

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 47262  
Formosa Retail, Inc. d/b/a Wez Mart 2  
RN102050994  
Docket No. 2013-1373-PST-E

**Order Type:**

Agreed Order

**Media:**

Petroleum Storage Tank

**Small Business:**

Yes

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

930 East Formosa Boulevard, San Antonio, Bexar 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:** July 4, 2014

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$11,049

**Total Paid to General Revenue:** \$339

**Total Due to General Revenue:** \$10,710

Payment Plan: 35 payments of \$306 each

**Compliance History Classifications:**

Person/CN – Unclassified  
Site/RN – Unclassified

**Major Source:** No

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** September 2011

**Investigation Information**

**Date(s) of Investigation:** April 23, 2013

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

**Date(s) of NOE(s):** July 7, 2013

**Formosa Retail, Inc. d/b/a Wez Mart 2**

RN102050994

Docket No. 2013-1373-PST-E

**Violation Information**

1. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].
2. 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)].
3. Failed to provide release detection for the pressurized piping associated with the UST system [TEX. WATER CODE § 26.3475(a) and 30 TEX. ADMIN. CODE § 334.50(b)(2)].
4. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b)(1)(B)].

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

None

**Technical Requirements:**

1. Immediately begin maintaining all UST records and ensure they are made immediately available for inspection upon request by agency personnel.
2. Within 30 days:
  - a. Demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs;
  - b. Implement a release detection method for all USTs at the Facility; and
  - c. Conduct the annual line tightness and line leak detector tests for the pressurized piping associated with the USTs, with passing results.
3. Within 45 days submit written certification to demonstrate compliance.

**Litigation Information****Date Petition(s) Filed:** December 20, 2013**Date Answer(s) Filed:** January 16, 2014**Settlement Date:** June 5, 2014**Contact Information****TCEQ Attorneys:** J. Amber Ahmed, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
Eli Martinez, Public Interest Counsel, (512) 239-6363**TCEQ Enforcement Coordinator:** Danielle Porras, Enforcement Division, (713) 767-3682**TCEQ Regional Contact:** Lynn Bumguardner, San Antonio Regional Office, (210) 403-4050**Respondent:** Shehmir Sherali, Director, Formosa Retail, Inc., 3500 Broadway Street,  
San Antonio, Texas 78209**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>	15-Jul-2013	<b>Screening</b>	22-Jul-2013	<b>EPA Due</b>	
	<b>PCW</b>	15-Oct-2013				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Formosa Retail, Inc. dba Wez Mart 2				
<b>Reg. Ent. Ref. No.</b>	RN102050994				
<b>Facility/Site Region</b>	13-San Antonio	<b>Major/Minor Source</b>	Minor		

## CASE INFORMATION

<b>Enf./Case ID No.</b>	47262	<b>No. of Violations</b>	3
<b>Docket No.</b>	2013-1373-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>	Danielle Porras
		<b>EC's Team</b>	Enforcement Team 7
<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>	\$8,750
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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>	0.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$0
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<b>Notes</b>	No adjustment for compliance history.
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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>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$2,396	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$4,098	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$8,750
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	26.3%	<b>Adjustment</b>	\$2,299
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	Enhancement to capture the avoided cost of compliance associated with violation nos. 1 and 2.
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<b>Final Penalty Amount</b>	\$11,049
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$11,049
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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 indicted 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>	\$11,049
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**Screening Date** 22-Jul-2013

**Docket No.** 2013-1373-PST-E

**PCW**

**Respondent** Formosa Retail, Inc. dba Wez Mart 2

*Policy Revision 3 (September 2011)*

**Case ID No.** 47262

*PCW Revision August 3, 2011*

**Reg. Ent. Reference No.** RN102050994

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** Danielle Porras

### 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%**

**Screening Date** 22-Jul-2013 **Docket No.** 2013-1373-PST-E **PCW**  
**Respondent** Formosa Retail, Inc. dba Wez Mart 2 *Policy Revision 3 (September 2011)*  
**Case ID No.** 47262 *PCW Revision August 3, 2011*  
**Reg. Ent. Reference No.** RN102050994  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Danielle Porras

**Violation Number**

**Rule Cite(s)**

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

**Violation Description**

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

**Base Penalty**

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

OR

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

**Percent**

>> **Programmatic Matrix**

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

**Percent**

Matrix Notes

100% of the rule requirement was not met.

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

*mark only one with an x*

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

**Violation Base Penalty**

Three single events (one per tank) are recommended.

**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

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** Formosa Retail, Inc. dba Wez Mart 2  
**Case ID No.** 47262  
**Reg. Ent. Reference No.** RN102050994  
**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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$1,980	23-Apr-2012	23-Apr-2013	1.92	\$190	\$1,980	\$2,170
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to provide financial assurance for three petroleum USTs (\$660 per tank). The Date Required is one year prior to the investigation date and the Final Date is the investigation date.

Approx. Cost of Compliance \$1,980

**TOTAL** \$2,170

Screening Date 22-Jul-2013

Docket No. 2013-1373-PST-E

PCW

Respondent Formosa Retail, Inc. dba Wez Mart 2

Policy Revision 3 (September 2011)

Case ID No. 47262

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102050994

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Danielle Porras

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A) and (b)(2) and Tex. Water Code § 26.3475(a) and (c)(1)

Violation Description

Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Also, failed to provide release detection for the pressurized piping associated with the UST system. Specifically, the annual line tightness and line leak detector tests for the pressurized piping associated with the USTs were not conducted.

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

90 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$3,750

One quarterly event is recommended from the April 23, 2013 investigation date to the July 22, 2013 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 \$202

Violation Final Penalty Total \$4,735

This violation Final Assessed Penalty (adjusted for limits) \$4,735

# Economic Benefit Worksheet

**Respondent** Formosa Retail, Inc. dba Wez Mart 2  
**Case ID No.** 47262  
**Reg. Ent. Reference No.** RN102050994  
**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
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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	23-Apr-2013	11-Apr-2014	0.97	\$73	n/a	\$73

**Notes for DELAYED costs**  
 Estimated cost to monitor the USTs for releases. 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]	\$118	23-Apr-2012	23-Apr-2013	1.92	\$11	\$118	\$129
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**  
 Estimated avoided cost to conduct the annual pressurized line tightness and line leak detector tests. The Date Required is one year prior to the investigation date and the Final Date is the investigation date.

Approx. Cost of Compliance \$1,618

**TOTAL** \$202

Screening Date 22-Jul-2013

Docket No. 2013-1373-PST-E

PCW

Respondent Formosa Retail, Inc. dba Wez Mart 2

Policy Revision 3 (September 2011)

Case ID No. 47262

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102050994

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Danielle Porras

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 334.10(b)(1)(B)

Violation Description

Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,250

One single event is recommended.

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 \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$24

Violation Final Penalty Total \$1,578

This violation Final Assessed Penalty (adjusted for limits) \$1,578

# Economic Benefit Worksheet

**Respondent** Formosa Retail, Inc. dba Wez Mart 2  
**Case ID No.** 47262  
**Reg. Ent. Reference No.** RN102050994  
**Media Violation No.** 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	\$500	23-Apr-2013	11-Apr-2014	0.97	\$24	n/a	\$24
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 maintain 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

\$500

**TOTAL**

\$24

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 CN603936584, RN102050994, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

**Customer, Respondent, or Owner/Operator:** CN603936584, Formosa Retail, Inc.      **Classification:** UNCLASSIFIED      **Rating:** -----  
**Regulated Entity:** RN102050994, Wez Mart 2      **Classification:** UNCLASSIFIED      **Rating:** -----  
**Complexity Points:** 3      **Repeat Violator:** NO  
**CH Group:** 01 - Gas Stations with convenience Stores and other Gas Stations  
**Location:** 930 E FORMOSA BLVD SAN ANTONIO, TX 78221-3032, BEXAR COUNTY  
**TCEQ Region:** REGION 13 - SAN ANTONIO  
**ID Number(s):** **PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 5936**  
**Compliance History Period:** September 01, 2007 to August 31, 2012      **Rating Year:** 2012      **Rating Date:** 9/1/2012  
**Date Compliance History Report Prepared:** July 22, 2013  
**Agency Decision Requiring Compliance History:** Enforcement  
**Component Period Selected:** July 22, 2008 to July 22, 2013  
**TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.**  
**Name:** Danielle Porras      **Phone:** (713) 767-3682

## 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? Formosa Retail, Inc. OWNER OPERATOR since 2/13/2009
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? Colonial Distribution, Inc., OPERATOR, 5/16/2008 to 2/12/2009
- 5) If **YES**, when did the change(s) in owner or operator occur? 2/13/2009

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

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

N/A

### **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

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# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
FORMOSA RETAIL, INC.  
D/B/A WEZ MART 2;  
RN102050994**

§  
§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER**

**DOCKET NO. 2013-1373-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 Formosa Retail, Inc. d/b/a Wez Mart 2 ("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 930 East Formosa Boulevard in San Antonio, Bexar County, Texas (Facility ID No. 5936) (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. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The TCEQ 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 TCEQ has jurisdiction to enter this Agreed Order, and that Respondent is subject to TCEQ'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 eleven thousand forty-nine dollars (\$11,049.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid three hundred thirty-nine dollars (\$339.00) of the administrative penalty. The remaining amount of ten thousand seven hundred ten dollars (\$10,710.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of three hundred six dollars (\$306.00) 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.

## **II. ALLEGATIONS**

1. During an investigation conducted on April 23, 2013, a UT-Arlington PST Program investigator (TCEQ Contractor) documented that Respondent:
  - a. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b);
  - b. 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);
  - c. Failed to provide release detection for the pressurized piping associated with the UST system, in violation of TEX. WATER CODE § 26.3475(a) and 30 TEX. ADMIN. CODE § 334.50(b)(2). Specifically, the annual line tightness and line leak detector tests for the pressurized piping system associated with the USTs were not conducted; and
  - d. Failed to maintain 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).
2. Respondent received notice of the violations on or about July 12, 2013.

## **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: Formosa Retail, Inc. d/b/a Wez Mart 2, Docket No. 2013-1373-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. Immediately upon the effective date of this Agreed Order, Respondent shall begin maintaining all UST records and ensure they are made immediately available for inspection upon request by agency personnel, in accordance with 30 TEX. ADMIN. CODE § 334.10.
  - b. Within 30 days after the effective date of this Agreed Order, Respondent shall:
    - i. Demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs, in accordance with 30 TEX. ADMIN. CODE § 37.815;
    - ii. Implement a release detection method for all USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.50; and
    - iii. Conduct the annual line tightness and line leak detector tests for the pressurized piping associated with the USTs with passing results, in accordance with 30 TEX. ADMIN. CODE § 334.50.
  - c. Within 45 days after the effective date of this Agreed Order, Respondent shall submit written certification to demonstrate compliance with Ordering Provisions Nos. 2.a. and 2.b. 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:

Lynn Bumguardner, Waste Section Manager  
San Antonio Regional Office  
Texas Commission on Environmental Quality  
14250 Judson Road  
San Antonio, Texas 78233-4480

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 TCEQ's jurisdiction, or of a rule adopted or an order or permit issued by the TCEQ 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

  
\_\_\_\_\_  
Date

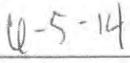
I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of Formosa Retail, Inc. d/b/a Wez Mart 2, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting 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 Shehmir Sherali, Director  
Formosa Retail, Inc.

  
\_\_\_\_\_  
Date