

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE No. 42603  
INS EMERALD, L.L.C. d/b/a Luna Mart  
RN101562726  
Docket No. 2013-1302-PST-E

**Order Type:**

Findings Agreed Order

**Findings Order Justification:**

Indifference to legal duty based on violation of a previous order.

**Media:**

PST

**Small Business:**

Yes

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

2647 West Northwest Highway, Dallas, Dallas County

**Type of Operation:**

convenience store with retail sales of gasoline

**Other Significant Matters:**

Additional Pending Enforcement Actions: None  
Past-Due Penalties: \$9,899.26 (2011-1978-PST-E; Payment Plan)  
Past-Due Fees: None  
Other: None  
Interested Third-Parties: None

**Texas Register Publication Date:** June 6, 2014

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$35,750

**Total Paid to General Revenue:** \$995

**Total Due to General Revenue:** \$34,755

Payment Plan: 35 monthly payments of \$993 each

**SEP Conditional Offset:** N/A

**Compliance History Classifications:**

Person/CN – Unsatisfactory  
Site/RN – Unsatisfactory

**Major Source:** No

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** September 2002

**Investigation Information**

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** April 29, 2013  
**Date(s) of NOV(s):** N/A  
**Date(s) of NOE(s):** May 27, 2013

**Violation Information**

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); 30 TEX. ADMIN. CODE § 334.50(b)(1)(A); and TCEQ Agreed Order Docket Number 2011-1760-PST-E, Ordering Provision No. 2.a.].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**  
None

**Technical Requirements:**

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

**Litigation Information**

**Date Petition(s) Filed:** September 19, 2013  
**Date Answer(s) Filed:** October 11, 2013  
**SOAH Referral Date:** November 14, 2013  
**Hearing Date(s):**  
Preliminary hearing: January 9, 2014 (waived)  
Evidentiary hearing: June 17, 2014 (scheduled)  
**Settlement Date:** April 21, 2014

**Contact Information**

**TCEQ Attorneys:** Elizabeth Lieberknecht, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
Vic McWherter, Public Interest Counsel, (512) 239-6363  
**TCEQ Enforcement Coordinator:** Keith Frank, Enforcement Division, (512) 239-1203  
**TCEQ Regional Contact:** Sam Barrett, Dallas/Fort Worth Regional Office, (817) 588-5800  
**Respondent:** Shah Popal, Member, INS EMERALD, L.L.C., 4533 Hallmark Drive, Plano, Texas 75024  
**Respondent's Attorney:** William W. Thompson, III, Grissom & Thompson, LLP, 509 West 12<sup>th</sup> Street, Austin, Texas 78701



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

|              |                 |             |                  |            |                |  |
|--------------|-----------------|-------------|------------------|------------|----------------|--|
| <b>DATES</b> | <b>Assigned</b> | 1-Jul-2013  | <b>Screening</b> | 8-Jul-2013 | <b>EPA Due</b> |  |
|              | <b>PCW</b>      | 14-Oct-2013 |                  |            |                |  |

|  |                                   |
|--|-----------------------------------|
| <b>RESPONDENT/FACILITY INFORMATION</b> |                                   |
| <b>Respondent</b>                      | INS EMERALD, L.L.C. dba Luna Mart |
| <b>Reg. Ent. Ref. No.</b>              | RN101562726                       |
| <b>Facility/Site Region</b>            | 4-Dallas/Fort Worth               |
| <b>Major/Minor Source</b>              | Minor                             |

|  |                        |                              |                    |
|--|------------------------|------------------------------|--------------------|
| <b>CASE INFORMATION</b>                |                        |                              |                    |
| <b>Enf./Case ID No.</b>                | 42603                  | <b>No. of Violations</b>     | 1                  |
| <b>Docket No.</b>                      | 2013-1302-PST-E        | <b>Order Type</b>            | Findings           |
| <b>Media Program(s)</b>                | Petroleum Storage Tank | <b>Government/Non-Profit</b> | No                 |
| <b>Multi-Media</b>                     |                        | <b>Enf. Coordinator</b>      | Keith Frank        |
|  |                        | <b>EC's Team</b>             | Enforcement Team 7 |
| <b>Admin. Penalty \$ Limit Minimum</b> | \$0                    | <b>Maximum</b>               | \$10,000           |

## Penalty Calculation Section

|   |                   |          |
|---|-------------------|----------|
| <b>TOTAL BASE PENALTY (Sum of violation base penalties)</b> | <b>Subtotal 1</b> | \$27,500 |
|---|-------------------|----------|

|  |  |         |
|--|--|---------|
| <b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>   |  |         |
| Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage. |  |         |
| <b>Compliance History</b>  | 30.0% Enhancement <b>Subtotals 2, 3, &amp; 7</b> | \$8,250 |

Notes: Enhancement for one previous order with denial of liability and unsatisfactory performer classification.

|                    |    |                  |                   |     |
|--------------------|----|------------------|-------------------|-----|
| <b>Culpability</b> | No | 0.0% Enhancement | <b>Subtotal 4</b> | \$0 |
|--------------------|----|------------------|-------------------|-----|

Notes: The Respondent does not meet the culpability criteria.

|  |                   |     |
|--|-------------------|-----|
| <b>Good Faith Effort to Comply Total Adjustments</b> | <b>Subtotal 5</b> | \$0 |
|--|-------------------|-----|

|                            |                   |                                   |     |
|----------------------------|-------------------|-----------------------------------|-----|
| <b>Economic Benefit</b>    | 0.0% Enhancement* | <b>Subtotal 6</b>                 | \$0 |
| Total EB Amounts           | \$200             | *Capped at the Total EB \$ Amount |     |
| Approx. Cost of Compliance | \$1,500           |                                   |     |

|                             |                       |          |
|-----------------------------|-----------------------|----------|
| <b>SUM OF SUBTOTALS 1-7</b> | <b>Final Subtotal</b> | \$35,750 |
|-----------------------------|-----------------------|----------|

|   |      |                   |     |
|---|------|-------------------|-----|
| <b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>                         | 0.0% | <b>Adjustment</b> | \$0 |
| Reduces or enhances the Final Subtotal by the indicated percentage. |      |                   |     |

Notes:

|                             |          |
|-----------------------------|----------|
| <b>Final Penalty Amount</b> | \$35,750 |
|-----------------------------|----------|

|                                   |                               |          |
|-----------------------------------|-------------------------------|----------|
| <b>STATUTORY LIMIT ADJUSTMENT</b> | <b>Final Assessed Penalty</b> | \$35,750 |
|-----------------------------------|-------------------------------|----------|

|   |      |           |                   |     |
|---|------|-----------|-------------------|-----|
| <b>DEFERRAL</b>   | 0.0% | Reduction | <b>Adjustment</b> | \$0 |
| Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.) |      |           |                   |     |

Notes: No deferral is recommended for Findings Orders.

|                        |          |
|------------------------|----------|
| <b>PAYABLE PENALTY</b> | \$35,750 |
|------------------------|----------|

Screening Date 8-Jul-2013

Docket No. 2013-1302-PST-E

PCW

Respondent INS EMERALD, L.L.C. dba Luna Mart

Policy Revision 2 (September 2002)

Case ID No. 42603

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101562726

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Keith Frank

### 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)** 20%

#### >> Repeat Violator (Subtotal 3)

No

**Adjustment Percentage (Subtotal 3)** 0%

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

Unsatisfactory Performer

**Adjustment Percentage (Subtotal 7)** 10%

#### >> Compliance History Summary

Compliance History Notes

Enhancement for one previous order with denial of liability and unsatisfactory performer classification.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 30%

**Screening Date** 8-Jul-2013 **Docket No.** 2013-1302-PST-E **PCW**  
**Respondent** INS EMERALD, L.L.C. dba Luna Mart *Policy Revision 2 (September 2002)*  
**Case ID No.** 42603 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN101562726  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Keith Frank

**Violation Number**

**Rule Cite(s)** 30 Tex. Admin. Code § 334.50(b)(1)(A), Tex. Water Code § 26.3475(c)(1), and TCEQ Agreed Order Docket No. 2011-1760-PST-E, Ordering Provision No. 2.a.

**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**

**>> 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="25%"/> |
|    | Potential | <input type="text" value="x"/> | <input type="text"/> | <input type="text"/> |                                  |

**>> Programmatic Matrix**

|  | Falsification        | Major                | Moderate             | Minor                | Percent                         |
|--|----------------------|----------------------|----------------------|----------------------|---------------------------------|
|  | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text" value="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**

**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**

Eleven monthly events are recommended based on documentation of the violation from the August 19, 2012 effective date of the Agreed Order to the July 8, 2013 screening date.

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

**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** INS EMERALD, L.L.C. dba Luna Mart  
**Case ID No.** 42603  
**Reg. Ent. Reference No.** RN101562726  
**Media Violation No.** 1  
**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 |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|

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 | 28-Jul-2011 | 28-Mar-2014 | 2.67 | \$200 | n/a | \$200 |

Notes for DELAYED costs

Estimated cost to monitor the USTs for releases. Date Required is the initial investigation date. 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** \$200

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



# Compliance History Report

**PUBLISHED** Compliance History Report for CN602529661, RN101562726, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

**Customer, Respondent, or Owner/Operator:** CN602529661, INS EMERALD, L.L.C. **Classification:** UNSATISFACTORY **Rating:** 128.12

**Regulated Entity:** RN101562726, Luna Mart **Classification:** UNSATISFACTORY **Rating:** 56.25

**Complexity Points:** 3 **Repeat Violator:** NO

**CH Group:** 14 - Other

**Location:** 2647 W NORTHWEST HWY DALLAS, TX 75220-4557, DALLAS COUNTY

**TCEQ Region:** REGION 04 - DFW METROPLEX

**ID Number(s):** PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 71390

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

**Date Compliance History Report Prepared:** July 08, 2013

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** July 08, 2008 to July 08, 2013

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

**Name:** Keith Frank

**Phone:** (512) 239-1203

## 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? INS Emerald, L.L.C. OWNER OPERATOR since 10/8/2010
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? Lone Star Mart Inc, OWNER, 2/10/2010 to 10/8/2010  
ANWARY, KEN, OPERATOR, 2/10/2010 to 10/7/2010  
Lone Star Mart Inc, OWNER OPERATOR, 8/31/1987 to 10/7/2010  
Azam Gul and Ken Anwary, OWNER OPERATOR, 12/21/1998 to 2/10/2010
- 5) If **YES**, when did the change(s) in owner or operator occur? 10/8/2010

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

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

- 1 Effective Date:** 08/19/2012 **ADMINORDER 2011-1760-PST-E (1660 Order-Agreed Order With Denial)**
  - Classification:** Moderate
  - Citation:** 2D TWC Chapter 26, SubChapter A 26.3467(a)  
30 TAC Chapter 334, SubChapter A 334.8(c)(5)(A)(i)
  - Description:** Failure to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs.
  - Classification:** Moderate
  - Citation:** 2D TWC Chapter 26, SubChapter A 26.3475(d)  
30 TAC Chapter 334, SubChapter C 334.49(a)(1)
  - Description:** Failure to provide proper corrosion protection for the UST system.
  - Classification:** Moderate
  - Citation:** 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)  
30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)
  - Description:** Failure to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).
  - Classification:** Moderate
  - Citation:** 30 TAC Chapter 334, SubChapter A 334.10(b)
  - Classification:** Moderate
  - Description:** Failure to maintain the UST records and make them immediately available for inspection upon request by agency personnel.
  - Classification:** Moderate
  - Citation:** 30 TAC Chapter 334, SubChapter A 334.8(c)(4)(A)(vii)  
30 TAC Chapter 334, SubChapter A 334.8(c)(5)(B)(ii)
  - Description:** Failure 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.

### **B. Criminal convictions:**

N/A

### **C. Chronic excessive emissions events:**

N/A

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

|        |                   |           |
|--------|-------------------|-----------|
| Item 1 | November 15, 2010 | (869964)  |
| Item 2 | May 08, 2012      | (1001708) |

**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  
INS EMERALD, L.L.C. DBA  
LUNA MART;  
RN101562726**

§  
§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER**

**DOCKET NO. 2013-1302-PST-E**

At its \_\_\_\_\_ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding INS EMERALD, L.L.C. d/b/a Luna 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, represented by William W. Thompson, III of the law firm Grissom & Thompson, LLP, presented this Agreed Order to the Commission.

Respondent understands that it has certain procedural rights at certain points in the enforcement process, including the right to formal notice of violations, the right to an evidentiary hearing, notice of an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon 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 2647 West Northwest Highway in Dallas, Dallas County, Texas (Facility ID No. 71390) (the "Facility"). The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the rules of the TCEQ, and contain a regulated petroleum substance as defined in the rules of the TCEQ.
2. During a record review conducted on April 29, 2013, TCEQ Central Office 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).
3. Respondent received notice of the violation on or about June 1, 2013.

### 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 TCEQ.
2. As evidenced by Finding of Fact No. 2, 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); 30 TEX. ADMIN. CODE § 334.50(b)(1)(A); and TCEQ Agreed Order Docket Number 2011-1760-PST-E, Ordering Provision No. 2.a.
3. Pursuant to TEX. WATER CODE § 7.051, TCEQ has the authority to assess an administrative penalty against Respondent for violations of state statutes within TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of thirty-five thousand seven hundred fifty dollars (\$35,750.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Respondent paid nine hundred ninety-five dollars (\$995.00) of the administrative penalty. The remaining amount of thirty-four thousand seven hundred fifty-five dollars (\$34,755.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of nine hundred ninety-three dollars (\$993.00) 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.

### ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty as set forth in Conclusion of Law No. 4 above, 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 Agreed Order resolve only the matters set forth by this Agreed Order in this action. 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: INS EMERALD, L.L.C. d/b/a Luna Mart, Docket No. 2013-1302-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:

Sam Barrett, Waste Section Manager  
Dallas/Fort Worth Regional Office  
Texas Commission on Environmental Quality  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

3. All relief not expressly granted in this Agreed Order is denied.
4. The provisions of 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 TCEQ's jurisdiction, or of a rule adopted or an order or permit issued by TCEQ under such a statute.
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 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. 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.
11. 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 notice of this Agreed Order to Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

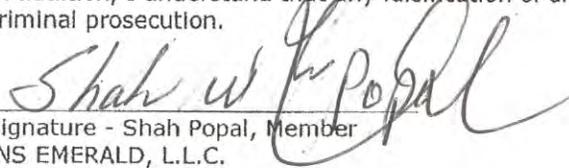
August 1, 2014  
Date

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 INS EMERALD, L.L.C. d/b/a Luna 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 Agreed 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 - Shah Popal, Member  
INS EMERALD, L.L.C.

04/21/14  
Date