# EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 50271
## INS EMERALD, L.L.C. d/b/a LUNA MART
### RN101562726
### Docket No. 2015-0441-PST-E

**Order Type:**
Default Order

**Media:**
PST

**Small Business:**
Yes

**Location(s) Where Violation(s) Occurred:**
2647 West Northwest Highway, Dallas, Dallas County

**Type of Operation:**
underground storage tank ("UST") system and a convenience store with retail sales of gasoline

**Other Significant Matters:**

| | |
|---|---|
| Additional Pending Enforcement Actions: | None |
| Past-Due Penalties: | $27,848.64 (2013-1302-PST-E; referred for collection) |
| Past-Due Fees: | None |
| Other: | None |
| Interested Third-Parties: | None |

**Texas Register Publication Date:** November 20, 2015

**Comments Received:** None

***Penalty Information***

**Total Penalty Assessed:** $7,750

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

**Total Due to General Revenue:** $7,750

**Compliance History Classifications:**
Person/CN –Unsatisfactory
Site/RN – Satisfactory

**Major Source:** No

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** April 2014

## *Investigation Information*

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

**Date(s) of Investigation:** February 10, 2015

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

**Date(s) of NOE(s):** March 11, 2015

## *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 maintain corrosion protection records and make them immediately available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE §§ 334.10(b) and 334.49(e)(1)].

## *Corrective Actions/Technical Requirements*

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

**Technical Requirements:**
N/A - Respondent no longer owns or operates the Facility as of June 30, 2015.

## *Litigation Information*

**Date Petition(s) Filed:** August 18, 2015

**Date Green Card(s) Signed:** August 24, 2015

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

## *Contact Information*

**TCEQ Attorneys:** Tracy Chandler, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Rudy Calderon, Public Interest Counsel, (512) 239-6363

**TCEQ Enforcement Coordinator:** Catherine Grutsch, Enforcement Division, (512) 239-2607

**TCEQ Regional Contact:** Sam Barrett, Dallas/Fort Worth Regional Office, (817) 588-5800

**Respondent Contact:** Shah Popal, Manager and Member, INS EMERALD, L.L.C., 4529 Southgate Drive, Plano, Texas 75024

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

# Penalty Calculation Worksheet (PCW)

*Policy Revision 4 (April 2014)* *PCW Revision March 26, 2014*

TCEQ

| DATES | | | | | |
|---|---|---|---|---|---|
| Assigned | 16-Mar-2015 | | | | |
| PCW | 13-Oct-2015 | Screening | 19-Mar-2015 | EPA Due | |

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

| CASE INFORMATION | | | |
|---|---|---|---|
| Enf./Case ID No. | 50271 | No. of Violations | 2 |
| Docket No. | 2015-0441-PST-E | Order Type | 1660 |
| Media Program(s) | Petroleum Storage Tank | Government/Non-Profit | No |
| Multi-Media | | Enf. Coordinator | Michael Meyer |
| | | EC's Team | Enforcement Team 6 |
| Admin. Penalty $ Limit Minimum | $0 | Maximum | $25,000 |

## Penalty Calculation Section

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

**ADJUSTMENTS (+/-) TO SUBTOTAL 1**

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** **55.0%** Enhancement *Subtotals 2, 3, & 7* **$2,750**

Notes: Enhancement for one order containing a denial of liability, one order with a denial of liability, and unsatisfactory performer classification.

**Culpability** No **0.0%** Enhancement *Subtotal 4* **$0**

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** *Subtotal 5* **$0**

**Economic Benefit** **0.0%** Enhancement* *Subtotal 6* **$0**

Total EB Amounts $70
Estimated Cost of Compliance $2,000

**Capped at the Total EB $ Amount*

**SUM OF SUBTOTALS 1-7** *Final Subtotal* **$7,750**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **0.0%** *Adjustment* **$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

*Final Penalty Amount* **$7,750**

**STATUTORY LIMIT ADJUSTMENT** **$7,750**

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

Reduces the Final Assessed Penalty by the indicated percentage. *(Enter number only; e.g. 20 for 20% reduction.)*

Notes: Deferral not offered for non-expedited settlement.

**PAYABLE PENALTY** **$7,750**

| | | | |
|---|---|---|---|
| **Screening Date** | 19-Mar-2015 | **Docket No.** 2015-0441-PST-E | **PCW** |
| **Respondent** | INS EMERALD, L.L.C. dba Luna Mart | | *Policy Revision 4 (April 2014)* |
| **Case ID No.** | 50271 | | *PCW Revision March 26, 2014* |
| **Reg. Ent. Reference No.** | RN101562726 | | |
| **Media [Statute]** | Petroleum Storage Tank | | |
| **Enf. Coordinator** | Michael Meyer | | |

# 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 (*number of NOVs meeting criteria*) | 0 | 0% |
| | Other written NOVs | 0 | 0% |
| Orders | Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*) | 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 | 1 | 25% |
| 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 (*number of judgments or consent decrees meeting criteria*) | 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 (*number of counts*) | 0 | 0% |
| Emissions | Chronic excessive emissions events (*number of events*) | 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 *(number of audits for which notices were submitted)* | 0 | 0% |
| | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*) | 0 | 0% |
| | | *Please Enter Yes or No* | |
| 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)*** 45%

## >> 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 order containing a denial of liability, one order with a denial of liability, and unsatisfactory performer classification.

***Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)*** 55%

## >> Final Compliance History Adjustment

***Final Adjustment Percentage*** ****capped at 100%*** 55%

| | | | | |
|---|---|---|---|---|
| **Screening Date** | 19-Mar-2015 | **Docket No.** | 2015-0441-PST-E | **PCW** |
| **Respondent** | INS EMERALD, L.L.C. dba Luna Mart | | | *Policy Revision 4 (April 2014)* |
| **Case ID No.** | 50271 | | | *PCW Revision March 26, 2014* |
| **Reg. Ent. Reference No.** | RN101562726 | | | |
| **Media [Statute]** | Petroleum Storage Tank | | | |
| **Enf. Coordinator** | Michael Meyer | | | |

**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

| | Release | Harm: Major | Harm: Moderate | Harm: Minor |
|---|---|---|---|---|
| OR | 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 that 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 | 37 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 February 10, 2015 investigation to the March 19, 2015 screening date.

## Good Faith Efforts to Comply

0.0% Reduction $0

| | Before NOE/NOV | NOE/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

**Estimated EB Amount** $54

## Statutory Limit Test

**Violation Final Penalty Total** $5,813

**This violation Final Assessed Penalty (adjusted for limits)** $5,813

# Economic Benefit Worksheet

**Respondent** INS EMERALD, L.L.C. dba Luna Mart
**Case ID No.** 50271
**Reg. Ent. Reference No.** RN101562726
**Media** Petroleum Storage Tank
**Violation No.** 1

| Percent Interest | Years of Depreciation |
|---|---|
| 5.0 | 15 |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|---|---|---|---|---|---|---|---|
| | No commas or $ | | | | | | |
| **Delayed Costs** | | | | | | | |
| Equipment | | | | 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 | 10-Feb-2015 | 31-Oct-2015 | 0.72 | $54 | n/a | $54 |
| Notes for DELAYED costs | Estimated cost to provide release detection for the USTs. 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** $54

| | | | |
|---|---|---|---|
| **Screening Date** | 19-Mar-2015 | **Docket No.** 2015-0441-PST-E | **PCW** |
| **Respondent** | INS EMERALD, L.L.C. dba Luna Mart | | *Policy Revision 4 (April 2014)* |
| **Case ID No.** | 50271 | | *PCW Revision March 26, 2014* |
| **Reg. Ent. Reference No.** | RN101562726 | | |
| **Media [Statute]** | Petroleum Storage Tank | | |
| **Enf. Coordinator** | Michael Meyer | | |

**Violation Number** 2

**Rule Cite(s)** 30 Tex. Admin. Code §§ 334.49(e)(1) and 334.10(b)

**Violation Description** Failed to maintain corrosion protection 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

37 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 NOE/NOV | NOE/NOV to EDPRP/Settlement Offer |
|---|---|---|
| Extraordinary | | |
| Ordinary | | |
| N/A | x | (mark w th x) |

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

**Violation Subtotal** $1,250

## Economic Benefit (EB) for this violation

**Estimated EB Amount** $16

## Statutory Limit Test

**Violation Final Penalty Total** $1,938

**This violation Final Assessed Penalty (adjusted for limits)** $1,938

# Economic Benefit Worksheet

**Respondent** INS EMERALD, L.L.C. dba Luna Mart
**Case ID No.** 50271
**Reg. Ent. Reference No.** RN101562726
**Media** Petroleum Storage Tank
**Violation No.** 2

| Percent Interest | Years of Depreciation |
|---|---|
| 5.0 | 15 |

| Item Description | Item Cost (No commas or $) | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|---|---|---|---|---|---|---|---|
| **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 | 10-Feb-2015 | 30-Sep-2015 | 0.64 | $16 | n/a | $16 |
| 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 the required 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** $16

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 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

**Customer, Respondent, or Owner/Operator:** CN602529661, INS EMERALD, L.L.C. **Classification:** UNSATISFACTORY **Rating:** 121.09
**Regulated Entity:** RN101562726, LUNA MART **Classification:** SATISFACTORY **Rating:** 42.19
**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, 2009 to August 31, 2014 **Rating Year:** 2014 **Rating Date:** 09/01/2014
**Date Compliance History Report Prepared:** April 06, 2015
**Agency Decision Requiring Compliance History:** Enforcement
**Component Period Selected:** April 06, 2010 to April 06, 2015
**TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.**
**Name:** Michael Meyer **Phone:** (512) 239-4492

## 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
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)
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.

**2 Effective Date: 09/19/2014 ADMINORDER 2013-1302-PST-E (Findings Order-Agreed Order Without Denial)**

Classification: Major
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)
30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)
Rqmt Prov: OP 2.a., 2.b., and 2.c. ORDER
Description: Failure to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between monitoring).

### 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** |

**DEFAULT ORDER**

**DOCKET NO. 2015-0441-PST-E**

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition, filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty. The respondent made the subject of this Order is INS EMERALD, L.L.C. d/b/a LUNA MART ("Respondent").

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

**FINDINGS OF FACT**

1. Respondent owned and operated, 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 Commission, and contain or contained a regulated petroleum substance as defined in the rules of the TCEQ.

2. During an investigation conducted on February 10, 2015, an investigator documented that Respondent:

   a. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and

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

3. The Executive Director recognizes that Respondent no longer owns or operates the Facility as of June 30, 2015.

4. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of INS EMERALD, L.L.C. d/b/a LUNA MART" (the "EDPRP") in the TCEQ Chief Clerk's office on August 18, 2015.

5. By letter dated August 18, 2015, sent to Respondent's last known address via certified mail, return receipt requested, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on August 24, 2015, as evidenced by the signature on the card.

6. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

## 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.a., 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).

3. As evidenced by Finding of Fact No. 2.b., Respondent failed to maintain corrosion protection records and make them immediately available for inspection upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE §§ 334.10(b) and 334.49(e)(1).

4. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(b)(1).

5. As evidenced by Finding of Fact No. 6, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.

6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

7. An administrative penalty in the amount of seven thousand seven hundred fifty dollars ($7,750.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

## ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of seven thousand seven hundred fifty dollars ($7,750.00) for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondent's compliance with all the requirements set forth in this Order resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations which are not raised here.

2. The penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to TCEQ and shall be sent with the notation "Re: INS EMERALD, L.L.C. d/b/a LUNA MART; Docket No. 2015-0441-PST-E" to:

Financial Administration Division, Revenue Operations Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

3. All relief not expressly granted in this Order is denied.

4. The provisions of this Order shall apply to and be binding upon Respondent.

5. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.

8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.

9. The Chief Clerk shall provide a copy of this fully executed Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

## S I G N A T U R E  P A G E

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

_____ _____
For the Commission Date

## AFFIDAVIT OF TRACY CHANDLER

**STATE OF TEXAS** §
§
**COUNTY OF TRAVIS** §

"My name is Tracy Chandler. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of INS EMERALD, L.L.C. d/b/a LUNA MART" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on August 18, 2015.

The EDPRP was mailed to Respondent's last known address on August 18, 2015, via certified mail, return receipt requested, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on August 24, 2015, as evidenced by the signature on the card.

More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."

Tracy Chandler, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Tracy Chandler, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Subscribed and sworn to before me on this 3rd day of November, A.D. 2015.

ECKO RENE BEGGS
Notary Public, State of Texas
My Commission Expires
MAY 30, 2018

Notary without Bond

Notary Public, State of Texas