

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 44581  
ACRES ENTERPRISES, INC. d/b/a Rebels Food Market  
RN101780500  
Docket No. 2012-1455-PST-E

**Order Type:**

Default Order (SOAH preliminary hearing)

**Media:**

PST

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

Farm-to-Market Road 105 and Murphy Road, Evadale, Jasper 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:** June 7, 2013

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$17,685

**Total Paid to General Revenue:** \$0

**Total Due to General Revenue:** \$17,685

**Compliance History Classifications:**

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

**Major Source:** No

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** September 2002 (PCW 1); September 2011 (PCW 2)

**Investigation Information**

**Date(s) of Investigation:** June 4, 2012

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

**Date(s) of NOE(s):** July 13, 2012

**Violation Information**

1. 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)].
2. Failed to maintain all UST records and make them immediately available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b)(1)(B)].
3. Failed to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date [30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)].
4. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting 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)].
5. Failed to ensure that a legible tag, label, or marking with the UST identification number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form [30 TEX. ADMIN. CODE § 334.8(c)(5)(C)].
6. Failed to contain and immediately clean up a spill of petroleum substance from a UST system [30 TEX. ADMIN. CODE §§ 334.75(b) and 334.76].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**

1. Performed a corrosion protection survey, prepared a tank verification report, and tested the system with passing results on July 27, 2012; and
2. Permanently affixed a label with the UST identification number to a non-removable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form on December 5, 2012.

**Technical Requirements:**

1. The Facility's UST fuel delivery certificate is revoked immediately. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements contained in the Order.
2. Immediately, cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ.
3. Within 10 days, send the Facility's UST fuel delivery certificate to the TCEQ.
4. Within 15 days, submit written certification to demonstrate compliance with Technical Requirements Nos. 2 and 3.
5. Within 30 days:
  - a. Begin maintaining all UST records; and
  - b. Implement appropriate corrective measures for cleanup of the spill of petroleum substances.
6. Within 45 days, submit written certification to demonstrate compliance with Technical Requirement No. 5.
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.

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 44581  
ACRES ENTERPRISES, INC. d/b/a Rebels Food Market  
RN101780500  
Docket No. 2012-1455-PST-E

**Litigation Information**

**Date Petition(s) Filed:** October 17, 2012  
**Date Answer(s) Filed:** February 14, 2013  
**SOAH Referral Date:** March 19, 2013  
**Hearing Date(s):**  
Preliminary hearing: May 2, 2013 (defaulted)  
Evidentiary hearing: N/A

**Contact Information**

**TCEQ Attorneys:** Ryan Rutledge, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
Amy Swanholm, Public Interest Counsel, (512) 239-6363  
**TCEQ Enforcement Coordinator:** Epifanio Villareal, Enforcement Division, (361) 825-3425  
**TCEQ Regional Contact:** Sarah Kirksey, Beaumont Regional Office, (409) 898-3838  
**Respondent:** Feroz Sheikh, President, ACRES ENTERPRISES, INC., P.O. Box 960, Evadale, Texas  
77615-0960  
**Respondent's Attorney:** N/A

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# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	16-Jul-2012	<b>Screening</b>	19-Jul-2012	<b>EPA Due</b>	
	<b>PCW</b>	19-Jul-2012				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	ACRES ENTERPRISES, INC. dba Rebels Food Market	
<b>Reg. Ent. Ref. No.</b>	RN101780500	
<b>Facility/Site Region</b>	10-Beaumont	<b>Major/Minor Source</b> Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	44581	<b>No. of Violations</b>	1
<b>Docket No.</b>	2012-1455-PST-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Epifanio Villarreal
		<b>EC's Team</b>	Enforcement Team 2
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$5,000**

### 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**

Notes: No adjustment for compliance history.

**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 **\$5,541**  
 Approx. Cost of Compliance **\$12,000**  
 \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$5,000**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **104.6%** **Adjustment** **\$5,230**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement recommended for recovery of avoided costs of compliance.

**Final Penalty Amount** **\$10,230**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$10,230**

**DEFERRAL** **0.0%** Reduction **Adjustment** **\$0**

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** **\$10,230**

<b>Screening Date</b>	19-Jul-2012	<b>Docket No.</b>	2012-1455-PST-E	<b>PCW</b>
<b>Respondent</b>	ACRES ENTERPRISES, INC. dba Rebels Food Market			<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b>	44581			<i>PCW Revision October 30, 2008</i>
<b>Reg. Ent. Reference No.</b>	RN101780500			
<b>Media [Statute]</b>	Petroleum Storage Tank			
<b>Enf. Coordinator</b>	Epifanio Villarreal			

### 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)**

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

**Adjustment Percentage (Subtotal 3)**

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

**Adjustment Percentage (Subtotal 7)**

>> **Compliance History Summary**

**Compliance History Notes**

No adjustment for compliance history.

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

<b>Screening Date</b>	19-Jul-2012	<b>Docket No.</b>	2012-1455-PST-E	<b>PCW</b>
<b>Respondent</b>	ACRES ENTERPRISES, INC. dba Rebels Food Market		Policy Revision 2 (September 2002)	
<b>Case ID No.</b>	44581	PCW Revision October 30, 2008		
<b>Reg. Ent. Reference No.</b>	RN101780500			
<b>Media [Statute]</b>	Petroleum Storage Tank			
<b>Enf. Coordinator</b>	Epifanio Villarreal			

**Violation Number**

**Rule Cite(s)**

**Violation Description**

**Base Penalty**

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	<b>Percent</b> <input type="text" value="0%"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

**Matrix Notes**

**Adjustment**

Violation Events

Number of Violation Events   Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text" value="x"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

**Violation Base Penalty**

Good Faith Efforts to Comply

Reduction

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

**Notes**

**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** ACRES ENTERPRISES, INC. dba Rebels Food Market  
**Case ID No.** 44581  
**Reg. Ent. Reference No.** RN101780500  
**Media Violation No.** 1  
**Media 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	\$6,000	4-Jun-2012	1-Mar-2013	0.74	\$15	\$296	\$311
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 UST system. The date required is the investigation date, 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	\$6,000	6-Aug-2011	4-Jun-2012	0.83	\$249	\$4,981	\$5,230
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**  
 Estimated cost for not providing corrosion protection for the UST system. The date required is the date of when the test failed and the final date is the date of the investigation.

<b>Approx. Cost of Compliance</b>	\$12,000	<b>TOTAL</b>	\$5,541
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# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

<b>DATES</b>	<b>Assigned</b>	16-Jul-2012	<b>Screening</b>	19-Jul-2012	<b>EPA Due</b>	
	<b>PCW</b>	19-Jul-2012				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	ACRES ENTERPRISES, INC. dba Rebels Food Market
<b>Reg. Ent. Ref. No.</b>	RN101780500
<b>Facility/Site Region</b>	10-Beaumont
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	44581	<b>No. of Violations</b>	5
<b>Docket No.</b>	2012-1455-PST-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Epifanio Villarreal
		<b>EC's Team</b>	Enforcement Team 2
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$7,250**

### 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**

Notes: No adjustment for compliance history.

**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: \$416  
 Approx. Cost of Compliance: \$5,900  
 \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$7,250**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **2.8%** **Adjustment** **\$205**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement recommended for recovery of avoided costs of compliance associated with violation nos. 2 and 5.

**Final Penalty Amount** **\$7,455**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$7,455**

**DEFERRAL** **0.0%** Reduction **Adjustment** **\$0**

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** **\$7,455**

<b>Screening Date</b>	19-Jul-2012	<b>Docket No.</b>	2012-1455-PST-E	<b>PCW</b>
<b>Respondent</b>	ACRES ENTERPRISES, INC. dba Rebels Food Mark			<i>Policy Revision 3 (September 2011)</i>
<b>Case ID No.</b>	44581			<i>PCW Revision August 3, 2011</i>
<b>Reg. Ent. Reference No.</b>	RN101780500			
<b>Media [Statute]</b>	Petroleum Storage Tank			
<b>Enf. Coordinator</b>	Epifanio Villarreal			

### 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)**

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

**Adjustment Percentage (Subtotal 3)**

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

**Adjustment Percentage (Subtotal 7)**

>> **Compliance History Summary**

**Compliance History Notes**

No adjustment for compliance history.

**Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)**

>> **Final Compliance History Adjustment**

**Final Adjustment Percentage \*capped at 100%**

<b>Screening Date</b>	19-Jul-2012	<b>Docket No.</b>	2012-1455-PST-E	<b>PCW</b>
<b>Respondent</b>	ACRES ENTERPRISES, INC. dba Rebels Food Market		<i>Policy Revision 3 (September 2011)</i>	
<b>Case ID No.</b>	44581	<i>PCW Revision August 3, 2011</i>		
<b>Reg. Ent. Reference No.</b>	RN101780500			
<b>Media [Statute]</b>	Petroleum Storage Tank			
<b>Enf. Coordinator</b>	Epifanio Villarreal			

**Violation Number**

**Rule Cite(s)**

**Violation Description**

**Base Penalty**

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

<b>OR</b>	<b>Harm</b>				<b>Percent</b> <input type="text" value="0.0%"/>
	<b>Release</b>	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	<b>Percent</b> <input type="text" value="5.0%"/>
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

**Matrix Notes**

**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 type="text"/>
single event	<input checked="" type="text" value="x"/>

**Violation Base Penalty**

**Good Faith Efforts to Comply**  Reduction

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

**Notes**

**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** ACRES ENTERPRISES, INC. dba Rebels Food Market  
**Case ID No.** 44581  
**Reg. Ent. Reference No.** RN101780500  
**Media Violation No.** 1  
**Media 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
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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	\$500	4-Jun-2012	1-Mar-2013	0.74	\$18	n/a	\$18
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

The delayed costs include the estimated cost to maintain all UST records. The date required is the investigation date, 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

**TOTAL**

<b>Screening Date</b>	19-Jul-2012	<b>Docket No.</b>	2012-1455-PST-E	<b>PCW</b>
<b>Respondent</b>	ACRES ENTERPRISES, INC. dba Rebels Food Market			<i>Policy Revision 3 (September 2011)</i>
<b>Case ID No.</b>	44581			<i>PCW Revision August 3, 2011</i>
<b>Reg. Ent. Reference No.</b>	RN101780500			
<b>Media [Statute]</b>	Petroleum Storage Tank			
<b>Enf. Coordinator</b>	Epifanio Villarreal			

**Violation Number**

**Rule Cite(s)**

**Violation Description**

**Base Penalty**

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0.0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="5.0%"/>

**Matrix Notes**

**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 type="text"/>
single event	<input checked="" type="text" value="x"/>

**Violation Base Penalty**

**Good Faith Efforts to Comply**  Reduction

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

**Notes**

**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** ACRES ENTERPRISES, INC. dba Rebels Food Market  
**Case ID No.** 44581  
**Reg. Ent. Reference No.** RN101780500  
**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)	\$100	4-Jun-2012	1-Mar-2013	0.74	\$4	n/a	\$4

**Notes for DELAYED costs** Estimated cost to obtain a current TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form. The date required is the date of the investigation, 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]	\$100	30-Apr-2012	4-Jun-2012	1.01	\$5	\$100	\$105
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs** Estimated cost to obtain a TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form. The date required is the expiration date of the delivery certificate, and the final date is the investigation date.

Approx. Cost of Compliance \$200

**TOTAL** \$109

<b>Screening Date</b>	19-Jul-2012	<b>Docket No.</b>	2012-1455-PST-E	<b>PCW</b>
<b>Respondent</b>	ACRES ENTERPRISES, INC. dba Rebels Food Market			<i>Policy Revision 3 (September 2011)</i>
<b>Case ID No.</b>	44581			<i>PCW Revision August 3, 2011</i>
<b>Reg. Ent. Reference No.</b>	RN101780500			
<b>Media [Statute]</b>	Petroleum Storage Tank			
<b>Enf. Coordinator</b>	Epifanio Villarreal			

**Violation Number**

**Rule Cite(s)**

**Violation Description**

**Base Penalty**

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="3.0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text" value="x"/>	

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0.0%"/>

Matrix Notes

**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 type="text"/>
single event	<input type="text" value="x"/>

**Violation Base Penalty**

**Good Faith Efforts to Comply**

Reduction

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

Notes

**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** ACRES ENTERPRISES, INC. dba Rebels Food Market  
**Case ID No.** 44581  
**Reg. Ent. Reference No.** RN101780500  
**Media Violation No.** Petroleum Storage Tank  
 3

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment			0.00	\$0	\$0	\$0
Buildings			0.00	\$0	\$0	\$0
Other (as needed)			0.00	\$0	\$0	\$0
Engineering/construction			0.00	\$0	\$0	\$0
Land			0.00	\$0	n/a	\$0
Record Keeping System			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. 2.

### 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

**TOTAL**

<b>Screening Date</b>	19-Jul-2012	<b>Docket No.</b>	2012-1455-PST-E	<b>PCW</b>
<b>Respondent</b>	ACRES ENTERPRISES, INC. dba Rebels Food Market			<i>Policy Revision 3 (September 2011)</i>
<b>Case ID No.</b>	44581			<i>PCW Revision August 3, 2011</i>
<b>Reg. Ent. Reference No.</b>	RN101780500			
<b>Media [Statute]</b>	Petroleum Storage Tank			
<b>Enf. Coordinator</b>	Epifanio Villarreal			

**Violation Number**

**Rule Cite(s)**

**Violation Description**

**Base Penalty**

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

<b>OR</b>	<b>Harm</b>			<b>Percent</b> <input type="text" value="0.0%"/>	
	<b>Release</b>	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	<b>Percent</b> <input type="text" value="5.0%"/>
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

**Matrix Notes**

**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 type="text"/>
single event	<input checked="" type="text" value="x"/>

**Violation Base Penalty**

**Good Faith Efforts to Comply**  Reduction

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

**Notes**

**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** ACRES ENTERPRISES, INC. dba Rebels Food Market  
**Case ID No.** 44581  
**Reg. Ent. Reference No.** RN101780500  
**Media Violation No.** 4  
**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	4-Jun-2012	1-Mar-2013	0.74	\$4	n/a	\$4

**Notes for DELAYED costs**  
 The estimated cost includes the amount required to permanently affix a label to the UST fill tube. The date required is the investigation date, 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)

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**      **TOTAL**

<b>Screening Date</b>	19-Jul-2012	<b>Docket No.</b>	2012-1455-PST-E	<b>PCW</b>
<b>Respondent</b>	ACRES ENTERPRISES, INC. dba Rebels Food Market			<i>Policy Revision 3 (September 2011)</i>
<b>Case ID No.</b>	44581			<i>PCW Revision August 3, 2011</i>
<b>Reg. Ent. Reference No.</b>	RN101780500			
<b>Media [Statute]</b>	Petroleum Storage Tank			
<b>Enf. Coordinator</b>	Epifanio Villarreal			

**Violation Number**

**Rule Cite(s)**

**Violation Description**

**Base Penalty**

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

<b>OR</b>	<b>Harm</b>				
	<b>Release</b>	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="text" value="X"/>	<b>Percent</b> <input type="text" value="5.0%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>		

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0.0%"/>

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input checked="" type="text" value="X"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

**Violation Base Penalty**

**Good Faith Efforts to Comply**  Reduction

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

**Notes**

**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** ACRES ENTERPRISES, INC. dba Rebels Food Market  
**Case ID No.** 44581  
**Reg. Ent. Reference No.** RN101780500  
**Media Violation No.** Petroleum Storage Tank  
 5

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	\$5,000	4-Jun-2012	1-Mar-2013	0.74	\$185	n/a	\$185
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to report, abate, and properly cleanup the spill. Date Required is the date when the release occurred. 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]	\$100	4-Jun-2012	5-Jun-2012	0.00	\$0	\$100	\$100
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to report a spill to the agency. Date Required is the date of the spill. Final Date is the date notification was due.

Approx. Cost of Compliance

\$5,100

**TOTAL**

\$285

# Compliance History Report

Customer/Respondent/Owner-Operator: CN600961189 ACRES ENTERPRISES, INC. Classification: AVERAGE Rating: 3.01  
Regulated Entity: RN101780500 REBELS FOOD MARKET Classification: AVERAGE BY DEFAULT Site Rating: 3.01  
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 71393  
Location: FM RD 105 & MURPHY ROAD, EVADALE, JASPER COUNTY, TEXAS  
TCEQ Region: REGION 10 - BEAUMONT  
Date Compliance History Prepared: July 19, 2012  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: July 19, 2007 to July 19, 2012  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Epi Villarreal Phone: 361-825-3425

## 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? Acres Enterprises, Inc., OWNER OPERATOR since 06/01/2009
4. If **YES**, who was/were the prior owner(s)/operator(s)? Irfan Enterprises, Inc., OWNER OPERATOR, 6/29/2005 to 6/1/2009
5. If **YES**, when did the change(s) in owner or operator occur? 6/1/2009
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 03/20/2012 (942443)
  - 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  
ACRES ENTERPRISES, INC.  
D/B/A REBELS FOOD MARKET;  
RN101780500**

§  
§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

### **DOCKET NO. 2012-1455-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 facility's fuel delivery certificate. The respondent made the subject of this Order is ACRES ENTERPRISES, INC. d/b/a Rebels Food Market ("Respondent").

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

### **FINDINGS OF FACT**

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 Farm-to-Market Road 105 and Murphy Road in Evadale, Jasper County, Texas (Facility ID No. 71393)(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 June 4, 2012, a TCEQ Beaumont Regional Office investigator documented that Respondent
  - a. Failed to provide proper corrosion protection for the UST system. Specifically, the UST system failed corrosion protection testing on August 6, 2011;
  - b. Failed to maintain all UST records and make them immediately available for inspection upon request by agency personnel;
  - c. Failed to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date. Specifically, the delivery certificate expired on April 30, 2012;
  - d. 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, Respondent received deliveries of fuel on May 16, May 24, and June 4, 2012, without a current valid delivery certificate;
  - e. Failed to ensure that a legible tag, label, or marking with the UST identification number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form; and

- f. Failed to contain and immediately clean up a spill of petroleum substance from a UST system. Specifically, a release of gasoline occurred on the concrete and asphalt drive, and Respondent failed to report and abate the situation.
3. Respondent received notice of the violations on or about July 18, 2012.
4. The Executive Director recognizes that Respondent implemented the following corrective measures at the Facility:
  - a. Performed a corrosion protection survey, prepared a tank verification report, and tested the system with passing results on July 27, 2012; and
  - b. Permanently affixed a label with the UST identification number to a non-removable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form on December 5, 2012.
5. 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 ACRES ENTERPRISES, INC. d/b/a Rebels Food Market" (the "EDPRP") in the TCEQ Chief Clerk's office on October 17, 2012.
6. Respondent filed an answer requesting a hearing on February 14, 2013, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on March 19, 2013.
7. On April 2, 2013, the TCEQ Chief Clerk mailed notice of the May 2, 2013, preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Respondent.
8. On May 2, 2013, the Administrative Law Judge ("ALJ") convened the preliminary hearing. Respondent failed to appear, and the Executive Director requested that the matter be dismissed from the SOAH Docket and remanded to the Executive Director so that a Default Order may be entered by the Commission.
9. On May 3, 2013, the ALJ entered a finding that Respondent was served with proper notice of the hearing and remanded the matter to the Executive Director by SOAH Order No. 1, Dismissing Case And Remanding To The Executive Director so that TCEQ may dispose of this case on a default basis.

#### **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.a., Respondent 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).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to maintain all UST records and make them immediately available for inspection upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 334.10(b)(1)(B).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii).

5. As evidenced by Finding of Fact No. 2.d., Respondent failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting 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).
6. As evidenced by Finding of Fact No. 2.e., Respondent failed to ensure that a legible tag, label, or marking with the UST identification number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(C).
7. As evidenced by Finding of Fact No. 2.f., Respondent failed to contain and immediately clean up a spill of petroleum substance from a UST system, in violation of 30 TEX. ADMIN. CODE §§ 334.75(b) and 334.76.
8. As evidenced by Finding of Fact No. 6, Respondent filed an answer requesting a hearing as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105, and the matter was referred to SOAH pursuant to 1 TEX. ADMIN. CODE §§ 155.53(b) and 155.101(b) and 30 TEX. ADMIN. CODE § 70.109.
9. As evidenced by Finding of Fact No. 7, Respondent was provided proper notice of the preliminary hearing in accordance with TEX. GOV'T CODE §§ 2001.051(1) and 2001.052, TEX. WATER CODE § 7.058, 1 TEX. ADMIN. CODE §§ 155.103(a) and (c)(3), 155.401 and 155.501, and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.23, 39.25, 39.405, 39.413, 39.423, 39.425 and 80.6.
10. As evidenced by Findings of Fact Nos. 8 and 9, Respondent failed to appear for the preliminary hearing, and pursuant to TEX. GOV'T CODE § 2001.056(4), TEX. WATER CODE § 7.057, and 1 TEX. ADMIN. CODE § 155.501(d), the ALJ dismissed the case from the SOAH docket so that the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director pursuant to 30 TEX. ADMIN. CODE § 70.106(b).
11. 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.
12. An administrative penalty in the amount of seventeen thousand six hundred eighty-five dollars (\$17,685.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
13. 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.
14. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke the Facility's UST fuel delivery certificate if the Commission finds that good cause exists.
15. Good cause for revocation of the Facility's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2 and 5 through 9, and Conclusions of Law Nos. 2 through 10.

### ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of seventeen thousand six hundred eighty-five dollars (\$17,685.00) 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: ACRES ENTERPRISES, INC. d/b/a Rebels Food Market; Docket No. 2012-1455-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. The Facility's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements of this Order.
4. Respondent shall undertake the following technical requirements:
  - a. 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.
  - b. Within 10 days after the effective date of this Order, Respondent shall send the Facility's 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
  - c. Within 15 days after the effective date of this Order, Respondent shall submit written certification, in accordance with Ordering Provision No. 4.f., below, to demonstrate compliance with Ordering Provisions Nos. 4.a. and 4.b.
  - d. Within 30 days after the effective date of this Order, Respondent shall:
    - i. Begin maintaining all UST records, in accordance with 30 TEX. ADMIN. CODE § 334.10; and
    - ii. Implement appropriate corrective measures for cleanup of the spill of petroleum substances, in accordance with 30 TEX. ADMIN. CODE § 334.75.
  - e. Within 45 days after the effective date of this Order, Respondent shall submit written certification, in accordance with Ordering Provision No. 4.f., below, to demonstrate compliance with Ordering Provision No. 4.d.

- f. 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:

Sarah Kirksey, Waste Section Manager  
Texas Commission on Environmental Quality  
Beaumont Regional Office  
3870 Easttex Fwy  
Beaumont, Texas 77703-1830

5. 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).
6. All relief not expressly granted in this Order is denied.
7. 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.
8. 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.
9. 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.

10. 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.
11. 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.
12. 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

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For the Commission

**AFFIDAVIT OF RYAN RUTLEDGE**

**STATE OF TEXAS**

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**COUNTY OF TRAVIS**

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"My name is Ryan Rutledge. 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 ACRES ENTERPRISES, INC. d/b/a Rebels Food Market" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on October 17, 2012.

Respondent filed an answer requesting a hearing on February 14, 2013, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on March 19, 2013. On April 2, 2013, the TCEQ Chief Clerk mailed notice of the May 2, 2013 preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Respondent.

Respondent failed to appear at the hearing on May 2, 2013. At that hearing, I requested that the ALJ enter a finding that Respondent was served with proper notice of the hearing and the matter be remanded to the Executive Director pursuant to 1 TEX. ADMIN. CODE § 155.501(d), which gives an ALJ the authority to remand the case back to the TCEQ for informal disposition on a default basis in accordance with TEX. GOV'T CODE § 2001.056.

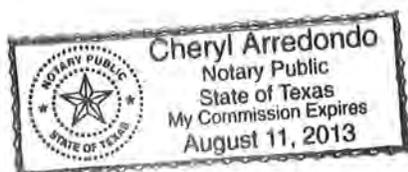
The ALJ remanded the matter to the Executive Director by SOAH Order No. 1, Dismissing Case And Remanding To The Executive Director, issued on May 3, 2013, so that TCEQ may dispose of this case on a default basis."

*Ryan Rutledge*

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Ryan Rutledge, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Ryan Rutledge, 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 9<sup>th</sup> day of May, A.D. 2013.



*Cheryl Arredondo*  
\_\_\_\_\_  
Notary Signature