

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 43717
Alice Michelle Chapa d/b/a Mikes Market
RN101860500
Docket No. 2012-0536-PST-E

Order Type:

Agreed Order

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

922 Farm-to-Market 3024, Mathis, Live Oak County

Type of Operation:

convenience 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: March 1, 2013

Comments Received: None

Penalty Information

Total Penalty Assessed: \$23,651

Total Paid to General Revenue: \$691

Total Due to General Revenue: \$22,960

Payment Plan: 35 payments of \$656 each

SEP Conditional Offset: N/A

Compliance History Classifications:

Person/CN – Average
Site/RN – Average by Default

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): N/A

Date(s) of Investigation: July 6, 2011; February 28, 2012

Date(s) of NOV(s): N/A

Date(s) of NOE(s): February 28, 2012

Alice Michelle Chapa d/b/a Mikes Market

RN101860500

Docket No. 2012-0536-PST-E

Violation Information

1. Failed to renew a delivery certificate by submitting a properly completed UST registration and self-certification form at least thirty days before the expiration of the delivery certificate [30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)].
2. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting a delivery of a regulated substance into the USTs [TEX. WATER CODE § 26.3467(a) and 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i)].
3. Failed to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].
4. Failed to provide proper corrosion protection for the UST system [TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(a)(1)].

Corrective Actions/Technical Requirements**Corrective Action(s) Completed:**

1. Submitted a properly completed UST registration and self-certification form which was received on September 16, 2011;
2. Obtained a valid fuel delivery certificate on September 22, 2011;
3. Demonstrated acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs on August 24, 2011; and
4. Repaired and successfully tested the corrosion protection system at the Facility on July 27, 2011.

Technical Requirements:

N/A

Litigation Information**Date Petition(s) Filed:** July 25, 2012**Date Answer(s) Filed:** August 6, 2012**SOAH Referral Date:** September 6, 2012**Hearing Date(s):**

Preliminary hearing: October 25, 2012 (waived)

Evidentiary hearing: February 26, 2013 (scheduled)

Settlement Date: January 25, 2013**Contact Information****TCEQ Attorneys:** Elizabeth Lieberknecht, Litigation Division, (512) 239-3400

Lena Roberts, Litigation Division, (512) 239-3400

Garett Arthur, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Rebecca Boyett, Enforcement Division, 512-239-2503**TCEQ Regional Contact:** Hector Gonzales, Corpus Christi Regional Office, 361- 825-3105**Respondent:** Alice Chapa, 922 Farm-to-Market 3024, Mathis, Texas 78368**Respondent's Attorney:** David J. Tuckfield, The AL Law Group PLLC, 12400 Highway 71 West, Suite 350-150, Austin, Texas 78738



Penalty Calculation Worksheet (PCW)

DATES	Assigned	5-Mar-2012			
	PCW	11-Jan-2013	Screening	6-Mar-2012	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	Alice Michelle Chapa dba Mikes Market
Reg. Ent. Ref. No.	RN101860500
Facility/Site Region	14-Corpus Christi
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	43717	No. of Violations	4
Docket No.	2012-0536-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Steven Van Landingham
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$26,500
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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	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No adjustment for compliance history.

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	\$6,625
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$3,801
 Approx. Cost of Compliance: \$8,120
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$19,875
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OTHER FACTORS AS JUSTICE MAY REQUIRE	19.0%	Adjustment	\$3,776
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with violation nos. 1 and 3.

Final Penalty Amount	\$23,651
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$23,651
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$23,651
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Screening Date 6-Mar-2012

Docket No. 2012-0536-PST-E

PCW

Respondent Alice Michelle Chapa dba Mikes Market

Policy Revision 2 (September 2002)

Case ID No. 43717

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101860500

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Van Landingham

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>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were 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) 0%

>> 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

No adjustment for compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 6-Mar-2012 **Docket No.** 2012-0536-PST-E **PCW**
Respondent Alice Michelle Chapa dba Mikes Market *Policy Revision 2 (September 2002)*
Case ID No. 43717 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN101860500
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Steven Van Landingham

Violation Number

Rule Cite(s)

30 Tex. Admin. Code § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)

Violation Description

Failed to renew a delivery certificate by submitting a properly completed underground storage tank ("UST") registration and self-certification form at least 30 days before the expiration. Specifically the delivery certificate expired on September 30, 2003.

Base Penalty

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

OR

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

Percent

>> **Programmatic Matrix**

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

Percent

Matrix Notes

100% of the rule requirement was not met.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input checked="" type="checkbox"/>
single event	<input type="text"/>

Violation Base Penalty

Eight annual events are recommended.

Good Faith Efforts to Comply

Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input checked="" type="checkbox"/>	<input type="text"/>
N/A	<input type="text"/>	(mark with x)

Notes

The Respondent came into compliance on September 16, 2011, prior to the Notice of Enforcement ("NOE") dated February 28, 2012.

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Alice Michelle Chapa dba Mikes Market
Case ID No. 43717
Reg. Ent. Reference No. RN101860500
Media Violation No. 1
Media Petroleum Storage Tank

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	\$100	6-Jul-2011	16-Sep-2011	0.20	\$1	n/a	\$1

Notes for DELAYED costs Estimated cost to renew a TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form. The date required is the investigation date and the final date is the compliance date.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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]	\$700	30-Sep-2003	6-Jul-2011	8.69	\$304	\$700	\$1,004
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs Estimated avoided cost (\$100 per full year) to accurately prepare and submit an updated registration and obtain a TCEQ delivery certificate. The date required is the delivery certificate expiration date and the final date is the investigation date.

Approx. Cost of Compliance \$800 **TOTAL** \$1,005

Screening Date 6-Mar-2012

Docket No. 2012-0536-PST-E

PCW

Respondent Alice Michelle Chapa dba Mikes Market

Policy Revision 2 (September 2002)

Case ID No. 43717

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101860500

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Van Landingham

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 334.8(c)(5)(A)(i) and Tex. Water Code § 26.3467(a)

Violation Description

Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, the Respondent received 28 fuel deliveries without a delivery certificate.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			x

Percent 5%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 28

22 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$14,000

28 single events are recommended.

Good Faith Efforts to Comply

25.0% Reduction

\$3,500

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

Notes

The Respondent came into compliance on September 22, 2011, prior to the NOE dated February 28, 2012.

Violation Subtotal \$10,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$12,495

This violation Final Assessed Penalty (adjusted for limits) \$12,495

Economic Benefit Worksheet

Respondent Alice Michelle Chapa dba Mikes Market
Case ID No. 43717
Reg. Ent. Reference No. RN101860500
Media Violation No. Petroleum Storage Tank
 2

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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Economic Benefit included in violation no. 1.

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 \$0

TOTAL \$0

Screening Date 6-Mar-2012

Docket No. 2012-0536-PST-E

PCW

Respondent Alice Michelle Chapa dba Mikes Market

Policy Revision 2 (September 2002)

Case ID No. 43717

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101860500

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Van Landingham

Violation Number 3

Rule Cite(s)

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

Violation Description

Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs.

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 2

365 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$2,000

Two single events are recommended for the two USTs at the Facility.

Good Faith Efforts to Comply

25.0% Reduction

\$500

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

Notes

The Respondent came into compliance on August 24, 2011, prior to the NOE dated February 28, 2012.

Violation Subtotal \$1,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2,772

Violation Final Penalty Total \$1,785

This violation Final Assessed Penalty (adjusted for limits) \$1,785

Economic Benefit Worksheet

Respondent Alice Michelle Chapa dba Mikes Market
Case ID No. 43717
Reg. Ent. Reference No. RN101860500
Media Violation No. 3
Media Petroleum Storage Tank

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

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

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]	\$1,320	6-Jul-2010	24-Aug-2011	2.00	\$132	\$2,640	\$2,772
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to provide financial assurance for two USTs (\$660 per tank). The date required is one year prior to the investigation date and the final date is the compliance date.

Approx. Cost of Compliance \$1,320

TOTAL \$2,772

Screening Date 6-Mar-2012

Docket No. 2012-0536-PST-E

PCW

Respondent Alice Michelle Chapa dba Mikes Market

Policy Revision 2 (September 2002)

Case ID No. 43717

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101860500

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Van LANDINGHAM

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code § 334.49(a)(1) and Tex. Water Code § 26.3475(d)

Violation Description

Failed to provide proper corrosion protection for the UST system.

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

21 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 July 6, 2011 investigation date to the July 27, 2011 compliance date.

Good Faith Efforts to Comply

25.0% Reduction

\$625

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

Notes

The Respondent came into compliance on July 27, 2011, prior to the NOE dated February 28, 2012.

Violation Subtotal \$1,875

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$24

Violation Final Penalty Total \$2,231

This violation Final Assessed Penalty (adjusted for limits) \$2,231

Economic Benefit Worksheet

Respondent Alice Michelle Chapa dba Mikes Market
Case ID No. 43717
Reg. Ent. Reference No. RN101860500
Media Violation No. 4
 Petroleum Storage Tank

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment	\$6,000	6-Jul-2011	27-Jul-2011	0.06	\$1	\$23	\$24
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 install corrosion protection for the USTs and test the system. The date required is the investigation date and the final date is the compliance date.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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 \$6,000 **TOTAL** \$24

Compliance History Report

Customer/Respondent/Owner-Operator:	CN601013576	Alice Michelle Chapa	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN101860500	MIKES MARKET	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION		20697
Location:	922 FM RD 3024, MATHIS, TX, 78368			
TCEQ Region:	REGION 14 - CORPUS CHRISTI			
Date Compliance History Prepared:	March 06, 2012			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	March 06, 2007 to March 06, 2012			

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

Name: Steven Van Landingham Phone: (512) 239-5717

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? NO
3. If **YES**, who is the current owner/operator? N/A
4. If **YES**, who was/were the prior owner(s)/operator(s)? N/A
5. If **YES**, when did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2011 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 02/28/2012 (949869)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
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
ALICE MICHELLE CHAPA
D/B/A MIKES MARKET;
RN101860500**

§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2012-0536-PST-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Alice Michelle Chapa d/b/a Mikes Market ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, represented by David J. Tuckfield of the law firm The AL Law Group PLLC, together stipulate that:

1. Respondent owns and operates, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), an underground storage tank ("UST") system and a convenience store with retail sales of gasoline located at 922 Farm-to-Market 3024 in Mathis, Live Oak County, Texas (Facility ID No. 20697) (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. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Executive Director and Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondent is subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of twenty-three thousand six hundred fifty-one dollars (\$23,651.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid six hundred ninety-one dollars (\$691.00) of the administrative penalty. The remaining amount of twenty-two thousand nine hundred sixty dollars (\$22,960.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of six hundred fifty-six dollars (\$656.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Respondent fails to

- timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Respondent's failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Agreed Order.
6. 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.
 7. The Executive Director and Respondent agree on a settlement of the matters addressed in this Agreed Order, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
 8. The Executive Director recognizes that Respondent implemented the following corrective measures at the Facility:
 - a. Submitted a properly completed UST registration and self-certification form which was received on September 16, 2011;
 - b. Obtained a valid fuel delivery certificate on September 22, 2011;
 - c. Demonstrated acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs on August 24, 2011; and
 - d. Repaired and successfully tested the corrosion protection system at the Facility on July 27, 2011.
 9. 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 Respondent has not complied with one or more of the terms or conditions contained in this Agreed Order.
 10. 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.
 11. The provisions of this Agreed Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

1. During an investigation conducted on July 6, 2011, and a record review conducted on February 28, 2012, a University of Texas at Arlington Petroleum Storage Tank Program investigator documented that Respondent:
 - a. Failed to renew a delivery certificate by submitting a properly completed UST registration and self-certification form at least thirty days before the

expiration of the delivery certificate, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii). Specifically, the delivery certificate expired on September 30, 2003;

- b. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting a delivery of a regulated substance into the USTs, in violation of TEX. WATER CODE § 26.3467(a) and 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i). Specifically, Respondent received twenty-eight fuel deliveries without a valid, current delivery certificate;
 - c. Failed to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b); and
 - d. Failed to provide proper corrosion protection for the UST system, in violation of TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(a)(1).
2. Respondent received notice of the violations on or about March 4, 2012.

III. DENIALS

Respondent generally denies each Allegation in Section II.

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Respondent pay an administrative penalty as set forth in Section I, Paragraph 5, above. The payment of this administrative penalty and 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 considering or requiring corrective actions or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Alice Michelle Chapa d/b/a Mikes Market, Docket No. 2012-0536-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
2. All relief not expressly granted in this Agreed Order is denied.
3. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If 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, Respondent's failure to comply is not a violation of this Agreed 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.
5. 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 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.
 6. This Agreed Order, issued by the Commission, shall not be admissible against 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.
 7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission" "owner" "person" "writing" and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
 8. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails a copy of the fully executed Agreed Order to Respondent, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

M. Sweeney
For the Executive Director

March 11, 2013
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of Alice Michelle Chapa d/b/a Mikes Market, 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 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;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.

Alice Michelle Chapa
Signature - Alice Michelle Chapa

January 25, 2013
Date