

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2004-0675-PST-E TCEQ ID: RN101893188 AND RN102444890 CASE NO.: 15492  
RESPONDENT NAME: M & K PANTRY, L.C. DBA LUMBERTON CHEVRON AND  
DBA M & K PANTRY 4**

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

<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:** 11335 Highway 96 South, Lumberton, Hardin County; 210 Highway 96 South, Silsbee, Hardin County

**TYPE OF OPERATION:** grocery store with retail sales of gasoline products

**SMALL BUSINESS:**  Yes  No

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

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

**COMMENTS RECEIVED:** The *Texas Register* comment period expired on March 23, 2009. 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. Jorge Ibarra, Water Enforcement Section, MC R-4, (817) 588-5890

**TCEQ Regional Contact:** Mr. Derek Eades, Beaumont Regional Office, MC R-10, (409) 898-8705

**Respondent:** Mr. Jimmy Jasani, Manager, M & K Pantry, L.C., P.O. Box 8357, Lumberton, Texas 77657

**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 type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b>                      N/A</p> <p><b>Dates of Investigation Relating to this Case:</b>                      January 20, 2004 and June 23, 2006</p> <p><b>Dates of NOEs Relating to this Case:</b>                      March 13, 2004 and August 12, 2006</p> <p><b>Background Facts:</b>                      Prior to referral to the Litigation Division, the Respondent was referred to the Financial Administration Division for an inability-to-pay review. A subsequent investigation revealed additional violations, which were consolidated with the initial enforcement action prior to referral to the Litigation Division. The Litigation Division received the case on September 25, 2006. The EDRP was filed February 5, 2008. The Respondent filed an answer and the case was referred to SOAH. The Respondent signed the Agreed Order on December 18, 2008.</p> <p><b>Current Compliance Status:</b>                      The Respondent has not yet submitted certification of compliance with the outstanding technical requirements.</p> <p><b>PST:</b>  <u>At the Lumberton Facility:</u>                      1. Failed to verify proper operation of the Stage II equipment by performing testing at least once every 12 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)].                      2. Failed to maintain the Stage II vapor recovery system in proper operating condition as specified by the manufacturer and/or any applicable California Air Resources Board ("CARB") Executive Order and free of defects that would impair the effectiveness of the system, and to make all necessary repairs, replacements or adjustments to faulty equipment [30 TEX. ADMIN. CODE § 115.242(3) and (5) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].                      3. Failed to ensure that at least one facility representative received training and instruction in the operation and maintenance of the Stage II Vapor Recovery System within three months of the departure of the trained employee, and to make each current employee aware of the purpose and correct operation of the Stage II equipment [30 TEX. ADMIN. CODE § 115.248(1) and (2) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p>	<p><b>Total Assessed:</b> \$21,825</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid/Due to General Revenue:</b>                      \$825/\$21,000</p> <p>The Respondent has paid \$825 of the administrative penalty. The remaining amount of \$21,000 of the administrative penalty shall be payable in 35 monthly payments of \$600 each.</p> <p><b><u>RN101893118 – Lumberton Facility</u></b>  <b>Site Compliance History Classification:</b>  <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b>  <input checked="" type="checkbox"/> High <input 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><u>RN102444890 – Silsbee Facility</u></b>  <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 Actions Taken:</b></p> <p>At the Lumberton Facility:</p> <ol style="list-style-type: none"> <li>Ensured that at least one facility representative received training and instruction in the operation and maintenance of the Stage II Vapor Recovery System; and</li> <li>Obtained acceptable financial assurance.</li> </ol> <p><b>Ordering Provisions:</b></p> <ol style="list-style-type: none"> <li>The Respondent shall undertake the following technical requirements at the Lumberton Facility:                         <ol style="list-style-type: none"> <li>Immediately, begin maintaining all Stage II equipment and make all necessary repairs, replacements, or adjustments to faulty equipment;</li> <li>Within 15 days, conduct initial compliance testing for the Stage II Vapor Recovery System;</li> <li>Within 30 days, ensure that each UST is equipped with a submerged fill pipe;</li> <li>Within 45 days, equip the UST system at the facility with spill and overflow prevention equipment;</li> <li>Within 60 days, conduct an annual performance test for line leak detectors on pressurized piping; and</li> <li>Within 75 days, submit written certification to demonstrate compliance with Ordering Provisions 1.a. through 1.e.</li> </ol> </li> <li>The Respondent shall undertake the following technical requirements at the Silsbee Facility:                         <ol style="list-style-type: none"> <li>Begin reporting all suspected UST system releases to the TCEQ;</li> <li>Within 15 days, begin maintaining all required UST records;</li> </ol> </li> </ol>

<b>VIOLATION SUMMARY CHART:</b>		
<b>VIOLATION INFORMATION</b>	<b>PENALTY CONSIDERATIONS</b>	<b>CORRECTIVE ACTIONS TAKEN/REQUIRED</b>
<p>4. Failed to ensure that each UST is equipped with a submerged fill pipe [30 TEX. ADMIN. CODE § 115.222(1) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p> <p>5. Failed to equip the regular unleaded UST system with overflow prevention equipment [30 TEX. ADMIN. CODE § 334.51(b)(2)(C) and TEX. WATER CODE § 26.3475(c)(2)].</p> <p>6. 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 USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].</p> <p>7. Failed to ensure that all USTs are monitored for releases at a frequency of at least once every month, to provide proper release detection for the product piping associated with the UST system, and to conduct an annual performance test for line leak detectors on pressurized piping [30 TEX. ADMIN. CODE § 334.50(b)(1)(A), (b)(2) and (b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a) and (c)].</p> <p><u>At the Silsbee Facility:</u></p> <p>8. Failed to develop and maintain all required UST records [30 TEX. ADMIN. CODE § 334.10(b)].</p> <p>9. Failed to provide a method of corrosion protection for the UST system [30 TEX. ADMIN. CODE § 334.49(a) and TEX. WATER CODE § 26.3475(d)].</p> <p>10. Failed to report a suspected UST system release to the agency within 24 hours when monitoring results from a release detection method indicate that a release may have occurred [30 TEX. ADMIN. CODE § 334.72(3)].</p>		<p>c. Within 30 days, provide a method of corrosion protection for the UST system; and</p> <p>d. Within 45 days, submit written certification of compliance with Ordering Provisions 2.a. through 2.c.</p>



**Penalty Calculation Worksheet (PCW)**

Policy Revision 2 (September 2002)

PCW Revision May 19, 2005

<b>DATES</b>	<b>Assigned</b>	21-Aug-2006	<b>Screening</b>	24-Aug-2006	<b>EPA Due</b>	
	<b>PCW</b>	22-Oct-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>			
<b>Respondent</b>	M & K Pantry, L.C. dba M & K Pantry 4		
<b>Reg. Ent. Ref. No.</b>	RN102444890		
<b>Facility/Site Region</b>	10-Beaumont	<b>Major/Minor Source</b>	Minor Source

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	15492	<b>No. of Violations</b>	3
<b>Docket No.</b>	2004-0675-PST-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Enf. Coordinator</b>	Jorge Ibarra, P.E.
<b>Multi-Media</b>		<b>EC's Team</b>	Enforcement Team 4
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

<b>Penalty Calculation Section</b>	
<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b> \$4,500
<b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>	
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.	
<b>Compliance History</b>	5% Enhancement <b>Subtotals 2, 3, &amp; 7</b> \$225
<b>Notes</b>	The respondent was issued an NOV with the same/similar type of violations.
<b>Culpability</b>	No 0% Enhancement <b>Subtotal 4</b> \$0
<b>Notes</b>	The respondent does not meet the culpability criteria.
<b>Good Faith Effort to Comply</b>	0% Reduction <b>Subtotal 5</b> \$0
	Before NOV    NOV to EDRP/Settlement Offer
Extraordinary	
Ordinary	
N/A	X (mark with a small x)
<b>Notes</b>	The respondent does not meet the good faith criteria.
<b>Economic Benefit</b>	0% Enhancement* <b>Subtotal 6</b> \$0
	*Capped at the Total EB \$ Amount
Total EB Amounts	\$118
Approx. Cost of Compliance	\$2,200
<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b> \$4,725
<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	<b>Adjustment</b> \$0
Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)	
<b>Notes</b>	
	<b>Final Penalty Amount</b> \$4,725
<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b> \$4,725
<b>DEFERRAL</b>	<b>Adjustment</b> \$0
Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)	
<b>Notes</b>	No deferral offered for non expedited settlement.
<b>PAYABLE PENALTY</b>	\$4,725

PCW1

22-M&K-Pantry4.wb3

<b>Screening Date</b> 24-Aug-2006	<b>Docket No.</b> 2004-0675-PST-E	<b>PCW</b>
<b>Respondent</b> M & K Pantry, L.C. dba M & K Pantry 4	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 15492	<i>PCW Revision May 19, 2005</i>	
<b>Reg. Ent. Reference No.</b> RN102444890		
<b>Media [Statute]</b> Petroleum Storage Tank		
<b>Enf. Coordinator</b> Jorge Ibarra, P.E.		

**Compliance History Worksheet**

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

Component	Number of...	<i>Enter Number Here</i>	<b>Adjust.</b>
NOVs	Written NOVs with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	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 ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	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 ( <i>number of audits for which notices were</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Other	<i>Please Enter Yes or No</i>		
	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) 5%**

>> **Repeat Violator (Subtotal 3)**

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

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

**Adjustment Percentage (Subtotal 7) 0%**

>> **Compliance History Summary**

**Compliance History Notes**

**Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%**

Screening Date 24-Aug-2006

22-M&K-Pantry4-wb3

Docket No. 2004-0675-PST-E

PCW

Respondent M & K Pantry, L.C. dba M & K Pantry 4

Policy Revision 2 (September 2002)

Case ID No. 15492

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN102444890

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one use a small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="text" value="x"/>

Violation Base Penalty

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

### Economic Benefit Worksheet

**Respondent** M & K Pantry, L.C. dba M & K Pantry 4  
**Case ID No.** 15492  
**Reg. Ent. Reference No.** RN102444890  
**Media [Statute]** Petroleum Storage Tank  
**Violation No.** 1

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

<b>Item Description</b>	<b>Item Cost</b>	<b>Date Required</b>	<b>Final Date</b>	<b>Yrs</b>	<b>Interest Saved</b>	<b>Onetime Costs</b>	<b>EB Amount</b>
<b>Delayed Costs</b>							
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	\$500	04-Apr-2006	01-Apr-2007	1.0	\$25	n/a	\$25
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 develop and maintain a recordkeeping system. Date Required is the inspection date, Final Date is the projected 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

**TOTAL**

22-M&K-Pantry4-wb3

**Screening Date** 24-Aug-2006

**Docket No.** 2004-0675-PST-E

**PCW**

**Respondent** M & K Pantry, L.C. dba M & K Pantry 4

*Policy Revision 2 (September 2002)*

**Case ID No.** 15492

*PCW Revision May 19, 2005*

**Reg. Ent. Reference No.** RN102444890

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** Jorge Ibarra, P.E.

**Violation Number**

**Primary Rule Cite(s)**

**Secondary Rule Cite(s)**

**Violation Description**

**Base Penalty**

>> **Environmental, Property and Human Health Matrix**

		Harm			
Release		Major	Moderate	Minor	
OR	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="25%"/>
	Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>				

**Matrix Notes**

**Adjustment**

**Base Penalty Subtotal**

**Violation Events**

**Number of Violation Events**

	daily	<input type="text"/>
	monthly	<input type="text"/>
mark only one	quarterly	<input checked="" type="checkbox"/>
use a small x	semiannual	<input type="checkbox"/>
	annual	<input type="checkbox"/>
	single event	<input type="checkbox"/>

**Violation Base Penalty**

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount**

**Violation Final Penalty Total**

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

22-M&K-Pantry4-wb3

### Economic Benefit Worksheet

**Respondent** M & K Pantry, L.C. dba M & K Pantry 4  
**Case ID No.** 15492  
**Reg. Ent. Reference No.** RN102444890  
**Media [Statute]** Petroleum Storage Tank  
**Violation No.** 2

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

<b>Item</b>	<b>Item Cost</b>	<b>Date Required</b>	<b>Final Date</b>	<b>Yrs</b>	<b>Interest Saved</b>	<b>Onetime Costs</b>	<b>EB Amount</b>
<b>Description</b>	No commas or \$						

**Delayed Costs**

Equipment	\$1,500	23-Jun-2006	15-Apr-2007	0.8	\$4	\$81	\$85
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

Estimated cost to provide a method of corrosion protection for the UST system. Date Required is the inspection date, Final Date is the projected 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

**TOTAL**

22-M&K-Pantry4 wb3

<b>Screening Date</b>	24-Aug-2006	<b>Docket No.</b>	2004-0675-PST-E	<b>PCW</b>
<b>Respondent</b>	M & K Pantry, L.C. dba M & K Pantry 4	<i>Policy Revision 2 (September 2002)</i>		
<b>Case ID No.</b>	15492	<i>PCW Revision May 19, 2005</i>		
<b>Reg. Ent. Reference No.</b>	RN102444890			
<b>Media [Statute]</b>	Petroleum Storage Tank			
<b>Enf. Coordinator</b>	Jorge Ibarra, P.E.			
<b>Violation Number</b>	3			
<b>Primary Rule Cite(s)</b>	30 Tex. Admin. Code § 334.72(3)			
<b>Secondary Rule Cite(s)</b>				
<b>Violation Description</b>	Failure to report a suspected UST system release to the agency within 24 hours when monitoring results from a release detection method indicate that a release may have occurred. Specifically, the SIR submitted on May 18, 2006 indicated failing results for regular unleaded gasoline and the TCEQ Beaumont Regional Office was not properly notified.			

**Base Penalty**

>> **Environmental, Property and Human Health Matrix**

		Harm			
		Major	Moderate	Minor	
OR	Actual				<b>Percent</b> <input style="width: 50px;" type="text"/>
	Potential				

>> **Programmatic Matrix**

	Major	Moderate	Minor	
	Falsification	x		

Matrix Notes

**Adjustment**

**Base Penalty Subtotal**

**Violation Events**

Number of Violation Events

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

**Violation Base Penalty**

One single event is recommended.

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

Estimated EB Amount

**Violation Final Penalty Total**

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

22-M&K-Pantry4-wb3

### Economic Benefit Worksheet

**Respondent** M & K Pantry, L.C. dba M & K Pantry 4  
**Case ID No.** 15492  
**Reg. Ent. Reference No.** RN102444890  
**Media [Statute]** Petroleum Storage Tank  
**Violation No.** 3

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

<b>Item Description</b>	<b>Item Cost</b>	<b>Date Required</b>	<b>Final Date</b>	<b>Yrs</b>	<b>Interest Saved</b>	<b>Onetime Costs</b>	<b>EB Amount</b>
<b>Delayed Costs</b>							
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)	\$200	23-Jun-2006	01-Apr-2007	0.8	\$8	n/a	\$8

Notes for DELAYED costs

Estimated cost to report a suspected UST system release to the agency within 24 hours. Date Required is the inspection date, Final Date is the projected 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 **\$200**

**TOTAL \$8**

# Compliance History

Customer/Respondent/Owner-Operator:	CN601672140 M & K Pantry LC	Classification: AVERAGE	Rating: 1.25
Regulated Entity:	RN102444890 M&K PANTRY 4	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	6898
Location:	210 HIGHWAY 96 S, SILSBEE, TX, 77656	Rating Date: 9/1/2005	Repeat Violator: NO
TCEQ Region:	REGION 10 - BEAUMONT		
Date Compliance History Prepared:	August 24, 2006		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	August 24, 2001 to August 24, 2006		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Jorge Ibarra, P.E.	Phone:	(817) 588-5890

## 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 |

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- |   |            |          |
|---|------------|----------|
| 1 | 04/20/2006 | (460629) |
| 2 | 08/17/2006 | (484024) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |              |   |          |                          |
|--------------|---|----------|--------------------------|
| Date:        | 04/20/2006  | (460629) |                          |
| Self Report? | NO  |          | Classification: Moderate |
| Citation:    | 30 TAC Chapter 334, SubChapter A 334.10(b)[G]   |          |                          |
| Description: | Failure to develop and maintain all UST records required by the provisions of Title 30 Tex. Admin. Code Chapter 334.  |          |                          |
| Self Report? | NO  |          | Classification: Moderate |
| Citation:    | 30 TAC Chapter 115, SubChapter C 115.244(3)   |          |                          |
| Description: | Failure to conduct monthly inspections of the Stage II vapor recovery system.   |          |                          |
| Self Report? | NO  |          | Classification: Moderate |
| Citation:    | 30 TAC Chapter 115, SubChapter C 115.242(3)[G]  |          |                          |
| Description: | Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order |          |                          |
| Self Report? | NO  |          | Classification: Moderate |
| Citation:    | 30 TAC Chapter 115, SubChapter C 115.222(3)   |          |                          |
|              | 30 TAC Chapter 115, SubChapter C 115.242(4)   |          |                          |
| Description: | Failure to ensure no avoidable gasoline leaks, as detected by sight, sound, or smell, exist anywhere in the liquid transfer or vapor balance systems.             |          |                          |
- F. Environmental audits.  
N/A

CH-1

- 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



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (09/02)

PCW Revision 2/10/2004

## DATES

PCW 18-Apr-2005 Screening 11-May-2004 Priority Due 8-Sep-2004 EPA Due

## RESPONDENT INFORMATION

Respondent M & K Pantry, L.C. dba Lumberton Chevron

Respondent/Site ID No(s). Petroleum Storage Tank Facility ID No. 43553

Facility/Site Region 10 - Beaumont Major/Minor Source Minor

## CASE INFORMATION

Enf./Case ID No(s). Case ID No. 15492 No. Violations 7

Docket No. 2004-0675-PST-E Order Type 1660 without deferral

Case Priority 3 EC's Team Enforcement Team 5

Enf. Coordinator Jorge Ibarra, P.E.

Media Program(s) Petroleum Storage Tank

Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

## Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 \$19,000

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

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

Compliance History -10% Reduction Subtotals 2, 3 & 7 -\$1,900

Notes Reduction due to High Performer classification. +

Culpability 0% Enhancement Subtotal 4 \$0

No Select Yes/No

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  
None of the above X (mark with small x)

Notes The respondent is not yet in compliance. +

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

\$2,189 Total EB Amounts \*Capped at the Total EB \$ Amount  
\$5,050 Approx. Cost of Compliance =

SUM OF SUBTOTALS 1-7 Final Subtotal \$17,100

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment \$0

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

Notes =

Final Penalty Amount \$17,100

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$17,100

DEFERRAL Deferral 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 because the respondent did not settle in a timely manner. =

PAYABLE PENALTY \$17,100

PCW 2

Screening Date 11-May-2004

Docket Number 2004-0675-PST-E **PCW**

Respondent M & K Pantry, L.C. dba Lumberton Chevron

Policy Revision 2 (09/02)

Case ID No. Case ID No. 15492

PCW Revision 2/10/2004

Respondent/Site ID No. Petroleum Storage Tank Facility ID No. 43553

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jorge Ibarra, P.E.

Site Address 1335 Highway 96 South, Lumberton, Hardin County, Texas 77657

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

Adjustment Percentage (Subtotal 2) 0%

>> **Repeat Violator (Subtotal 3)**

No  Select Yes/No

Adjustment Percentage (Subtotal 3) 0%

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

High Performer  Select High, Average or Poor

Adjustment Percentage (Subtotal 7) -10%

**Compliance History Summary**

Compliance History Notes

Reduction due to High Performer classification.

**Total Adjustment Percentage (Subtotals 2, 3 & 7) -10%**

Screening Date 11-May-04

Docket Number 2004-0675-PST-E

PCW

Respondent M & K Pantry, L.C. dba Lumberton Chevron

Policy Revision 2 (09/02)

Case ID No. Case ID No. 15492

PCW Revision 2/10/2004

Respondent/Site ID No. Petroleum Storage Tank Facility ID No. 43553

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 1

Primary Rule Cite 30 Tex. Admin. Code § 115.245(2)

Secondary Cite(s) Tex. Health & Safety Code § 382.085(b)

Violation Description

Failure to verify proper operation of the Stage II equipment by performing testing at least once every 12 months or upon major system replacement or modification, whichever occurs first, specifically, full compliance testing was due on 04/07/2003. Testing was conducted on 04/10/2003 but failed due to faulty equipment.

Base Penalty \$10,000

» Environmental, Property and Human Health Matrix

Harm

Release	Major	Moderate	Minor
OR Actual			
Potential		x	

Percent 10%

» Programmatic Matrix

Falsification	Major	Moderate	Minor
OR			

Percent

Matrix Notes

Failure to conduct the Stage II Vapor Recovery System testing could result in the release of significant amounts of pollutants which would not exceed levels that are protective of human health or the environment.

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

Violation Events

Number of Violation Events 1

mark only one; use small x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

Events Notes

One single event is recommended based on the findings documented during the inspection of January 20, 2004.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount (\$) \$58

Violation Final Penalty total \$900

This Violation Final Assessed Penalty (adjusted for limits) \$900

## Economic Benefit Worksheet

Respondent M & K Pantry, L.C. dba Lumberton Chevron

ID Number(s) Case ID No. 15492

Media [Statute] Petroleum Storage Tank

Violation Number 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
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	\$500	7-Apr-2003	1-Aug-2005	2.3	\$58	n/a	\$58
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 conduct the required triennial vapor recovery system testing.

**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/equip				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 \$500

TOTAL \$58

Screening Date 11-May-04

Docket Number 2004-0675-PST-E

PCW

Respondent M & K Pantry, L.C. dba Lumberton Chevron

Policy Revision 2 (09/02)

Case ID No. Case ID No. 15492

PCW Revision 2/10/2004

Respondent/Site ID No. Petroleum Storage Tank Facility ID No. 43553

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 2

Primary Rule Cite 30 Tex. Admin. Code § 115.242(3) and (5)

Secondary Cite(s) Tex. Health & Safety Code § 382.085(b)

Violation Description

Failure to maintain the Stage II vapor recovery system in proper operating condition as specified by the manufacturer and/or any applicable CARB Executive Order and free of defects that would impair the effectiveness of the system and to make all necessary repairs, replacements or adjustments to faulty equipment. Specifically, all nozzles were releasing fuel vapors and the automatic cut-off for pump # 2 was not working.

Base Penalty \$10,000

» Environmental, Property and Human Health Matrix

Harm

Release	Major	Moderate	Minor
Actual			X
Potential			

Percent 10%

» Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent

Matrix Notes

Failure to maintain the Stage II vapor recovery system in proper operating condition resulted in the release of insignificant amounts of pollutants which do not exceed levels that are protective of human health or the environment.

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

Violation Events

Number of Violation Events 1

mark only one; use small x

daily	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty \$1,000

Events Notes

The penalty was calculated from the inspection date (January 20, 2004) to the compliance date (February 17, 2004).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount (\$) \$3

Violation Final Penalty total \$900

This Violation Final Assessed Penalty (adjusted for limits) \$900

### Economic Benefit Worksheet

Respondent M & K Pantry, L.C. dba Lumberton Chevron  
 ID Number(s) Case ID No. 15492  
 Media [Statute] Petroleum Storage Tank  
 Violation Number 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
Equipment	\$500	20-Jan-2004	17-Feb-2004	0.1	\$0	\$3	\$3
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

Estimated cost to properly operate and maintain the Stage II vapor recovery system as specified.

**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/equip				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 \$500

TOTAL \$3

Screening Date 11-May-04

Docket Number 2004-0675-PST-E

PCW

Respondent M & K Pantry, L.C. dba Lumberton Chevron

Policy Revision 2 (09/02)

Case ID No. Case ID No. 15492

PCW Revision 2/10/2004

Respondent/Site ID No. Petroleum Storage Tank Facility ID No. 43553

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number

3

Primary Rule Cite

30 Tex. Admin. Code § 115.248(1) and (2)

Secondary Cite(s)

Tex. Health & Safety Code § 382.085(b)

Violation Description

Failure to ensure that at least one facility representative received training and instruction in the operation and maintenance of the Stage II vapor recovery system within three months of the departure of the trained employee and to make each current employee aware of the purpose and correct operation of the Stage II equipment.

Base Penalty \$10,000

» Environmental, Property and Human Health Matrix

Harm

Release	Major	Moderate	Minor
Actual			
Potential		x	

Percent 10%

» Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent

Matrix Notes

Failure to ensure that at least one company representative received training and instruction in the operation and maintenance of the Stage II Vapor Recovery System could result in the release of significant amounts of pollutants which would not exceed levels that are protective of human health or the environment.

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

Violation Events

Number of Violation Events 1

mark only one; use small x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$1,000

Events Notes

The penalty was calculated from the inspection date (January 20, 2004) to the compliance date (January 29, 2004).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount (\$) \$1

Violation Final Penalty total \$900

This Violation Final Assessed Penalty (adjusted for limits) \$900

### Economic Benefit Worksheet

Respondent M & K Pantry, L.C. dba Lumberton Chevron  
 ID Number(s) Case ID No. 15492  
 Media [Statute] Petroleum Storage Tank  
 Violation Number 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>-Delayed Costs</b>							
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	\$500	20-Jan-2004	29-Jan-2004	0.0	\$1	n/a	\$1
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 ensure that at least one company representative received training and instruction in the operation and maintenance of the Stage II Vapor Recovery System.

**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/equip				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 \$500

TOTAL \$1

Screening Date 11-May-04

Docket Number 2004-0675-PST-E

PCW

Respondent M & K Pantry, L.C. dba Lumberton Chevron

Policy Revision 2 (09/02)

Case ID No. Case ID No. 15492

PCW Revision 2/10/2004

Respondent/Site ID No. Petroleum Storage Tank Facility ID No. 43553

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number

4

Primary Rule Cite

30 Tex. Admin. Code § 115.222(1)

Secondary Cite(s)

Tex. Health & Safety Code § 382.085(b)

Violation Description

Failure to ensure that each UST is equipped with a submerged fill pipe, specifically, the lower portion of the drop tube on the regular unleaded UST was missing.

Base Penalty \$10,000

» Environmental, Property and Human Health Matrix

Harm

Release	Major	Moderate	Minor
Actual			X
Potential			

Percent 10%

» Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent

Matrix Notes

Failure to ensure that each UST is equipped with a submerged fill pipe resulted in the release of insignificant amounts of pollutants which do not exceed levels that are protective of human health or the environment.

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

Violation Events

Number of Violation Events 3

mark only one; use small x

daily	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty \$3,000

Events Notes

The penalty was calculated from the inspection date (January 20, 2004) to the end of the settlement period (August 1, 2004).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount (\$) \$23

Violation Final Penalty total \$2,700

This Violation Final Assessed Penalty (adjusted for limits) \$2,700

**Economic Benefit Worksheet**

Respondent M & K Pantry, L.C. dba Lumberton Chevron  
 ID Number(s) Case ID No. 15492  
 Media [Statute] Petroleum Storage Tank  
 Violation Number 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	---	---------------	------------	-----	----------------	---------------	-----------

**Delayed Costs**

Equipment	\$200	20-Jan-2004	1-Sep-2005	1.6	\$1	\$22	\$23
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

Estimated cost to ensure that each UST is equipped with a submerged fill pipe.

**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/equip				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

TOTAL

Screening Date 11-May-04

Docket Number 2004-0675-PST-E

PCW

Respondent M & K Pantry, L.C. dba Lumberton Chevron

Policy Revision 2 (09/02)

Case ID No. Case ID No. 15492

PCW Revision 2/10/2004

Respondent/Site ID No. Petroleum Storage Tank Facility ID No. 43553

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number

5

Primary Rule Cite

30 Tex. Admin. Code § 334.51(b)(2)(C)

Secondary Cite(s)

Tex. Water Code § 26.3475(c)(2)

Violation Description

Failure to equip the regular unleaded UST system with overfill prevention equipment.

Base Penalty

\$10,000

» Environmental, Property and Human Health Matrix

Harm

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent

25%

» Programmatic Matrix

	Falsification	Major	Moderate	Minor
OR				

Percent

Matrix Notes

Failure to equip the regular unleaded UST system with overfill prevention equipment could result in the release of significant amounts of pollutants which would exceed levels that are protective of human health or the environment.

Adjustment

-\$7,500

Base Penalty Subtotal

\$2,500

Violation Events

Number of Violation Events

3

mark only one; use small x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty

\$7,500

Events Notes

The penalty was calculated from the inspection date (January 20, 2004) to the end of the settlement period (August 1, 2004). Quarterly events are recommended to make the penalty commensurate with the situation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount (\$)

\$46

Violation Final Penalty total

\$6,750

This Violation Final Assessed Penalty (adjusted for limits)

\$6,750

**Economic Benefit Worksheet**

Respondent M & K Pantry, L.C. dba Lumberton Chevron  
 ID Number(s) Case ID No. 15492  
 Media [Statute] Petroleum Storage Tank  
 Violation Number 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
Equipment	\$400	20-Jan-2004	15-Sep-2005	1.7	\$2	\$44	\$46
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

Estimated cost to equip the regular unleaded UST system with overfill prevention equipment.

**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/equip				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

TOTAL

Screening Date 11-May-04

Docket Number 2004-0675-PST-E

PCW

Respondent M & K Pantry, L.C. dba Lumberton Chevron

Policy Revision 2 (09/02)

Case ID No. Case ID No. 15492

PCW Revision 2/10/2004

Respondent/Site ID No. Petroleum Storage Tank Facility ID No. 43553

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number

6

Primary Rule Cite

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

Secondary Cite(s)

Violation Description

Failure 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 USTs.

Base Penalty \$10,000

» Environmental, Property and Human Health Matrix

Harm

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent

» Programmatic Matrix

OR	Falsification	Major	Moderate	Minor
			x	

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

Violation Events

Number of Violation Events 3

mark only one; use small x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$3,000

Events Notes

Three single events are recommended (one per tank) based on the findings documented during the investigation of January 20, 2004.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount (\$) \$2,048

Violation Final Penalty total \$2,700

This Violation Final Assessed Penalty (adjusted for limits) \$2,700

**Economic Benefit Worksheet**

**Respondent** M & K Pantry, L.C. dba Lumberton Chevron  
**ID Number(s)** Case ID No. 15492  
**Media [Statute]** Petroleum Storage Tank  
**Violation Number** 6

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

<b>Item Description</b>	<b>Item Cost</b> <small>No commas or \$</small>	<b>Date Required</b>	<b>Final Date</b>	<b>Yrs</b>	<b>Interest Saved</b>	<b>Onetime Costs</b>	<b>EB Amount</b>
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**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (As needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (As Needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

--

**Avoided Costs**

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equip				0.0	\$0	\$0	\$0
Financial Assurance [2]	\$1,950	20-Jan-2003	20-Jan-2004	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 the petroleum USTs for the 12 month period preceding the investigation of January 20, 2004.
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Approx Cost of Compliance

**TOTAL**

Screening Date 11-May-04

Docket Number 2004-0675-PST-E

PCW

Respondent M & K Pantry, L.C. dba Lumberton Chevron

Policy Revision 2 (09/02)

Case ID No. Case ID No. 15492

PCW Revision 2/10/2004

Respondent/Site ID No. Petroleum Storage Tank Facility ID No. 43553

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 7

Primary Rule Cite 30 Tex. Admin. Code § 334.50(b)(1)(A), (b)(2) and (b)(2)(A)(i)(III)

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

Violation Description Failure to ensure that all USTs are monitored for releases at a frequency of at least once every month, to provide proper release detection for the product piping associated with the UST system, and to conduct an annual performance test for line leak detectors on pressurized piping.

Base Penalty \$10,000

» Environmental, Property and Human Health Matrix

Harm

Release	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

» Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent

Matrix Notes

Failure to provide an acceptable method of release detection could result in the release of significant amounts of pollutants which would exceed levels that are protective of human health or the environment.

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 1

mark only one; use small x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$2,500

Events Notes

The penalty was calculated from the inspection date (January 20, 2004) to the compliance date (March 31, 2004). Quarterly events are recommended to make the penalty commensurate with the situation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount (\$) \$12

Violation Final Penalty total \$2,250

This Violation Final Assessed Penalty (adjusted for limits) \$2,250

**Economic Benefit Worksheet**

Respondent M & K Pantry, L.C. dba Lumberton Chevron  
 ID Number(s) Case ID No. 15492  
 Media [Statute] Petroleum Storage Tank  
 Violation Number 7

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
Equipment	\$500	20-Jan-2004	31-Mar-2004	0.2	\$0	\$6	\$7
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	\$500	20-Jan-2004	31-Mar-2004	0.2	\$5	n/a	\$5
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 provide a method of release detection for the UST system.

**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/equip				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 \$1,000

TOTAL \$12

# Compliance History Report

Customer/Respondent/Owner-Operator:	CN601672140 M & K Pantry LC	Classification: HIGH	Rating: 0.00
Regulated Entity:	RN101893188 LUMBERTON CHEVRON	Classification: HIGH	Site Rating: 0.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		43553
Location:	1335 HIGHWAY 96 S, LUMBERTON, TX, 77657		
TCEQ Region:	REGION 10 - BEAUMONT		
Date Compliance History Prepared:	February 13, 2009		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	May 11, 1999 to May 11, 2004		

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

Name: Jorge Ibarra Phone: (817) 588-5890

### 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?   | <u>Fnu Aashif Kareem</u><br><u>M &amp; K Pantry LC</u> |
| 4. If Yes, who was/were the prior owner(s)?  | <u>M &amp; K Pantry LC</u>                             |
| 5. When did the change(s) in ownership occur?  | <u>05/28/2003</u>                                      |
| 6. Rating Date: 9/1/2003 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.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 

1	04/14/2000	(52217)
2	04/14/2000	(52219)
3	03/18/2004	(260676)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
- F. Environmental audits.  
N/A
- G. Type of environmental management systems (EMSs).  
N/A
- H. Voluntary on-site compliance assessment dates.  
N/A
- I. Participation in a voluntary pollution reduction program.  
N/A
- J. Early compliance.

CH-2

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
M & K PANTRY, L.C. DBA  
LUMBERTON CHEVRON,  
RN101893188 AND DBA M & K  
PANTRY 4, RN102444890

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BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

**AGREED ORDER**  
**DOCKET NO. 2004-0675-PST-E**

**I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding M & K Pantry, L.C. dba Lumberton Chevron and dba M & K Pantry 4 ("M&K Pantry") under the authority of TEX. WATER CODE chs. 7 and 26, and TEX. HEALTH & SAFETY CODE ch. 382. The Executive Director of the TCEQ, represented by the Litigation Division, and M&K Pantry, appear before the Commission and together stipulate that:

1. M&K Pantry owns and operates a grocery store with retail sales of gasoline products located at 11335 Highway 96 South, Lumberton, Hardin County, Texas (the "Lumberton Chevron"). M&K Pantry owns and operates a grocery store with retail sales of gasoline products at 210 Highway 96 South in Silsbee, Hardin County, Texas ("M & K Pantry 4").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 382, and TCEQ rules.
3. The Commission and M&K Pantry agree that the Commission has jurisdiction to enter this Agreed Order, and that M&K Pantry is subject to the Commission's jurisdiction.
4. M&K Pantry received notice of the violations in Section II, 1.a. through 1.g. on or about March 18, 2004. M&K Pantry received notice of the violations in Section II, 2.a. through 2.c. on or about August 17, 2006.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by M&K Pantry of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of twenty-one thousand eight hundred twenty-five dollars (\$21,825.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). M&K Pantry paid eight hundred twenty-five dollars (\$825.00) of the administrative penalty. The remaining amount of twenty-one thousand dollars (\$21,000.00) of the administrative penalty shall be payable in 35 monthly payments of six hundred dollars (\$600.00) each, pursuant to 30 TEX. ADMIN. CODE § 70.9(a). The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If M&K Pantry fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, M&K Pantry's failure to meet the payment schedule of this Agreed Order constitutes the failure by M&K Pantry to timely and satisfactorily comply with all of the terms of this Agreed Order.
7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and M&K Pantry agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director of the TCEQ recognizes that M&K Pantry implemented the following corrective measures at the Lumberton Chevron Station in response to this enforcement action:
  - a. Ensured that at least one Station representative received training and instruction in the operation and maintenance of the Stage II vapor recovery systems as documented on January 29, 2004; and
  - b. Obtained acceptable financial assurance as documented on February 2, 2004.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that M&K Pantry has not complied with one or more of the terms or conditions in this Agreed Order.

11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

1. During an investigation conducted at Lumberton Chevron on January 20, 2004, a TCEQ Beaumont Regional Office investigator documented that M&K Pantry violated:
  - a. 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to verify proper operation of the Stage II equipment by performing testing at least once every 12 months or upon major system replacement or modification, whichever occurs first. Specifically, full compliance testing was due on April 7, 2003. Testing was conducted on April 10, 2003 but failed due to faulty equipment.
  - b. 30 TEX. ADMIN. CODE § 115.242(3) and (5) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to maintain the Stage II vapor recovery system in proper operating condition as specified by the manufacturer and/or any applicable California Air Resources Board ("CARB") Executive Order and free of defects that would impair the effectiveness of the system, and to make all necessary repairs, replacements or adjustments to faulty equipment. Specifically, all nozzles were releasing fuel vapors and the automatic cut-off for pump number 2 was not working.
  - c. 30 TEX. ADMIN. CODE § 115.248(1) and (2) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to ensure that at least one Station representative received training and instruction in the operation and maintenance of the Stage II vapor recovery system within three months of the departure of the trained employee, and to make each current employee aware of the purpose and correct operation of the Stage II equipment.
  - d. 30 TEX. ADMIN. CODE § 115.222(1) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to ensure that each UST is equipped with a submerged fill pipe. Specifically, the lower portion of the drop-tube on the regular unleaded UST was missing.
  - e. 30 TEX. ADMIN. CODE § 334.51(b)(2)(C) and TEX. WATER CODE § 26.3475(c)(2) by failing to equip the regular unleaded UST system with overflow prevention equipment.

- f. 30 TEX. ADMIN. CODE § 37.815(a) and (b) by failing 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 USTs.
  - g. 30 TEX. ADMIN. CODE § 334.50(b)(1)(A), (b)(2) and (b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a) and (c) by failing to ensure that all USTs are monitored for releases at a frequency of at least once every month, failing to provide proper release detection for the product piping associated with the UST system, and failing to conduct an annual performance test for line leak detectors on pressurized piping.
2. During an investigation conducted at M & K Pantry 4 on June 23, 2006, a TCEQ Beaumont Regional Office investigator documented that M&K Pantry violated:
- a. 30 TEX. ADMIN. CODE § 334.10(b) by failing to develop and maintain all required UST records. Specifically, no records were available for inventory control/reconciliation, overfill prevention, the cathodic protection test, the line leak detector test, and statistical inventory reconciliation ("SIR") for 2006.
  - b. 30 TEX. ADMIN. CODE § 334.49(a) and TEX. WATER CODE § 26.3475(d) by failing to provide a method of corrosion protection for the UST system.
  - c. 30 TEX. ADMIN. CODE § 334.72(3) by failing to report a suspected UST system release to the agency within 24 hours when monitoring results from a release detection method indicate that a release may have occurred. Specifically, the SIR submitted on May 18, 2006 indicated failing results for regular unleaded gasoline and the TCEQ Beaumont Regional Office was not properly notified.

### III. DENIALS

M&K Pantry generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that M&K Pantry pay an administrative penalty as set forth in Section I, Paragraph 6, above. The payment of this administrative penalty and M&K Pantry's compliance with all the terms and conditions set forth in this Agreed Order resolve only the Allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: M & K Pantry, L.C. dba Lumberton Chevron and dba M & K Pantry 4, Docket No. 2004-0675-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. M&K Pantry shall undertake the following technical requirements at Lumberton Chevron:
- a. Immediately upon the effective date of this Agreed Order, M&K Pantry shall begin maintaining all Stage II equipment and make all necessary repairs, replacements, or adjustments to faulty equipment, in accordance with 30 TEX. ADMIN. CODE § 115.242 (relating to Control Requirements);
  - b. Within 15 days after the effective date of this Agreed Order, M&K Pantry shall conduct initial compliance testing for the Stage II vapor recovery system, in accordance with 30 TEX. ADMIN. CODE § 115.245 (relating to Testing Requirements)
  - c. Within 30 days after the effective date of this Agreed Order, M&K Pantry shall ensure that each UST is equipped with a submerged fill pipe, in accordance with 30 TEX. ADMIN. CODE § 115.222 (relating to Control Requirements);
  - d. Within 45 days after the effective date of this Agreed Order, M&K Pantry shall equip the UST system at the Station with spill and overflow prevention equipment, in accordance with 30 TEX. ADMIN. CODE § 334.51(b) (relating to Spill and Overflow Equipment);
  - e. Within 60 days after the effective date of this Agreed Order, M&K Pantry shall conduct an annual performance test for line leak detectors on pressurized piping, in accordance with 30 TEX. ADMIN. CODE § 334.50 (relating to Release Detection); and
  - f. Within 75 days after the effective date of this Order, M&K Pantry shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.e. 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.”

3. M&K Pantry shall undertake the following technical requirements at M & K Pantry 4:
  - a. Immediately upon the effective date of this Agreed Order, M&K Pantry shall begin reporting all suspected UST system releases to the TCEQ, in accordance with the requirements of 30 TEX. ADMIN. CODE § 334.72;
  - b. Within 15 days after the effective date of this Agreed Order, M & K shall begin maintaining all required UST records, in accordance with the requirements of 30 TEX. ADMIN. CODE § 334.10;
  - c. Within 30 days after the effective date of this Agreed Order, M & K shall provide a method of corrosion protection for the UST system, in accordance with the requirements of 30 TEX. ADMIN. CODE § 334.49; and
  - d. Within 45 days after the effective date of this Agreed Order, M & K shall submit written certification of compliance with Ordering Provisions 3.a. through 3.c. as described below:

The certification shall include detailed supporting documentation including receipts and/or other records to demonstrate compliance, 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."

4. M & K shall submit all correspondence, reports, and documentation required by these Ordering Provisions to:

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

and

Keith Anderson, Waste Section Manager  
Texas Commission on Environmental Quality  
Beaumont Regional Office  
3870 Eastex Freeway  
Beaumont, Texas 77703

5. The provisions of this Agreed Order shall apply to and be binding upon M&K Pantry. M&K Pantry is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over Lumberton Chevron and M & K Pantry 4 operations referenced in this Agreed Order.
6. If M&K Pantry fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, M&K Pantry's failure to comply is not a violation of this Agreed Order. M&K Pantry shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. M&K Pantry shall notify the Executive Director within seven days after M&K Pantry becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by M&K Pantry shall be made in writing to the Executive Director. Extensions are not effective until M&K Pantry receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
8. This Agreed Order, issued by the Commission, shall not be admissible against M&K Pantry in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
9. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be

transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

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

M & K Pantry, L.C. dba Lumberton Chevron and dba M & K Pantry 4  
DOCKET NO. 2004-0675-PST-E  
Page 9

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

[Signature]  
For the Executive Director

2/19/09  
Date

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

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

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

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

[Signature]  
Signature

12/18/08  
Date

JIMMY SASANI  
Name (Printed or typed)

Manager  
Title

Authorized representative of  
M & K Pantry, L.C. dba Lumberton Chevron and dba M & K Pantry 4