2009	Screening	5-Dec-2008
			EPA Due	

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	NEW WAY ENTERPRISE INC. dba Time Out Food Mart 2
Reg. Ent. Ref. No.	RN101892982
Facility/Site Region	12-Houston
Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	36937	No. of Violations	4
Docket No.	2008-1935-PST-E	Order Type	Findings
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Wallace Myers
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** Subtotal 1 \$7,000

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

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

Compliance History 44.0% Enhancement Subtotals 2, 3, & 7 \$3,080

Notes: Enhancement for two NOVs without same or similar violations and two 1660 orders.

Culpability No 0.0% Enhancement Subtotal 4 \$0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments Subtotal 5 \$0

Economic Benefit 0.0% Enhancement\* Subtotal 6 \$0

Total EB Amounts	\$1,338
Approx. Cost of Compliance	\$4,100

\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** Final Subtotal \$10,080

**OTHER FACTORS AS JUSTICE MAY REQUIRE** 11.9% Adjustment \$1,196

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with violation no. 2.

**Final Penalty Amount** \$11,276

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty \$11,276

**DEFERRAL** 0.0% Reduction Adjustment \$0

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

Notes: No deferral is recommended for Findings Orders.

**PAYABLE PENALTY** \$11,276

Screening Date 5-Dec-2008

Docket No. 2008-1935-PST-E

PCW

Respondent NEW WAY ENTERPRISE INC. dba Time Out Food Mart

Policy Revision 2 (September 2002)

Case ID No. 36937

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101892982

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

### Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOV's with same or similar violations as those in the current enforcement action (number of NOV's meeting criteria)	0	0%
	Other written NOV's	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	2	40%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 44%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for two NOV's without same or similar violations and two 1660 orders.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 44%

<b>Screening Date</b> 5-Dec-2008	<b>Docket No.</b> 2008-1935-PST-E	<b>PCW</b>		
<b>Respondent</b> NEW WAY ENTERPRISE INC. dba Time Out Food Mart 2		<i>Policy Revision 2 (September 2002)</i>		
<b>Case ID No.</b> 36937		<i>PCW Revision October 30, 2008</i>		
<b>Reg. Ent. Reference No.</b> RN101892982				
<b>Media [Statute]</b> Petroleum Storage Tank				
<b>Enf. Coordinator</b> Wallace Myers				
<b>Violation Number</b> <input type="text" value="1"/>				
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 115.246(7)(A) and Tex. Health &amp; Safety Code § 382.085(b)"/>			
<b>Violation Description</b>	<input type="text" value="Failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel."/>			
	<b>Base Penalty</b>	<input type="text" value="\$10,000"/>		
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
<b>OR</b>	<b>Release</b>	<b>Harm</b>		
		Major      Moderate      Minor		
	Actual <input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential <input type="text"/>	<input type="text"/>	<input type="text"/>	
		<b>Percent</b>	<input type="text" value="0%"/>	
<b>&gt;&gt; Programmatic Matrix</b>				
	<b>Falsification</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>
			<b>Percent</b>	<input type="text" value="10%"/>
<b>Matrix Notes</b>	<input type="text" value="100% of the rule requirement was not met."/>			
	<b>Adjustment</b>	<input type="text" value="\$9,000"/>		
<input type="text" value="\$1,000"/>				
<b>Violation Events</b>				
	<b>Number of Violation Events</b>	<input type="text" value="1"/>	<b>Number of violation days</b>	
		<input type="text" value="31"/>		
<i>mark only one with an x</i>	daily <input type="text"/>	weekly <input type="text"/>	<b>Violation Base Penalty</b> <input type="text" value="\$1,000"/>	
	monthly <input type="text"/>	quarterly <input type="text"/>		
	semiannual <input type="text"/>	annual <input type="text"/>		
	single event <input checked="" type="text" value="x"/>	<input type="text"/>		
<input type="text" value="One single event is recommended based on documentation of the violation during the July 14, 2008 investigation."/>				
<b>Good Faith Efforts to Comply</b>		<input type="text" value="0.0%"/> Reduction	<input type="text" value="\$0"/>	
		Before NOV      NOV to EDRP/Settlement Offer		
Extraordinary	<input type="text"/>	<input type="text"/>		
Ordinary	<input type="text"/>	<input type="text"/>		
N/A	<input checked="" type="text" value="x"/>	(mark with x)		
<b>Notes</b>	<input type="text" value="Because this is a Default Order, the Respondent does not meet the good faith criteria for this violation."/>			
	<b>Violation Subtotal</b>	<input type="text" value="\$1,000"/>		
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>		
<b>Estimated EB Amount</b>	<input type="text" value="\$0"/>	<b>Violation Final Penalty Total</b>	<input type="text" value="\$1,611"/>	
		<b>This violation Final Assessed Penalty (adjusted for limits)</b>	<input type="text" value="\$1,611"/>	

## Economic Benefit Worksheet

**Respondent** NEW WAY ENTERPRISE INC. dba Time Out Food Mart 2

**Case ID No.** 36937

**Reg. Ent. Reference No.** RN101892982

**Media** 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
<b>Delayed Costs</b>							
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$100	14-Jul-2008	14-Aug-2008	0.08	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**

Estimated cost to maintain Stage II records at the Station. The date required is the investigation date and the final date is the date of compliance.

**Avoided Costs**

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

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

**Notes for AVOIDED costs**

Approx. Cost of Compliance

\$100

TOTAL

\$0

<b>Screening Date</b> 5-Dec-2008	<b>Docket No.</b> 2008-1935-PST-E	<b>PCW</b>																			
<b>Respondent</b> NEW WAY ENTERPRISE INC. dba Time Out Food Mart 2		<i>Policy Revision 2 (September 2002)</i>																			
<b>Case ID No.</b> 36937		<i>PCW Revision October 30, 2008</i>																			
<b>Reg. Ent. Reference No.</b> RN101892982																					
<b>Media [Statute]</b> Petroleum Storage Tank																					
<b>Enf. Coordinator</b> Wallace Myers																					
<b>Violation Number</b> <input type="text" value="2"/>																					
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 115.245(2) and Tex. Health &amp; Safety Code § 382.085(b)"/>																				
<b>Violation Description</b>	<input type="text" value="Failed to verify proper operation of the Stage II equipment at least once every 12 months and vapor space manifold and dynamic back-pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first. Specifically, the Stage II annual and triennial compliance tests were not conducted."/>																				
	<b>Base Penalty</b>	<input type="text" value="\$10,000"/>																			
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>																					
OR	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <th colspan="3">Harm</th> <td></td> </tr> <tr> <td>Release</td> <th>Major</th> <th>Moderate</th> <th>Minor</th> <td></td> </tr> <tr> <td>Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td rowspan="2" style="text-align: right;"><b>Percent</b> <input type="text" value="25%"/></td> </tr> <tr> <td>Potential</td> <td><input type="text" value="x"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>		Harm				Release	Major	Moderate	Minor		Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="25%"/>	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	
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	Falsification	Major	Moderate	Minor																	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>																
<b>Matrix Notes</b>	<input type="text" value="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."/>																				
	<b>Adjustment</b>	<input type="text" value="\$7,500"/>																			
		<input type="text" value="\$2,500"/>																			
<b>Violation Events</b>																					
	<b>Number of Violation Events</b> <input type="text" value="1"/>	<input type="text" value="1095"/> <b>Number of violation days</b>																			
<i>mark only one with an x</i>	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr><td>daily</td><td><input type="text"/></td></tr> <tr><td>weekly</td><td><input type="text"/></td></tr> <tr><td>monthly</td><td><input type="text"/></td></tr> <tr><td>quarterly</td><td><input type="text"/></td></tr> <tr><td>semiannual</td><td><input type="text"/></td></tr> <tr><td>annual</td><td><input type="text"/></td></tr> <tr><td>single event</td><td><input type="text" value="x"/></td></tr> </table>	daily	<input type="text"/>	weekly	<input type="text"/>	monthly	<input type="text"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input type="text" value="x"/>	<b>Violation Base Penalty</b> <input type="text" value="\$2,500"/>					
daily	<input type="text"/>																				
weekly	<input type="text"/>																				
monthly	<input type="text"/>																				
quarterly	<input type="text"/>																				
semiannual	<input type="text"/>																				
annual	<input type="text"/>																				
single event	<input type="text" value="x"/>																				
	<input type="text" value="One single event is recommended for the three-year period preceding the November 25, 2008 record review."/>																				
<b>Good Faith Efforts to Comply</b>																					
	<input type="text" value="0.0%"/> <b>Reduction</b>	<input type="text" value="\$0"/>																			
	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <th>Before NOV</th> <th>NOV to EDRP/Settlement Offer</th> </tr> <tr> <td>Extraordinary</td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> <tr> <td>Ordinary</td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> <tr> <td>N/A</td> <td><input type="text" value="x"/></td> <td><input type="text" value="(mark with x)"/></td> </tr> </table>		Before NOV	NOV to EDRP/Settlement Offer	Extraordinary	<input type="text"/>	<input type="text"/>	Ordinary	<input type="text"/>	<input type="text"/>	N/A	<input type="text" value="x"/>	<input type="text" value="(mark with x)"/>								
	Before NOV	NOV to EDRP/Settlement Offer																			
Extraordinary	<input type="text"/>	<input type="text"/>																			
Ordinary	<input type="text"/>	<input type="text"/>																			
N/A	<input type="text" value="x"/>	<input type="text" value="(mark with x)"/>																			
<b>Notes</b>	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>																				
	<b>Violation Subtotal</b>	<input type="text" value="\$2,500"/>																			
<b>Economic Benefit (EB) for this violation</b>																					
	<b>Estimated EB Amount</b> <input type="text" value="\$1,196"/>	<b>Statutory Limit Test</b>																			
		<b>Violation Final Penalty Total</b> <input type="text" value="\$4,027"/>																			
	<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$4,027"/>																				

## Economic Benefit Worksheet

**Respondent** NEW WAY ENTERPRISE INC. dba Time Out Food Mart 2

**Case ID No.** 36937

**Reg. Ent. Reference No.** RN101892982

**Media** 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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No commas or \$

**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

**Avoided Costs**

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$1,000	25-Nov-2005	25-Nov-2008	3.92	\$196	\$1,000	\$1,196
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost for annual and triennial testing to verify proper operation of the Stage II equipment. The date required is three years prior to the record review and the final date is the record review date.

Approx. Cost of Compliance

\$1,000

TOTAL

\$1,196

<b>Screening Date</b> 5-Dec-2008	<b>Docket No.</b> 2008-1935-PST-E	<b>PCW</b>	
<b>Respondent</b> NEW WAY ENTERPRISE INC. dba Time Out Food Mart 2		<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 36937		<i>PCW Revision October 30, 2008</i>	
<b>Reg. Ent. Reference No.</b> RN101892982			
<b>Media [Statute]</b> Petroleum Storage Tank			
<b>Enf. Coordinator</b> Wallace Myers			
<b>Violation Number</b> <input type="text" value="3"/>			
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 115.242(1)(C) and Tex. Health &amp; Safety Code § 382.085(b)"/>		
<b>Violation Description</b>	<input compatible="" orvr")="" systems."="" type="text" value="Failed to upgrade the Stage II equipment to onboard refueling vapor recovery ("/>		
	<b>Base Penalty</b>	<input type="text" value="\$10,000"/>	
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>			
OR	<b>Release</b>	<b>Harm</b>	
		Major      Moderate      Minor	
	Actual	<input type="text"/>	<input type="text"/>
	Potential	<input type="text" value="x"/>	<input type="text"/>
		<b>Percent</b>	<input type="text" value="10%"/>
<b>&gt;&gt; Programmatic Matrix</b>			
	<b>Falsification</b>	<b>Major</b>	<b>Moderate</b>
	<input type="text"/>	<input type="text"/>	<input type="text"/>
		<b>Percent</b>	<input type="text" value="0%"/>
<b>Matrix Notes</b>	<input type="text" value="Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation."/>		
	<b>Adjustment</b>	<input type="text" value="\$9,000"/>	
		<input type="text" value="\$1,000"/>	
<b>Violation Events</b>			
	<b>Number of Violation Events</b>	<input type="text" value="1"/>	<input type="text" value="10"/> <b>Number of violation days</b>
<i>mark only one with an x</i>	daily	<input type="text"/>	<b>Violation Base Penalty</b> <input type="text" value="\$1,000"/>
	weekly	<input type="text"/>	
	monthly	<input type="text"/>	
	quarterly	<input type="text" value="x"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input type="text"/>	
	<input type="text" value="One quarterly event is recommended based on documentation of the violation during the November 25, 2008 record review to the December 5, 2008 screening date."/>		
<b>Good Faith Efforts to Comply</b>			<input type="text" value="0.0%"/> <b>Reduction</b>
		<input type="text" value="\$0"/>	
	<b>Before NOV</b>	<b>NOV to EDRP/Settlement Offer</b>	
Extraordinary	<input type="text"/>	<input type="text"/>	
Ordinary	<input type="text"/>	<input type="text"/>	
N/A	<input type="text" value="x"/>	<input type="text" value="(mark with x)"/>	
<b>Notes</b>	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>		
	<b>Violation Subtotal</b>	<input type="text" value="\$1,000"/>	
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>	
<b>Estimated EB Amount</b>	<input type="text" value="\$121"/>	<b>Violation Final Penalty Total</b>	<input type="text" value="\$1,611"/>
	<b>This violation Final Assessed Penalty (adjusted for limits)</b>		<input type="text" value="\$1,611"/>

## Economic Benefit Worksheet

**Respondent** NEW WAY ENTERPRISE INC. dba Time Out Food Mart 2

**Case ID No.** 36937

**Reg. Ent. Reference No.** RN101892982

**Media** 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 Costs	EB Amount
<b>Delayed Costs</b>							
Equipment	\$2,500	25-Nov-2008	5-Aug-2009	0.69	\$6	\$116	\$121
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs** Estimated cost to upgrade the Stage II equipment to ORVR compatible systems. The date required is the record review 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				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

Approx. Cost of Compliance TOTAL

\$2,500	\$121
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<b>Screening Date</b> 5-Dec-2008	<b>Docket No.</b> 2008-1935-PST-E	<b>PCW</b>			
<b>Respondent</b> NEW WAY ENTERPRISE INC. dba Time Out Food Mart 2	<i>Policy Revision 2 (September 2002)</i>				
<b>Case ID No.</b> 36937	<i>PCW Revision October 30, 2008</i>				
<b>Reg. Ent. Reference No.</b> RN101892982					
<b>Media [Statute]</b> Petroleum Storage Tank					
<b>Enf. Coordinator</b> Wallace Myers					
<b>Violation Number</b> <input type="text" value="4"/>					
<b>Rule Cite(s)</b>	TCEQ Agreed Order Docket No. 2006-1537-PST-E, Ordering Provision No. 2.a., and 30 Tex. Admin. Code § 334.48(c)				
<b>Violation Description</b>	Failed to conduct effective manual or automatic inventory control procedures for the UST system.				
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>			
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>					
OR	Harm			Percent <input type="text" value="25%"/>	
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>&gt;&gt; Programmatic Matrix</b>					
	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
				Percent <input type="text" value="0%"/>	
<b>Matrix Notes</b>	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.				
<b>Adjustment</b>		<input type="text" value="\$7,500"/>			
			<input type="text" value="\$2,500"/>		
<b>Violation Events</b>					
	<b>Number of Violation Events</b>	<input type="text" value="1"/>	<input type="text" value="44"/>	<b>Number of violation days</b>	
mark only one with an x	daily	<input type="text"/>		Violation Base Penalty <input type="text" value="\$2,500"/>	
	weekly	<input type="text"/>			
	monthly	<input type="text"/>			
	quarterly	<input checked="" type="checkbox"/>			
	semiannual	<input type="text"/>			
	annual	<input type="text"/>			
	single event	<input type="text"/>			
One quarterly event is recommended from the order effective date of October 23, 2008 to the December 5, 2008 screening date.					
<b>Good Faith Efforts to Comply</b>		<input type="text" value="0.0%"/> Reduction	<input type="text" value="\$0"/>		
		Before NOV	NOV to EDPRP/Settlement Offer		
Extraordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>		
Ordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>		
N/A	<input checked="" type="checkbox"/>	(mark with x)			
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.				
<b>Violation Subtotal</b>		<input type="text" value="\$2,500"/>			
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>			
<b>Estimated EB Amount</b>	<input type="text" value="\$20"/>	<b>Violation Final Penalty Total</b>	<input type="text" value="\$4,027"/>		
		<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$4,027"/>			

## Economic Benefit Worksheet

**Respondent:** NEW WAY ENTERPRISE INC. dba Time Out Food Mart 2

**Case ID No.** 36937

**Reg. Ent. Reference No.** RN101892982

**Media:** Petroleum Storage Tank

**Violation No.** 4

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<i>No commas or \$</i>							
<b>Delayed Costs</b>							
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	23-Oct-2008	14-Aug-2009	0.81	\$20	n/a	\$20
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to conduct proper inventory control procedures. The date required is the effective date of TCEQ Agreed Order Docket No. 2006-1537-PST-E and the final date is the estimated date of compliance.

**Avoided Costs**

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$20

# Compliance History Report

Customer/Respondent/Owner-Operator:	CN601033343	NEW WAY ENTERPRISE INC.	Classification: AVERAGE	Rating: 13.50
Regulated Entity:	RN101892982	Time Out Food Mart 2	Classification: AVERAGE	Site Rating: 13.50
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION REGISTRATION			35274
Location:	1000 N VELASCO ST, ANGLETON, TX, 77515			
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	December 05, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	December 05, 2003 to December 05, 2008			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Wallace Myers	Phone:	512-239-6580	

## 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?    | No  |
| 3. If Yes, who is the current owner?   | N/A |
| 4. If Yes, who was/were the prior owner(s)?  | N/A |
| 5. When did the change(s) in ownership occur?  | N/A |
| 6. Rating Date: 9/1/2008 Repeat Violator: NO   |     |

### 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: 08/28/2004   | ADMINORDER 2003-0891-PST-E |
| Classification: Moderate   |                            |
| Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)<br>30 TAC Chapter 37, SubChapter I 37.815(b)   |                            |
| Description: Failure to demonstrate acceptable financial assurance.  |                            |
| Effective Date: 10/23/2008   | ADMINORDER 2006-1537-PST-E |
| Classification: Moderate   |                            |
| Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)<br>30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)  |                            |
| Description: Failed to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring).                                    |                            |
| Classification: Major  |                            |
| Citation: 30 TAC Chapter 334, SubChapter C 334.48(c)   |                            |
| Description: Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel. |                            |
- 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 | 08/11/2006 | (489005) |
| 2 | 08/24/2006 | (483173) |
| 3 | 09/11/2007 | (572852) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |                 |   |                 |          |
|-----------------|---|-----------------|----------|
| Date: 6/20/2006 | (489005)                                    | CN601033343     |          |
| Self Report?    | NO  | Classification: | Moderate |
| Citation:       | 30 TAC Chapter 115, SubChapter C 115.242(3) |                 |          |

Description: 30 TAC 115.242 (3)(A) - Failure to provide and maintain the Stage II Vapor Recovery system in proper operating condition, as specified by the California Air Resources Board (CARB) Executive Order, including the absence or disconnection of any component that is a part of the approved system.

Self Report? NO Classification Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(A)  
Description: 30 TAC 115.242 (3)(A) - Failure to provide and maintain the Stage II Vapor Recovery system in proper operating condition, as specified by the California Air Resources Board (CARB) Executive Order, including the absence or disconnection of any component that is a part of the approved system.

Date: 09/11/2007 (572852) CN601033343

Self Report? NO Classification Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)  
Description: UST Registration not accurate.

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  
NEW WAY ENTERPRISE INC.  
DBA TIME OUT FOOD MART 2;  
RN101892982**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER  
DOCKET NO. 2008-1935-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. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent and revocation of the respondent's fuel delivery certificate. The respondent made the subject of this Order is New Way Enterprise Inc. dba Time Out Food Mart 2 ("New Way Enterprise").

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

**FINDINGS OF FACT**

1. New Way Enterprise owns and operates a convenience store with retail sales of gasoline located at 1000 North Velasco Street in Angleton, Brazoria County, Texas (the "Station").
2. New Way Enterprise's two underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. New Way Enterprise's USTs contain a regulated substance as defined in the rules of the Commission. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. During an investigation conducted on July 14, 2008, and a record review conducted on November 25, 2008, a TCEQ Houston Regional Office investigator documented that New Way Enterprise:
  - a. Failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel;
  - b. Failed to verify proper operation of the Stage II equipment at least once every 12 months and vapor space manifolding and dynamic back-pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first;

- c. Failed to upgrade the Stage II equipment to on board refueling vapor recovery ("ORVR") compatible systems; and
  - d. Failed to conduct effective manual or automatic inventory control procedures for the UST system.
4. New Way Enterprise received notice of the violations on or about November 30, 2008.
  5. The Executive Director recognizes that on August 14, 2008, New Way Enterprise submitted documentation to the TCEQ Houston Regional Office verifying that all Stage II records are being maintained at the Station.
  6. 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 New Way Enterprise Inc. dba Time Out Food Mart 2" (the "EDPRP") in the TCEQ Chief Clerk's office on May 28, 2009.
  7. By letter dated May 28, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served New Way Enterprise with notice of the EDPRP. According to the return receipt "green card", New Way Enterprise received notice of the EDPRP on May 30, 2009, as evidenced by the signature on the card.
  8. More than 20 days have elapsed since New Way Enterprise received notice of the EDPRP provided by the Executive Director. New Way Enterprise failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, New Way Enterprise is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., New Way Enterprise failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 115.246(7)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b).
3. As evidenced by Finding of Fact No. 3.b., New Way Enterprise failed to verify proper operation of the Stage II equipment at least once every 12 months and vapor space manifold and dynamic back-pressure at least once every 36 months or upon major system

replacement or modification, whichever occurs first, in violation of 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b).

4. As evidenced by Finding of Fact No. 3.c., New Way Enterprise failed to upgrade the Stage II equipment to ORVR compatible systems, in violation of 30 TEX. ADMIN. CODE § 115.242(1)(C) and TEX. HEALTH & SAFETY CODE § 382.085(b).
5. As evidenced by Finding of Fact No. 3.d., New Way Enterprise failed to conduct effective manual or automatic inventory control procedures for the UST system, in violation of 30 TEX. ADMIN. CODE § 334.48(c) and TCEQ Agreed Order Docket No. 2006-1537-PST-E, Ordering Provision No. 2.a.
6. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director timely served New Way Enterprise with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
7. As evidenced by Finding of Fact No. 8, New Way Enterprise failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against New Way Enterprise and assess the penalty recommended by the Executive Director.
8. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against New Way Enterprise for violations of the Texas Water Code and the Texas Health and Safety 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.
9. An administrative penalty in the amount of eleven thousand two hundred seventy-six dollars (\$11,276.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
10. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.
11. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke New Way Enterprise's UST fuel delivery certificate if the Commission finds that good cause exists.
12. Good cause for revocation of New Way Enterprise's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 3, 4, 6, 7 and 8 and Conclusions of Law Nos. 2 through 7.

### ORDERING PROVISIONS

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

1. New Way Enterprise is assessed an administrative penalty in the amount of eleven thousand two hundred seventy-six dollars (\$11,276.00) for violations of state statutes and TCEQ rules. The payment of this administrative penalty and New Way Enterprise's compliance with all the terms and conditions set forth in this Order completely resolve 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: New Way Enterprise Inc. dba Time Out Food Mart 2; Docket No. 2008-1935-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. New Way Enterprise's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. New Way Enterprise may submit an application for a new delivery certificate only after New Way Enterprise has complied with all of the requirements of this Order.
3. Within 10 days after the effective date of this Order, New Way Enterprise shall send its UST fuel delivery certificate to:

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

4. New Way Enterprise shall undertake the following technical requirements:

- a. Immediately upon the effective date of this Order, New Way Enterprise shall begin conducting proper inventory control procedures for all USTs at the Station in accordance with 30 TEX. ADMIN. CODE § 334.48; and
- b. Within 30 days after the effective date of this Order, New Way Enterprise shall:
  - i. Conduct the required annual and triennial testing of the Stage II equipment in accordance with 30 TEX. ADMIN. CODE § 115.245; and
  - ii. Upgrade the Stage II equipment to ORVR compatible systems and conduct successful Stage II vapor recovery tests after completing the ORVR upgrade in accordance with 30 TEX. ADMIN. CODE § 115.242.
- c. Within 45 days after the effective date of this Order, New Way Enterprise shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision Nos. 4.a. and 4.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.”

New Way Enterprise shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

with a copy to:

Nicole Bealle, Waste Section Manager  
Texas Commission on Environmental Quality  
Houston Regional Office  
5425 Polk Ave., Ste. H  
Houston, Texas 77023-1452

5. All relief not expressly granted in this Order is denied.
6. The provisions of this Order shall apply to and be binding upon New Way Enterprise. New Way Enterprise is ordered to give notice of this Order to personnel who maintain day-to-day control over the Station operations referenced in this Order.
7. If New Way Enterprise fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, New Way Enterprise's failure to comply is not a violation of this Order. New Way Enterprise shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. New Way Enterprise shall notify the Executive Director within seven days after New Way Enterprise becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
8. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by New Way Enterprise shall be made in writing to the Executive Director. Extensions are not effective until New Way Enterprise receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
9. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to New Way Enterprise if the Executive Director determines that New Way Enterprise has not complied with one or more of the terms or conditions in this Order.
10. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
11. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date this Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

New Way Enterprise Inc. dba Time Out Food Mart 2  
Docket No. 2008-1935-PST-E  
Page 7

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF KARI L. GILBRETH**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Kari L. Gilbreth. 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 New Way Enterprise Inc. dba Time Out Food Mart 2” (the “EDPRP”) was filed with the Office of the Chief Clerk on May 28, 2009.

I sent the EDPRP to New Way Enterprise at its last known address on May 28, 2009 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card”, New Way Enterprise received notice of the EDPRP on May 30, 2009, as evidenced by the signature on the card.

More than 20 days have elapsed since New Way Enterprise received notice of the EDPRP. New Way Enterprise failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference”.

  
Kari L. Gilbreth  
Attorney  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Kari L. Gilbreth, 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 17<sup>th</sup> day of August, A.D., 2009.

  
Notary Signature

