

Executive Summary – Enforcement Matter – Case No. 15492
M & K PANTRY, LLC (f/k/a M & K PANTRY, L.C.) d/b/a M & K PANTRY 4
RN102444890
Docket No. 2011-0638-PST-E

Order Type:

Default Shutdown Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

210 Highway 96 South, Silsbee, Hardin County

Type of Operation:

UST system and a grocery store with retail sales of gasoline

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: December 9, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed: \$28,125

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$28,125

Compliance History Classifications:

Person/CN – Average
Site/RN – Average

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: March 22, 2011
Date(s) of NOV(s): October 21, 2009
Date(s) of NOE(s): April 20, 2011

Violation Information

Failed to provide proper corrosion protection for the UST system [TEX. WATER CODE § 26.3475(d); 30 TEX. ADMIN. CODE § 334.49(a); and TCEQ Agreed Order Docket No. 2004-0675-PST-E, Ordering Provision No. 3.c.].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

1. Immediately shut down operations of all USTs at the Facility:
 - a. Cease dispensing fuel from the USTs;
 - b. Cease receiving deliveries of regulated substances into the USTs;
 - c. Padlock the dispensers;
 - d. Empty the USTs of all regulated substances; and
 - e. Temporarily remove the USTs from service.
2. The USTs shall remain out of service until such time as Respondent demonstrates to the satisfaction of the Executive Director that the release detection and corrosion protection violations have been corrected.
3. Respondent's UST fuel delivery certificate is revoked immediately. Respondent shall cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements.
4. Within 10 days, Respondent shall surrender its UST fuel delivery certificate.
5. Within 15 days, submit a detailed written report documenting the steps taken to comply with Technical Requirements Nos. 1 and 4.
6. Prior to receiving deliveries of gasoline and resuming sales of gasoline:
 - a. Install and implement a corrosion protection system for the UST system; and
 - b. Obtain a new fuel delivery certificate.
7. Upon obtaining a new fuel delivery certificate, post the fuel delivery certificate in a location at the Facility where the delivery certificate is clearly visible at all times.
8. Within 10 days of resuming sales of gasoline, submit written certification to demonstrate compliance with Technical Requirements Nos. 6 and 7.

Executive Summary – Enforcement Matter – Case No. 15492
M & K PANTRY, LLC (f/k/a M & K PANTRY, L.C.) d/b/a M & K PANTRY 4
RN102444890
Docket No. 2011-0638-PST-E

Litigation Information

Date Petition(s) Filed: September 9, 2011
Date(s) Green Card(s) Signed: September 14, 2011
Date(s) Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Xavier Guerra, Litigation Division, (210) 403-4016
Lena Roberts, Litigation Division, (512) 239-3400

TCEQ Enforcement Coordinator: Wallace Myers, Waste Enforcement Section, (512) 239-6580

TCEQ Regional Contact: Derek Eades, Beaumont Regional Office, (409) 898-3838

Respondent: Malik Aziz Kheraj, Director, M & K PANTRY, LLC, 6161 Savoy Drive, Suite 222,
Houston, Texas 77036

Respondent's Attorney: N/A

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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	25-Apr-2011	Screening	26-Apr-2011	EPA Due	
	PCW	27-Apr-2011				

RESPONDENT/FACILITY INFORMATION						
Respondent	M & K PANTRY, LLC [Formerly M & K Pantry, L.C.] dba M & K Pantry 4					
Reg. Ent. Ref. No.	RN102444890					
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor			

CASE INFORMATION						
Enf./Case ID No.	15492	No. of Violations	1			
Docket No.	2011-0638-PST-E	Order Type	Findings			
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No			
Multi-Media		Enf. Coordinator	Wallace Myers			
		EC's Team	Enforcement Team 7			
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000			

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$22,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	25.0% Enhancement	Subtotals 2, 3, & 7	\$5,625
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Notes: Enhancement for one NOV with same/similar violations and for one order with denial of liability.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$321
Approx. Cost of Compliance	\$1,500

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$28,125
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$28,125
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$28,125
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$28,125
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Screening Date 26-Apr-2011

Docket No. 2011-0638-PST-E

PCW

Respondent M & K PANTRY, LLC [Formerly M & K Pantry, L.C.]

Policy Revision 2 (September 2002)

Case ID No. 15492

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102444890

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("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>)	1	20%
	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 submitted</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%
<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) 25%

>> 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 NOV with same/similar violations and for one order with denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 25%

Screening Date 26-Apr-2011

Docket No. 2011-0638-PST-E

PCW

Respondent M & K PANTRY, LLC [Formerly M & K Pantry, L.C.] dba M & K P:

Policy Revision 2 (September 2002)

Case ID No. 15492

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102444890

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.49(a), Tex. Water Code § 26.3475(d) and TCEQ Agreed Order Docket No. 2004-0675-PST-E, Ordering Provision No. 3.c.

Violation Description Failed to provide proper corrosion protection for the underground storage tank ("UST") system.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (25%).

>> Programmatic Matrix

Table with columns: 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 9 Number of violation days 751

Table with columns: Frequency (daily, weekly, monthly, quarterly, semiannual, annual, single event), mark only one with an x.

Violation Base Penalty \$22,500

Nine quarterly events are recommended from the order effective date of April 5, 2009 to the April 26, 2011 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Table with columns: Extraordinary, Ordinary, N/A, Before NOV, NOV to EDPRP/Settlement Offer.

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

Violation Subtotal \$22,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$321

Violation Final Penalty Total \$28,125

This violation Final Assessed Penalty (adjusted for limits) \$28,125

Economic Benefit Worksheet

Respondent M & K PANTRY, LLC [Formerly M & K Pantry, L.C.] dba M & K Pantry 4
Case ID No. 15492
Req. Ent. Reference No. RN102444890
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	\$1,500	5-Apr-2009	26-Apr-2012	3.06	\$15	\$306	\$321
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to provide corrosion protection for all components of the UST system. The date required is the effective date of TCEQ Agreed Order Docket No. 2004-0675-PST-E and the final date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$321

Compliance History

Customer/Respondent/Owner-Operator: CN601672140 M & K PANTRY, LLC Classification: AVERAGE Rating: 44.77
 Regulated Entity: RN102444890 M&K Pantry 4 Classification: AVERAGE Site Rating: 39.00
 ID Number(s): PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 6898
 Location: 210 HIGHWAY 96 S, SILSBEE, TX, 77656
 TCEQ Region: REGION 10 - BEAUMONT
 Date Compliance History Prepared: April 26, 2011
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: April 26, 2006 to April 26, 2011
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
 Name: Wallace Myers Phone: 512-239-6580

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? Yes
3. If Yes, who is the current owner/operator? OPR 3 STARS JUBILLE INC
4. If Yes, who was/were the prior owner(s)/operator(s)? OWN M & K PANTRY, LLC
5. When did the change(s) in owner or operator occur? OWNOPR M & K PANTRY, L.C.
6. Rating Date: 9/1/2010 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.
Effective Date: 04/05/2009 ADMINORDER 2004-0675-PST-E
 Classification: Moderate
 Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)
 Description: Failure to develop and maintain all UST records required by the provisions of Title 30 Tex. Admin. Code Chapter 334.
 Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.3475(d)
 30 TAC Chapter 334, SubChapter C 334.49(a)
 Description: Failure to have corrosion protection.
 Classification: Moderate
 Citation: 30 TAC Chapter 334, SubChapter D 334.72(3)
 Description: Failure for the owner or operator of a UST system to report a suspected release to the agency within 24 hours when monitoring results from a release detection method indicate that a release may have occurred.
- 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 | 08/17/2006 | (484024) |
| 2 | 11/20/2009 | (778555) |
| 3 | 04/20/2011 | (906788) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 10/21/2009 (778555) CN601672140
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)
 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: 2D TWC Chapter 26, SubChapter A 26.3475(d)
 30 TAC Chapter 334, SubChapter C 334.49(a)
 Description: Failure to have corrosion protection.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 334, SubChapter D 334.72(3)
 Description: Failure for the owner or operator of a UST system to report a suspected release to the agency within 24 hours when monitoring results from a release detection method indicate that a release may have occurred.
- 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
M & K PANTRY, LLC (F/K/A
M & K PANTRY, L.C.) D/B/A
M & K PANTRY 4;
RN102444890**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT AND SHUTDOWN ORDER

DOCKET NO. 2011-0638-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, corrective action of the respondent, and revocation of the respondent's fuel delivery certificate. The Commission also considered the Executive Director's Motion requesting the entry of an Order requiring the respondent to shutdown and remove from service the underground storage tanks ("USTs") located at 210 Highway 96 South in Silsbee, Hardin County, Texas. The respondent made the subject of this Order is M & K PANTRY, LLC (f/k/a M & K PANTRY, L.C.) d/b/a M & K Pantry 4 ("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), a UST system and a grocery store with retail sales of gasoline located at 210 Highway 96 South in Silsbee, Hardin 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 an investigation conducted on March 22, 2011, a TCEQ Beaumont Regional Office investigator documented that Respondent failed to provide proper corrosion protection for the UST system.
3. By letter dated April 20, 2011, the TCEQ Beaumont Regional Office provided Respondent with notice of the violations and of TCEQ's authority to shut down and remove from service USTs not in compliance with release detection, spill and/or overfill prevention, corrosion protection, and/or financial assurance requirements if the violations are not corrected.
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 M & K PANTRY, LLC (f/k/a M & K PANTRY, L.C.) d/b/a M & K Pantry 4," (the "EDPRP") in the TCEQ Chief Clerk's office on September 9, 2011.

5. By letter dated September 9, 2011, 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. According to the return receipt "green card," Respondent received notice of the EDPRP on September 14, 2011, as evidenced by the signature on the card.
6. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.
7. By letter dated November 2, 2011, the Executive Director provided Respondent with notice of TCEQ's intent to order the USTs at the Facility to be shut down and removed from service if Respondent failed to correct the corrosion protection violation within 30 days after Respondent's receipt of the notice.
8. As of the date of entry of this Order, Respondent has not provided the Executive Director with documentation demonstrating that the corrosion protection violation alleged in Finding of Fact No. 2 has been corrected.
9. The USTs at the Facility do not have corrosion protection as required by TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(a) and may be releasing petroleum products to the environment. Therefore, conditions at the Facility constitute an imminent peril to public health, safety, and welfare.

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 provide proper corrosion protection for the UST system, in violation of TEX. WATER CODE § 26.3475(d); 30 TEX. ADMIN. CODE § 334.49(a); and TCEQ Agreed Order Docket No. 2004-0675-PST-E, Ordering Provision No. 3.c.
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(a).
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 twenty-eight thousand one hundred twenty-five dollars (\$28,125.00) 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. As evidenced by Findings of Fact Nos. 3, 7 and 8, Respondent failed to correct documented violations of Commission corrosion protection requirements within 30 days after Respondent received notice of the violations and notice of the Executive Director's intent to shut down the Facility.
8. TEX. WATER CODE §§ 26.3475(e) and 26.352(i) authorize the Commission to order a UST owner or operator to shut down a UST system if, within 30 days after receiving notice of the violations, the owner or operator fails to correct violations of Commission regulatory requirements relating to release detection for tanks and/or piping, spill and/or overfill protection for tanks, corrosion protection for tanks and/or piping, and/or acceptable financial assurance.
9. 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.
10. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Respondent's UST fuel delivery certificate if the Commission finds that good cause exists.
11. Good cause for revocation of Respondent's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2 and 4 through 6 and Conclusions of Law Nos. 2 through 4.
12. As evidenced by Finding of Fact Nos. 8 and 9, current conditions at the Facility constitute an imminent peril to public health, safety, and welfare. Therefore, pursuant to the Administrative Procedure Act, TEX. GOV'T CODE § 2001.144(a)(3), this Order is final and effective on the date rendered.

ORDERING PROVISIONS

NOW, THEREFORE, IT IS ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. Immediately upon the effective date of this Order, Respondent shall take the following steps to shut down operations of all USTs at the Facility:
 - a. Cease dispensing fuel from the USTs;
 - b. Cease receiving deliveries of regulated substances into the USTs;
 - c. Padlock the dispensers;
 - d. Empty the USTs of all regulated substances in accordance with 30 TEX. ADMIN. CODE § 334.54(d); and
 - e. Temporarily remove the USTs from service in accordance with 30 TEX. ADMIN. CODE § 334.54.
2. Respondent's USTs shall remain out of service, pursuant to TEX. WATER CODE § 26.3475 and as directed by Ordering Provision Nos. 1.a. through 1.e., until such time as Respondent demonstrates to the satisfaction of the Executive Director that the corrosion protection violation noted in Finding of Fact No. 2 and Conclusion of Law No. 2 has been corrected.

3. If Respondent elects to permanently remove from service any portion of the UST system at the Facility, Respondent shall, immediately upon the effective date of the Order, permanently remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.55, and within 15 days after the effective date of this Order, shall submit a written report documenting compliance with 30 TEX. ADMIN. CODE § 334.55 to:

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

4. Respondent's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Respondent shall cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ in accordance with 30 TEX. ADMIN. CODE §§ 334.7 and 334.8. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements set forth in this Order.
5. Within 10 days after the effective date of this Order, Respondent shall send its UST fuel delivery certificate to:

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

6. Within 15 days after the effective date of this Order, Respondent shall submit a detailed written report, in accordance with Ordering Provision No. 12, below, documenting the steps taken to comply with Ordering Provisions Nos. 1.a. through 1.e. and 5.
7. Respondent is assessed an administrative penalty in the amount of twenty-eight thousand one hundred twenty-five dollars (\$28,125.00) 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.
8. 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: M & K PANTRY, LLC (f/k/a M & K PANTRY, L.C.) d/b/a M & K Pantry 4; Docket No. 2011-0638-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

9. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline, Respondent shall undertake the following technical requirements:
 - a. Install and implement a corrosion protection system for the UST system at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.49; and
 - b. Obtain a new fuel delivery certificate from the TCEQ.
10. Upon obtaining a new fuel delivery certificate, Respondent shall post the fuel delivery certificate in a location at the Facility where the delivery certificate is clearly visible at all times, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii).
11. Within 10 days of resuming retail sales of gasoline, Respondent shall submit written certification and detailed supporting documentation, in accordance with Ordering Provision No. 12, below, to demonstrate compliance with Ordering Provisions Nos. 9 and 10.
12. The certifications required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, 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 certifications and supporting 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:

Derek Eades, Waste Section Manager
Texas Commission on Environmental Quality
Beaumont Regional Office
3870 Eastex Freeway
Beaumont, Texas 77703-1830

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

14. 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.
15. 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.
16. 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.
17. 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.
18. 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.
19. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date this Order was rendered, pursuant to TEX. GOV'T CODE § 2001.144(a)(3).

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF XAVIER GUERRA

STATE OF TEXAS

§

COUNTY OF BEXAR

§

"My name is Xavier Guerra. 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 M & K PANTRY, LLC (f/k/a M & K PANTRY, L.C.) d/b/a M & K Pantry 4" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on September 9, 2011.

The EDPRP was mailed to Respondent's last known address on September 9, 2011, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on September 14, 2011, as evidenced by the signature on the card.

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

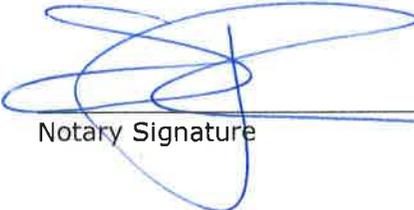
By letter dated November 2, 2011, sent via first class mail and certified mail, return receipt requested article no. 7003 0500 0002 9936 9759 and article no. 7003 0500 0002 9936 9742, I provided Respondent with notice of the TCEQ's intent to order the USTs at the Facility shut down and removed from service if the violation pertaining to corrosion protection were not corrected within 30 days of Respondent's receipt of the letter. According to the return receipt "green cards," Respondent received the notices on November 4, 2011.

As of the date of this affidavit, I am not aware of any evidence that indicates that Respondent has corrected the violations noted during the March 22, 2011, investigation."


Xavier Guerra, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Xavier Guerra, 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 14th day of December A.D. 2011.


Notary Signature

