Executive Summary – Enforcement Matter – Case No. 40233
Louisa Valdez
RN101846871
Docket No. 2010-1356-PST-E

Order Type:
Default Order

Findings Order Justification:
N/A

Media:
PST

Small Business:
N/A

Location(s) Where Violation(s) Occurred:
702 North Avenue F, Post, Garza County

Type of Operation:
former gas station

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: February 4, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed:	$ 2,750
Amount Deferred for Expedited Settlement:	N/A
Amount Deferred for Financial Inability to Pay:	N/A
Total Paid to General Revenue:	$0
Total Due to General Revenue:	$2,750
SEP Conditional Offset:	N/A

Compliance History Classifications:
Person/CN – Average
Site/RN – Average by Default

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Executive Summary – Enforcement Matter – Case No. 40233
Louisa Valdez
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Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A

Date(s) of Investigation: August 2, 2010

Date(s) of NOV(s): November 12, 2009; February 17, 2010

Date(s) of NOE(s): August 10, 2010

Violation Information

Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST for which any applicable component of the system is not brought into timely compliance with the upgrade requirements [30 TEX. ADMIN. CODE § 334.47(a)(2)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

1. Within 30 days, permanently remove the UST system from service.
2. Within 45 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: December 14, 2010

Date(s) Green Card(s) Signed: Unclaimed

Date(s) Answer(s) Filed: N/A

SOAH Referral Date: N/A

Hearing Date(s):
Preliminary hearing: N/A
Evidentiary hearing: N/A

Contact Information

TCEQ Attorneys: Steven M. Fishburn, Litigation Division, MC 175, (512) 239-3400
Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ SEP Coordinator: N/A

TCEQ Enforcement Coordinator: Allison Fischer, Air Enforcement Section, (512) 239-2574

TCEQ Regional Contact: Patrick Cooke, Lubbock Regional Office, MC R-2, (806) 796- 7092

Respondent: Louisa Valdez c/o Lucy Martin, 706 N. Avenue F, Post, Texas 79356

Respondent's Attorney: N/A

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) *PCW Revision October 30, 2008*

TCEQ

DATES					
Assigned	9-Aug-2010				
PCW	19-Nov-2010	Screening	18-Aug-2010	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Louisa Valdez		
Reg. Ent. Ref. No.	RN101846871		
Facility/Site Region	2-Lubbock	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	40233	No. of Violations	1
Docket No.	2010-1356-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Allison Fischer
		EC's Team	Enforcement Team 4

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

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* $2,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 10.0% Enhancement *Subtotals 2, 3, & 7* $250

Notes: Enhancement for two NOVs with same/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* $0

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

Total EB Amounts $212
Approx. Cost of Compliance $5,000

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 *Final Subtotal* $2,750

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0% *Adjustment* $0

Reduces or enhances the Final Subtotal by the ind cated percentage.

Notes:

Final Penalty Amount $2,750

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* $2,750

DEFERRAL 0.0% Reduction *Adjustment* $0

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

Notes: Defferal not offered for non-expedited settlement.

PAYABLE PENALTY $2,750

Screening Date	18-Aug-2010	**Docket No.**	2010-1356-PST-E	**PCW**
Respondent	Louisa Valdez			*Policy Revision 2 (September 2002)*
Case ID No.	40233			*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN101846871			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Allison Fischer			

Compliance History Worksheet

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

Component	Number of...	*Enter Number Here*	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*)	2	10%
	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) 10%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for two NOVs with same/similar violations.

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

Screening Date	18-Aug-2010	**Docket No.**	2010-1356-PST-E	**PCW**
Respondent	Louisa Valdez			*Policy Revision 2 (September 2002)*
Case ID No.	40233			*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN101846871			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Allison Fischer			

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.47(a)(2)

Violation Description Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an underground storage tank system ("UST") for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.

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 — 16 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 documenta ion of the violation during the August 2, 2010 record review to the August 18, 2010 screening date.

Good Faith Efforts to Comply

0.0% Reduction — $0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark w th x)

Notes: The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal $2,500

Economic Benefit (EB) for this violation

Estimated EB Amount $212

Statutory Limit Test

Violation Final Penalty Total $2,750

This violation Final Assessed Penalty (adjusted for limits) $2,750

Economic Benefit Worksheet

Respondent Louisa Valdez
Case ID No. 40233
Reg. Ent. Reference No. RN101846871
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.00	$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)	$5 000	24-Apr-2009	28-Feb-2010	0 85	$212	n/a	$212

Notes for DELAYED costs: Estimated minimum cost to permanently remove from service three USTs. The date required is the date when the Respondent aquired he UST system and the final date is the estimated date of compliance.

Avoided Costs							
	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]				0.00	$0	$0	$0
Other (as needed)				0 00	$0	$0	$0

Notes for AVOIDED costs:

Approx. Cost of Compliance $5,000

TOTAL $212

Compliance History Report

Customer/Respondent/Owner-Operator: CN603647496 Valdez, Louisa Classification: AVERAGE Rating: 3.01
Regulated Entity: RN101846871 LOUISA VALDEZ PROPERTY Classification: AVERAGE BY DEFAULT Site Rating: 3.01
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 6524
Location: 702 N AVENUE F, POST, TX, 79356
TCEQ Region: REGION 02 - LUBBOCK
Date Compliance History Prepared: August 10, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: August 10, 2005 to August 10, 2010
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:
Name: Allison Fischer Phone: (512) 239 - 2574

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 Valdez, Louisa
4. If Yes, who was/were the prior owner(s)/operator(s)? OWNOPR VALDEZ, JULIO
5. When did the change(s) in owner or operator occur? 04/24/2009
6. Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site:

A. Final Enforcement Orders, court judgments, 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 11/10/2009 (779360)
2 02/17/2010 (786947)
3 08/05/2010 (844034)

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

Date: 11/12/2009 (779360) CN603647496

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)
Description: Failure of the owner to amend, update, or change UST registration information.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)
Description: Failure of the owner to permanently remove from service empty and out of service UST systems that are non-compliant with the required technical upgrades.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.54(b)(2)
Description: Failure of the owner to lock, or otherwise secure, the fill pipe cap of each tank, or tank compartment, to prevent access, tampering, or vandalism by unauthorized persons.

Date: 02/17/2010 (786947) CN603647496

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)
Description: Failure of the owner to amend, update, or change UST registration information.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)
Description: Failure of the owner to permanently remove from service empty and out of service UST systems that are non-compliant with the required technical upgrades.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.54(b)(2)
Description: Failure of the owner to lock, or otherwise secure, the fill pipe cap of each tank, or tank compartment, to prevent access, tampering, or vandalism by unauthorized persons.

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

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN ENFORCEMENT ACTION CONCERNING LOUISA VALDEZ; RN101846871	**§ § § § §**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2010-1356-PST-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Louisa Valdez ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns, as defined in 30 TEX. ADMIN. CODE § 334.2(73), an underground storage tank ("UST") system and a former gas station located at 702 North Avenue F in Post, Garza County, Texas (the "Facility"). The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contain a regulated petroleum substance as defined in the rules of the TCEQ.

2. During a record review conducted on August 2, 2010, a TCEQ Lubbock Regional Office investigator documented that Respondent failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.

3. Respondent received notice of the violation on or about August 15, 2010.

4. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Louisa Valdez" (the "EDPRP") in the TCEQ Chief Clerk's office on December 14, 2010.

5. By letter dated December 14, 2010, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.

6. More than 20 days have elapsed since Respondent received notice of the EDPRP provided by the Executive Director. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the Commission.

2. As evidenced by Finding of Fact No. 2, Respondent failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, in violation of 30 TEX. ADMIN. CODE § 334.47(a)(2).

3. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).

4. As evidenced by Finding of Fact No. 6, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.

5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

6. An administrative penalty in the amount of two thousand seven hundred fifty dollars ($2,750.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of two thousand seven hundred fifty dollars ($2,750.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here.

2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Louisa Valdez, Docket No. 2010-1356-PST-E" to:

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

3. Respondent shall undertake the following technical requirements:

   a. Within 30 days after the effective date of this Order, Respondent shall permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55; and

   b. Within 45 days after the effective date of this Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision No. 3.a. The certification shall be notarized by a State of Texas Notary Public and shall 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."

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

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

   and:

   Mr. Patrick Cooke, Waste Section Manager
   Lubbock Regional Office
   Texas Commission on Environmental Quality
   5012 50th St., Ste. 100
   Lubbock, Texas 79414-3421

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

5. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.

6. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent 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 Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.

9. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.

10. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

AFFIDAVIT OF STEVEN M. FISHBURN

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

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

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Louisa Valdez," (the "EDPRP") was filed in the TCEQ Chief Clerk's office on December 14, 2010.

The EDPRP was mailed to Respondent's last known address on December 14, 2010 via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.

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

Steven M. Fishburn, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 5th day of May, A.D. 2011.

Notary Signature

MARGARET T JACKSON
NOTARY PUBLIC
State of Texas
Comm. Exp. 12-21-2013