

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-1879-PST-E **TCEQ ID:** RN101435279 **CASE NO.:** 38724

RESPONDENT NAME: NEW MART CORPORATION dba J & C Mobil

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: J & C Mobil, 502 Farm-to-Market Road 1092, Stafford, Fort Bend County</p> <p>TYPE OF OPERATION: Convenience store with retail sales of gasoline</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on March 29, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Philip Aldridge, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-0855; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Cherian Zachariah, Registered Agent/Manager, NEW MART CORPORATION, 502 Farm-to-Market Road 1092, Stafford, Texas 77477 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: August 26, 2009</p> <p>Date of NOV/NOE Relating to this Case: November 6, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>1) Failure to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system. Specifically, the vapor motor on dispenser no. 3 was leaking [30 TEX. ADMIN. CODE § 115.242(3) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2) Failure to verify proper operation of the Stage II equipment at least once every twelve months [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>3) Failure to maintain Stage II records at the Station. Specifically, the Respondent did not maintain the Stage II test results [30 TEX. ADMIN. CODE § 115.246(5) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$5,168</p> <p>Total Deferred: \$1,033 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$145 (remaining \$3,990 due in 35 monthly payments of \$114 each)</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Station:</p> <p>a. Replaced the vapor motor on dispenser no. 3 on September 8, 2009;</p> <p>b. Conducted the required annual testing of the Stage II equipment on September 14, 2009, with passing results; and</p> <p>c. Began maintaining Stage II testing records at the Station on August 27, 2009.</p>

Additional ID No(s): 14941



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	9-Nov-2009	Screening	16-Nov-2009	EPA Due	
	PCW	18-Nov-2009				

RESPONDENT/FACILITY INFORMATION

Respondent	NEW MART CORPORATION dba J & C Mobil		
Reg. Ent. Ref. No.	RN101435279		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	38724	No. of Violations	3
Docket No.	2009-1879-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Philip Aldridge
Admin. Penalty \$ Limit Minimum	\$0	EC's Team	Enforcement Team 7
Maximum	\$10,000		

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 \$6,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 5.0% Enhancement Subtotals 2, 3, & 7 \$300

Notes Enhancement for one previous NOV with same or similar violations.

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 \$1,500

Economic Benefit 0.0% Enhancement* Subtotal 6 \$0

Total EB Amounts \$369 *Capped at the Total EB \$ Amount
 Approx. Cost of Compliance \$1,126

SUM OF SUBTOTALS 1-7 Final Subtotal \$4,800

OTHER FACTORS AS JUSTICE MAY REQUIRE 7.7% Adjustment \$368

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 \$5,168

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$5,168

DEFERRAL 20.0% Reduction Adjustment -\$1,033

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

Notes Deferral offered for expedited settlement.

PAYABLE PENALTY \$4,135

Screening Date 16-Nov-2009

Docket No. 2009-1879-PST-E

PCW

Respondent NEW MART CORPORATION dba J & C Mobil

Policy Revision 2 (September 2002)

Case ID No. 38724

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101435279

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Philip Aldridge

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> 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 one previous NOV with same or similar violations.

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

Screening Date 16-Nov-2009

Docket No. 2009-1879-PST-E

PCW

Respondent NEW MART CORPORATION dba J & C Mobil

Policy Revision 2 (September 2002)

Case ID No. 38724

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101435279

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Philip Aldridge

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 115.242(3) and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system. Specifically, the vapor motor on dispenser no. 3 was leaking.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent

Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 13 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	X
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One monthly event is recommended based on documentation of the violation during the August 26, 2009 investigation to the September 8, 2009 compliance date.

Good Faith Efforts to Comply

25.0% Reduction

\$625

	Before NOV	NOV to EOPRP/Settlement Offer
Extraordinary		
Ordinary	X	
N/A		(mark with x)

The Respondent came into compliance on September 8, 2009, prior to the NOE dated November 06, 2009.

Violation Subtotal \$1,875

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$2,153

This violation Final Assessed Penalty (adjusted for limits) \$2,153

Economic Benefit Worksheet

Respondent NEW MART CORPORATION dba J & C Mobil
Case ID No. 38724
Reg. Ent. Reference No. RN101435279
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
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)	\$275	26-Aug-2009	8-Sep-2009	0.04	\$0	n/a	\$0

Notes for DELAYED costs

Actual cost to replace one vapor motor per receipt submitted by the Respondent. 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

\$275	TOTAL	\$0
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Screening Date 16-Nov-2009

Docket No. 2009-1879-PST-E

PCW

Respondent NEW MART CORPORATION dba J & C Mobil

Policy Revision 2 (September 2002)

Case ID No. 38724

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101435279

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Phillip Aldridge

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 115.245(2) and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to verify proper operation of the Stage II equipment at least once every twelve months.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual:			
Potential:	x		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

45 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	x
single event	

Violation Base Penalty \$2,500

One annual event is recommended for the period preceding the August 26, 2009 investigation.

Good Faith Efforts to Comply

25.0% Reduction

\$625

	Before NOV	NOV to EOPRP/Settlement Offer
Extraordinary		
Ordinary	x	
N/A		(mark with x)

Notes

The Respondent came into compliance on September 14, 2009, prior to the NOE dated November 06, 2009.

Violation Subtotal \$1,875

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$368

Violation Final Penalty Total \$2,153

This violation Final Assessed Penalty (adjusted for limits) \$2,153

Economic Benefit Worksheet

Respondent: NEW MART CORPORATION dba J & C Mobil
Case ID No.: 38724
Reg. Ent. Reference No.: RN101435279
Media: Petroleum Storage Tank
Violation No.: 2

Percent Interest	Years of Depreciation
5.0	15

Item Cost: **Date Required:** **Final Date:** **Yrs:** **Interest Saved:** **Onetime Costs:** **EB Amount:**
Item Description: 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]	\$350	31-Jul-2009	14-Sep-2009	1.04	\$18	\$350
Other (as needed)			0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Actual avoided cost for annual testing to verify proper operation of the Stage II equipment per receipt submitted by the Respondent. The Date Required is the date the test was due and the Final Date is the date of compliance.

Approx. Cost of Compliance

\$350

TOTAL

\$368

Screening Date 16-Nov-2009

Docket No. 2009-1879-PST-E

PCW

Respondent NEW MART CORPORATION dba J & C-Mobil

Policy Revision 2 (September 2002)

Case ID No. 38724

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101435279

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Phillip Aldridge

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 115.246(5) and Tex Health & Safety Code § 382.085(b)

Violation Description

Failed to maintain Stage II records at the Station. Specifically, the Respondent did not maintain the Stage II test results.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

One single event is recommended based on the documentation of the violation during the August 26, 2009 investigation.

Good Faith Efforts to Comply

25.0% Reduction

\$250

	Before NOV	NOV to EO/PRP/Settlement Offer
	Extraordinary	
Ordinary	x	
N/A		(mark with x)

Notes

The Respondent came into compliance on August 27, 2009, prior to the NOE dated November 08, 2009.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$861

This violation Final Assessed Penalty (adjusted for limits) \$861

Economic Benefit Worksheet

Respondent NEW MART CORPORATION dba J & C Mobil

Case ID No. 38724

Reg. Ent. Reference No. RN101435279

Media Petroleum Storage Tank

Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
 Item Description: 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	\$500	26-Aug-2009	27-Aug-2009	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 maintain Stage II records at the Station. The Date Required is the date of investigation 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

\$500

TOTAL

\$0

Compliance History Report

Customer/Respondent/Owner-Operator:	CN602482796 NEW MART CORPORATION	Classification: AVERAGE	Rating: 2.78
Regulated Entity:	RN101435279 J & C Mobil	Classification: AVERAGE	Site Rating: 3.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	14941
Location:	502 FM 1092 RD, STAFFORD, TX, 77477		
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	November 13, 2009		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	November 13, 2004 to November 13, 2009		

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

Name: Philip Aldridge Phone: (512) 239-0855

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/operator of the site during the compliance period? Yes
3. If Yes, who is the current owner/operator?

	OWNOPR	New Mart Corporation
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4. If Yes, who was/were the prior owner(s)/operator(s) ?

	OWNOPR	Cherlan Zachariah
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5. When did the change(s) in owner or operator occur?

	05/27/2005
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6. Rating Date: 9/1/2009 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	08/25/2006	(497400)	
N/A	2	10/06/2006	(515008)	
	3	11/06/2009	(777194)	
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	08/25/2006	(497400)	CN602482796
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 115, SubChapter C 115.245(2)		
Description:	30 TAC 115.245(2) - Failure to verify proper operation of the Stage II equipment at least once every twelve months or upon major system replacement or modification. The verification shall include all functional tests that were required for the initial system test, which must be performed at least once every 36 months.		
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 115, SubChapter C 115.242(3)(B)		
Description:	30 TAC 115.242 (3)(B) - Failure to maintain hose in a manner that the hose is not crimped, kinked, or flattened such that the vapor passage is blocked, or the back-pressure through the vapor system exceeds the value as certified in the approved systems CARB Executive Order(s).		
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.

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 MART CORPORATION DBA
J & C MOBIL
RN101435279**

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§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2009-1879-PST-E**

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding NEW MART CORPORATION dba J & C Mobil ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a convenience store with retail sales of gasoline at 502 Farm-to-Market Road 1092 in Stafford, Fort Bend County, Texas (the "Station").
2. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about November 11, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Five Thousand One Hundred Sixty-Eight Dollars (\$5,168) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Hundred Forty-Five Dollars (\$145) of the administrative penalty and One Thousand Thirty-Three Dollars (\$1,033) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Three Thousand Nine Hundred Ninety Dollars (\$3,990) of the administrative penalty shall be payable in 35 monthly payments of One Hundred Fourteen Dollars (\$114) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Station:
 - a. Replaced the vapor motor on dispenser no. 3 on September 8, 2009;
 - b. Conducted the required annual testing of the Stage II equipment on September 14, 2009, with passing results; and
 - c. Began maintaining Stage II testing records at the Station on August 27, 2009.
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 the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Station, the Respondent is alleged to have:

1. Failed to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system, in violation of 30 TEX. ADMIN. CODE § 115.242(3) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on August 26, 2009. Specifically, the vapor motor on dispenser no. 3 was leaking.
2. Failed to verify proper operation of the Stage II equipment at least once every twelve months, in violation of 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on August 26, 2009.
3. Failed to maintain Stage II records at the Station, in violation of 30 TEX. ADMIN. CODE § 115.246(5) and TEX. HEALTH & SAFETY CODE § 382.085(b) as documented during an investigation conducted on August 26, 2009. Specifically, the Respondent did not maintain the Stage II test results.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: NEW MART CORPORATION dba J & C Mobil, Docket No. 2009-1879-PST-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Station operations referenced in this Agreed Order.
3. If the Respondent 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, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such

an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This 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 under this Agreed Order.
7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John S. Miller
For the Executive Director

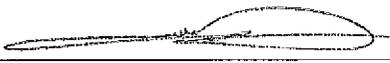
3/9/2010
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity 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 failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- 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;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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


Signature

1/8/10
Date

Cheriann Zachariah
Name (Printed or typed)
Authorized Representative of
NEW MART CORPORATION dba J & C Mobil

OP Manager
Title

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

