

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 45479  
New Caney Enterprise, Inc. d/b/a Bills 3Gs Food Mart  
RN101879716  
Docket No. 2012-2337-PST-E

**Order Type:**

Agreed Order

**Media:**

PST

**Small Business:**

Yes

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

23550 Farm-to-Market Road 1485, New Caney, Montgomery 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:** April 26, 2013

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$8,063

**Total Paid to General Revenue:** \$363

**Total Due to General Revenue:** \$7,700

Payment Plan: 35 payments of \$220 each

**SEP Conditional Offset:** N/A

**Compliance History Classifications:**

Person/CN – Satisfactory  
Site/RN – Satisfactory

**Major Source:** No

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** September 2011

**Investigation Information**

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

**Date(s) of Investigation:** January 12, 2012; October 17, 2012

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

**Date(s) of NOE(s):** October 17, 2012

**Violation Information**

1. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A)].
2. Failed to provide proper corrosion protection to 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:**

Began providing proper corrosion protection for the UST system on March 10, 2012.

**Technical Requirements:**

1. Within 30 days, implement a release detection method for the USTs at the Facility; and
2. Within 45 days, submit written certification to demonstrate compliance.

**Litigation Information**

**Date Petition(s) Filed:** March 5, 2013

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

**Settlement Date:** April 22, 2013

**Contact Information**

**TCEQ Attorneys:** Phillip M. Goodwin, P.G., Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
Amy Swanholm, Public Interest Counsel, (512) 239-6363

**TCEQ Enforcement Coordinator:** David Carney, Enforcement Division, (512) 239-2583

**TCEQ Regional Contact:** Jason Ybarra, Houston Regional Office, (713) 767-3623

**Respondent:** Noman Sheikh, Director, New Caney Enterprise, Inc., 23550 Farm-to-Market Road 1485, New Caney, Texas 77357-6676

**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

<b>DATES</b>	<b>Assigned</b>	22-Oct-2012		
	<b>PCW</b>	8-Apr-2013	<b>Screening</b>	12-Nov-2012
			<b>EPA Due</b>	

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	New Caney Enterprise, Inc. dba Bills 3Gs Food Mart		
<b>Reg. Ent. Ref. No.</b>	RN101879716		
<b>Facility/Site Region</b>	12-Houston	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	45479	<b>No. of Violations</b>	2
<b>Docket No.</b>	2012-2337-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>	David Carney
		<b>EC's Team</b>	Enforcement Team 4
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$7,500
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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.

<b>Compliance History</b>	20.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$1,500
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<b>Notes</b>	Enhancement for one agreed order with denial of liability.
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<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$937
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$186	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$7,500	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$8,063
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	
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<b>Final Penalty Amount</b>	\$8,063
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$8,063
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<b>DEFERRAL</b>	0.0%	Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>Notes</b>	Deferral not offered for non-expedited settlement.
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<b>PAYABLE PENALTY</b>	\$8,063
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**Screening Date** 12-Nov-2012

**Docket No.** 2012-2337-PST-E

**PCW**

**Respondent** New Caney Enterprise, Inc. dba Bills 3Gs Food Me

Policy Revision 3 (September 2011)

**Case ID No.** 45479

PCW Revision August 3, 2011

**Reg. Ent. Reference No.** RN101879716

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** David Carney

### 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> )	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)**

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

**Adjustment Percentage (Subtotal 3)**

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

**Adjustment Percentage (Subtotal 7)**

>> **Compliance History Summary**

**Compliance History Notes**

Enhancement for one agreed order with denial of liability.

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

>> **Final Compliance History Adjustment**

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

**Screening Date** 12-Nov-2012 **Docket No.** 2012-2337-PST-E **PCW**  
**Respondent** New Caney Enterprise, Inc. dba Bills 3Gs Food Mart *Policy Revision 3 (September 2011)*  
**Case ID No.** 45479 *PCW Revision August 3, 2011*  
**Reg. Ent. Reference No.** RN101879716  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** David Carney

**Violation Number** 1

**Rule Cite(s)** 30 Tex. Admin. Code § 334.50(b)(1)(A) and Tex. Water Code § 26.3475(c)(1)

**Violation Description** Failed to monitor the underground storage tanks ("USTs") for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).

**Base Penalty** \$25,000

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				15.0%
	Potential	x			

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
					0.0%

**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** \$21,250

\$3,750

**Violation Events**

Number of Violation Events 1 26 Number of violation days

<i>mark only one with an x</i>	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

**Violation Base Penalty** \$3,750

One monthly event is recommended from the October 17, 2012 record review date to the November 12, 2012 screening date.

**Good Faith Efforts to Comply**

0.0% Reduction

\$0

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

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

**Violation Subtotal** \$3,750

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount** \$119

**Violation Final Penalty Total** \$4,500

**This violation Final Assessed Penalty (adjusted for limits)** \$4,500

# Economic Benefit Worksheet

**Respondent** New Caney Enterprise, Inc. dba Bills 3Gs Food Mart  
**Case ID No.** 45479  
**Reg. Ent. Reference No.** RN101879716  
**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				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)	\$1,500	12-Jan-2012	12-Aug-2013	1.58	\$119	n/a	\$119

Notes for DELAYED costs: Estimated cost to implement a release detection method for the USTs at the Facility. 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 \$1,500

**TOTAL** \$119

Screening Date 12-Nov-2012

Docket No. 2012-2337-PST-E

PCW

Respondent New Caney Enterprise, Inc. dba Bills 3Gs Food Mart

Policy Revision 3 (September 2011)

Case ID No. 45479

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101879716

Media [Statute] Petroleum Storage Tank

Enf. Coordinator David Carney

Violation Number 2

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 \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

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 \$21,250

\$3,750

Violation Events

Number of Violation Events 1

58 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$3,750

One quarterly event is recommended from the January 12, 2012 investigation date to the March 10, 2012 compliance date.

Good Faith Efforts to Comply

25.0% Reduction

\$937

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

Notes

The Respondent came into compliance on March 10, 2012, prior to the Notice of Enforcement dated October 17, 2012.

Violation Subtotal \$2,813

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$67

Violation Final Penalty Total \$3,563

This violation Final Assessed Penalty (adjusted for limits) \$3,563

# Economic Benefit Worksheet

**Respondent** New Caney Enterprise, Inc. dba Bills 3Gs Food Mart  
**Case ID No.** 45479  
**Reg. Ent. Reference No.** RN101879716  
**Media Violation No.** Petroleum Storage Tank  
 2

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment	\$6,000	12-Jan-2012	10-Mar-2012	0.16	\$3	\$64	\$67
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**   Estimated cost to provide proper corrosion protection for the UST 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**   \$67



# Compliance History Report

**PUBLISHED** Compliance History Report for CN603475898, RN101879716, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

**Customer, Respondent, or Owner/Operator:** CN603475898, New Caney Enterprise, Inc. **Classification:** SATISFACTORY **Rating:** 26.25

**Regulated Entity:** RN101879716, Bills 3Gs Food Mart **Classification:** SATISFACTORY **Rating:** 26.25

**Complexity Points:** 4 **Repeat Violator:** NO

**CH Group:** 14 - Other

**Location:** 23550 FARM-TO-MARKET ROAD 1485, NEW CANEY, TEXAS 77357-6676, MONTGOMERY COUNTY

**TCEQ Region:** REGION 12 - HOUSTON

**ID Number(s):**  
PETROLEUM STORAGE TANK REGISTRATION 53755

**Compliance History Period:** September 01, 2007 to August 31, 2012 **Rating Year:** 2012 **Rating Date:** 09/01/2012

**Date Compliance History Report Prepared:** December 03, 2012

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** November 12, 2007 to November 12, 2012

## TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

**Name:** David Carney **Phone:** (512) 239-2583

## Site and Owner/Operator History:

- 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 for #2, who is the current owner/operator? New Caney Enterprise, Inc., owner/operator since 3/17/2009
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? R & K Shaik Ent Inc., owner, 1/1/2002 to 3/17/2009  
R & K Shaik Ent Inc., operator, 1/15/2002 to 3/17/2009
- 5) If YES, when did the change(s) in owner or operator occur? 3/17/2009

## Components (Multimedia) for the Site Are Listed in Sections A - J

### A. Final Orders, court judgments, and consent decrees:

1 **Effective Date:** 03/01/2012 **ADMINORDER** 2011-0914-PST-E (1660 Order-Agreed Order With Denial)

Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(4)  
5C THSC Chapter 382 382.085(b)

Description: Failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel. Specifically, the Stage II representatives training certificate and employee training records were not available for review.

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)  
5C THSC Chapter 382 382.085(b)

Description: Failed to verify proper operation of the Stage II equipment at least once every 12 months.

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(L)  
5C THSC Chapter 382 382.085(b)

Description: Failed to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system. Specifically, the hoses on the dispensers were torn and ripped.

**B. Criminal convictions:**

N/A

**C. Chronic excessive emissions events:**

N/A

**D. The approval dates of investigations (CCEDS Inv. Track. No.):**

N/A

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

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

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

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
NEW CANEY ENTERPRISE, INC.  
D/B/A BILLS 3GS FOOD MART;  
RN101879716**

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§  
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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER**

**DOCKET NO. 2012-2337-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 New Caney Enterprise, Inc. d/b/a Bills 3Gs Food Mart ("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 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 23550 Farm-to-Market Road 1485 in New Caney, Montgomery County, Texas (Facility ID No. 53755) (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 eight thousand sixty-three dollars (\$8,063.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid three hundred sixty-three dollars (\$363.00) of the administrative penalty. The remaining amount of seven thousand seven hundred dollars (\$7,700.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of two hundred twenty dollars (\$220.00) 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 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.
9. 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.
10. 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.
11. The Executive Director recognizes that Respondent began providing proper corrosion protection for the UST system on March 10, 2012.

## **II. ALLEGATIONS**

1. During an investigation conducted on January 12, 2012, and a record review conducted on October 17, 2012, University of Texas at Arlington Petroleum Storage Tank staff documented that Respondent failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A).
2. During an investigation conducted on January 12, 2012, University of Texas at Arlington Petroleum Storage Tank staff documented that Respondent failed to provide proper corrosion protection to the UST system, in violation of TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(a)(1).
3. Respondent received notice of the violations on or about October 22, 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: New Caney Enterprise, Inc. d/b/a Bills 3Gs Food Mart, Docket No. 2012-2337-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. Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order, Respondent shall implement a release detection method for the USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.50.
  - b. Within 45 days after the effective date of this Agreed Order, Respondent shall submit written certification to demonstrate compliance with Ordering Provision No. 2.a. The certification 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 certification 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:

Jason Ybarra, Waste Section Manager  
Texas Commission on Environmental Quality  
Houston Regional Office  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486

3. All relief not expressly granted in this Agreed Order is denied.
4. 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.
5. 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.
6. 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.
  7. 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.
  8. 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.
  9. 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

  
For the Executive Director

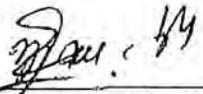
June 12, 2013  
Date

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 New Caney Enterprise, Inc. d/b/a Bills 3Gs Food Mart, 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.

  
Signature - Noman Sheikh, Director  
New Caney Enterprise, Inc.

04/22/13  
Date