

Brooke T. Paup, *Chairwoman*  
Bobby Janecka, *Commissioner*  
Catarina R. Gonzales, *Commissioner*  
Kelly Keel, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

May 19, 2025

To: Persons on the Attached Mailing List (Via email only)

Re: An Enforcement Action Concerning E & J Fernandes Inc dba Johnny's Corner Store;  
TCEQ Docket No. 2023-0141-PST-E; SOAH Docket No. 582-18-3786

The above-referenced matter is scheduled to be considered by the Texas Commission on Environmental Quality ("Commission") at its May 22, 2025, public meeting. On May 19, 2025, the Executive Director requested a continuance of this matter to the July 23, 2025, public meeting.

Pursuant to 30 TAC § 10.4 and the Commission's Resolution issued on February 2, 2009, Docket No. 2009-0059-RES, this matter is hereby continued and will be set for the Commission's July 23, 2025, public meeting beginning at 9:30 A.M.

Due to an ongoing construction project, the agenda meeting will be held in Room 244 of the Texas Workforce Commission located at 101 East 15th Street in Austin, Texas. The agenda meeting may be held in person, virtually, or both in person and virtually. To confirm how the meeting will be held, please visit the Commissioners' Agenda webpage at <https://www.tceq.texas.gov/goto/agendas> eight days before the Agenda. No further exceptions or replies are authorized by this continuance.

If you have any questions about the public meeting or related matters, please contact Elaine Lucas at [elaine.lucas@tceq.texas.gov](mailto:elaine.lucas@tceq.texas.gov).

Sincerely,

A handwritten signature in cursive script that reads "Mary Smith".

Mary Smith  
General Counsel

Mailing List

Mailing List  
E & J Fernandes Inc dba Johnny's Country Corner  
TCEQ Docket No. 2023-0141-PST-E

Elton "Johnny" Fernandes, Manager  
E & J Fernandes Inc  
8169 County Road 468 West  
Henderson, Texas 75654-8288  
903/539-2624  
[johnnyfernandes1@yahoo.com](mailto:johnnyfernandes1@yahoo.com)

Michelle Baetz  
TCEQ Tyler Regional Office MC – R5  
2916 Teague Dr.  
Tyler, Texas 75701-3734  
903-535-5100 • FAX: 903-595-1562  
[michelle.baetz@tceq.texas.gov](mailto:michelle.baetz@tceq.texas.gov)

Melissa Cordell  
Michael Parrish  
Ramya Wendt  
Leslie Gann  
Stuart Beckley  
TCEQ Enforcement Division MC 219  
P.O. Box 13087  
Austin, Texas 78711-3087  
512/239-2545 FAX 512/239-2550  
[Melissa.cordell@tceq.texas.gov](mailto:Melissa.cordell@tceq.texas.gov)  
[Michael.parrish@tceq.texas.gov](mailto:Michael.parrish@tceq.texas.gov)  
[Ramya.wendt@tceq.texas.gov](mailto:Ramya.wendt@tceq.texas.gov)  
[Leslie.gann@tceq.texas.gov](mailto:Leslie.gann@tceq.texas.gov)  
[Stuart.beckley@tceq.texas.gov](mailto:Stuart.beckley@tceq.texas.gov)

Gitanjali Yadav  
Katherine Mckenzie  
Marilyn Norrod  
TCEQ Litigation Division MC 175  
P.O. Box 13087  
Austin, Texas 78711-3087  
512/239-0600 FAX 512/239-3434  
[Gitanjali.Yadav@tceq.texas.gov](mailto:Gitanjali.Yadav@tceq.texas.gov)  
[Katherine.mckenzie@tceq.texas.gov](mailto:Katherine.mckenzie@tceq.texas.gov)  
[Marilyn.Norrod@tceq.texas.gov](mailto:Marilyn.Norrod@tceq.texas.gov)

Sheldon Wayne  
TCEQ Office of Public Interest Counsel MC 103  
P.O. Box 13087  
Austin, Texas 78711-3087  
512/239-6363 FAX 512/239-6377  
[Sheldon.Wayne@tceq.texas.gov](mailto:Sheldon.Wayne@tceq.texas.gov)

Docket Clerk  
TCEQ Office of Chief Clerk MC 105  
P.O. Box 13087  
Austin, Texas 78711-3087  
512/239-3300 FAX 512/239-3311  
<https://www.tceq.texas.gov/goto/eFilings>

Ryan Vise  
TCEQ External Relations Division MC 118  
P.O. Box 13087  
Austin, Texas 78711-3087  
512/239-0010 FAX 512/239-5000  
[pep@tceq.texas.gov](mailto:pep@tceq.texas.gov)

Kyle Lucas  
TCEQ Alternative Dispute Resolution MC 222  
P.O. Box 13087  
Austin, Texas 78711-3087  
512/239-0687 FAX 512-239-4015  
[Kyle.lucas@tceq.texas.gov](mailto:Kyle.lucas@tceq.texas.gov)

## TCEQ Interoffice Memorandum

---

**To:** Mary Smith, General Counsel  
Elaine Lucas Assistant General Counsel

**Thru:** Anna Treadwell, Senior Attorney  
*AMT* Litigation Division

**From:** Marilyn Norrod, Staff Attorney  
*MN* Litigation Division

**Date:** May 19, 2025

**Subject:** **Request for Continuance**  
**May 22, 2025 Commission Agenda**  
Item No. 24 E & J Fernandes Inc dba Johnny's Corner Store  
Docket No. 2023-0141-PST-E

The Executive Director respectfully requests that the above-referenced item be continued to the July 23, 2025 Commission Agenda. Respondent has shown through documentation that it has come into compliance on several violations and is working to resolve the sole remaining release detection violation. Respondent estimates the documentation to demonstrate compliance on this outstanding violation will be completed by mid-June.

Respondent Contact:  
Elton "Johnny" Fernandes, Manager  
E & J Fernandes Inc  
8169 County Road 468 West  
Henderson, Texas 75654-8288

Phone: 903-539-2624  
Email: johnnyfernades1@yahoo.com

Respondent has been notified of this Request for Continuance. Please do not hesitate to call me at (512) 239-5916 if you have any questions regarding this matter.

cc: Ramyia Wendt, Enforcement Coordinator  
Michelle Baetz, Tyler Regional Office  
Sheldon Wayne, Office of Public Interest Counsel  
Michael Parrish, Enforcement Division  
Leslie Gann, Enforcement Division  
Stuart Beckley, Enforcement Division  
Gill Valls, Office of the General Counsel  
Johnny Fernandes

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 63529  
E & J Fernandes Inc dba Johnny's Country Corner  
RN102715182  
Docket No. 2023-0141-PST-E

Page 1 of 3

**Order Type:**

Default Shutdown Order

**Media:**

PST

**Small Business:**

Yes

**Location Where Violations Occurred:**

3540 United States Highway 79 South, Henderson, Rusk County

**Type of Operation:**

an 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:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

**Texas Register Publication Date:** April 11, 2025

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$9,375

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

**Total Due to General Revenue:** \$9,375

**Compliance History Classifications:**

Person/CN – Satisfactory  
Site/RN – Satisfactory

**Major Source:** No

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** January 28, 2021

**Investigation Information**

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

**Date of Investigation:** November 9, 2022

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

**Date of NOE:** January 6, 2023

**Violation Information**

1. Failed to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days [TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A)].
2. Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel [30 TEX. ADMIN. CODE §§ 334.50(d)(1)(B) and 334.48(c)].
3. Failed to provide corrosion protection for the UST system [TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(a)(1)].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**

The Executive Director recognizes that by January 13, 2023, the Respondent began conducting effective manual or automatic inventory control procedure for the UST system at the Facility.

**Technical Requirements:**

1. Immediately shut down operations of all USTs at the Facility:
  - a. Cease dispensing fuel from the USTs;
  - b. Cease receiving deliveries of regulated substances into the USTs;
  - c. Secure the dispensers;
  - d. Empty the USTs of all regulated substances; and
  - e. Temporarily remove the USTs from service.
2. The Facility's UST fuel delivery certificate is revoked immediately. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements set forth in the Order, including payment of the administrative penalty in full.
3. The USTs shall remain out of service until such time as Respondent demonstrates to the satisfaction of the Executive Director that the release detection and corrosion protection violations have been corrected and Respondent obtains a new fuel delivery certificate for the Facility.
4. Immediately cease accepting fuel at the Facility until such time as a valid delivery certificate is obtained from the TCEQ.
5. Within 10 days surrender the Facility's UST fuel delivery certificate to the TCEQ.
6. Within 15 days submit a detailed written report documenting the steps taken to comply with Technical Requirement Nos. 1, 4, and 5.
7. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline:
  - a. Implement a release detection method;
  - b. Repair and test the corrosion protection system; and
  - c. Obtain a new fuel delivery certificate.
8. Upon obtaining a new fuel delivery certificate, post the fuel delivery certificate in a location at the Facility where the delivery certificate is clearly visible at all times.
9. Within 10 days of resuming sales of gasoline, submit written certification to demonstrate compliance with Technical Requirement Nos. 7 and 8.

**Litigation Information**

**Date Petition Filed:** September 18, 2024  
**Date of Service:** September 30, 2024  
**Date Answer(s) Filed:** N/A

**Contact Information**

**TCEQ Attorneys:** Marilyn Norrod, Litigation Division, (512) 239-3400  
Sheldon Wayne, Public Interest Counsel, (512) 239-6363  
**TCEQ Litigation Agenda Coordinator:** Katherine McKenzie, Litigation Division, (512) 239-2575  
**TCEQ Enforcement Coordinator:** Ramyia Wendt, Enforcement Division, (512) 239-2513  
**TCEQ Regional Contact:** Michelle Baetz, Tyler Regional Office, (903) 535-5100  
**Respondent Contact:** Elton Fernandes, Manager, E & J Fernandes Inc, 8169 County Road 468 West,  
Henderson, Texas 75654-8288  
**Respondent's Attorney:** N/A

**THIS PAGE INTENTIONALLY LEFT BLANK**



# Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

<b>DATES</b>	<b>Assigned</b>	9-Jan-2023	<b>Screening</b>	18-Jan-2023	<b>EPA Due</b>	
	<b>PCW</b>	19-Jan-2023				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	E & J Fernandes Inc dba Johnny's Country Corner				
<b>Reg. Ent. Ref. No.</b>	RN102715182				
<b>Facility/Site Region</b>	5-Tyler	<b>Major/Minor Source</b>	Minor		

## CASE INFORMATION

<b>Enf./Case ID No.</b>	63529	<b>No. of Violations</b>	2
<b>Docket No.</b>	2023-0141-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>	Ramyia Wendt
		<b>EC's Team</b>	Enforcement Team 3
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

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

## 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>	25.0%	<b>Adjustment</b>	<b>Subtotals 2, 3, &amp; 7</b>	\$1,875
---------------------------	-------	-------------------	--------------------------------	---------

<b>Notes</b>	Enhancement for one Default Order without a denial of liability.			
--------------	--	--	--	--

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

<b>Notes</b>	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%	<b>Enhancement*</b>	<b>Subtotal 6</b>	\$0
-------------------------	------	---------------------	-------------------	-----

Total EB Amounts	\$312	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$5,250	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$9,375
-----------------------------	-----------------------	---------

<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
---	------	-------------------	-----

Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>				
--------------	--	--	--	--

<b>Final Penalty Amount</b>	\$9,375
-----------------------------	---------

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$9,375
-----------------------------------	-------------------------------	---------

<b>DEFERRAL</b>	0.0%	<b>Reduction</b>	<b>Adjustment</b>	\$0
-----------------	------	------------------	-------------------	-----

Reduces the Final Assessed Penalty by the indicated percentage.

<b>Notes</b>	Deferral not offered for non-expedited settlement.			
--------------	--	--	--	--

<b>PAYABLE PENALTY</b>	\$9,375
------------------------	---------

<b>Screening Date</b>	18-Jan-2023	<b>Docket No.</b>	2023-0141-PST-E	<b>PCW</b>
<b>Respondent</b>	E & J Fernandes Inc dba Johnny's Country Corner			<i>Policy Revision 5 (January 28, 2021)</i>
<b>Case ID No.</b>	63529			<i>PCW Revision February 11, 2021</i>
<b>Reg. Ent. Reference No.</b>	RN102715182			
<b>Media</b>	Petroleum Storage Tank			
<b>Enf. Coordinator</b>	Ramya Wendt			

### Compliance History Worksheet

#### >> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	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	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 ( <i>number of judgments 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%
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)** 25%

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

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

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

**Adjustment Percentage (Subtotal 7)** 0%

#### >> Compliance History Summary

**Compliance History Notes**

Enhancement for one Default Order without a denial of liability.

**Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)** 25%

#### >> Final Compliance History Adjustment

**Final Adjustment Percentage \*capped at 100%** 25%

<b>Screening Date</b>	18-Jan-2023	<b>Docket No.</b>	2023-0141-PST-E	<b>PCW</b>
<b>Respondent</b>	E & J Fernandes Inc dba Johnny's Country Corner			<i>Policy Revision 5 (January 28, 2021)</i>
<b>Case ID No.</b>	63529			<i>PCW Revision February 11, 2021</i>
<b>Reg. Ent. Reference No.</b>	RN102715182			
<b>Media</b>	Petroleum Storage Tank			
<b>Enf. Coordinator</b>	Ramya Wendt			
<b>Violation Number</b>	1			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code §§ 334.50(b)(1)(A) and (d)(1)(B) and 334.48(c) and Tex. Water Code § 26.3475(c)(1)			
<b>Violation Description</b>	Failed to monitor the underground storage tanks ("USTs") in a manner which will detect a release at a frequency of at least once every 30 days. Also, failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel.			
		<b>Base Penalty</b>	\$25,000	

  

>> Environmental, Property and Human Health Matrix

OR

		<b>Harm</b>	
<b>Release</b>	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 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

70 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty \$3,750

One quarterly event is recommended from the November 9, 2022 investigation date to the January 18, 2023 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

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

Violation Subtotal \$3,750

  

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
Estimated EB Amount \$53	Violation Final Penalty Total \$4,688
This violation Final Assessed Penalty (adjusted for limits) \$4,688	

# Economic Benefit Worksheet

**Respondent** E & J Fernandes Inc dba Johnny's Country Corner  
**Case ID No.** 63529  
**Reg. Ent. Reference No.** RN102715182  
**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	Costs Saved	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				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Inventory Control	\$500	9-Nov-2022	13-Jan-2023	0.18	\$4	n/a	\$4
Other (as needed)	\$1,000	9-Nov-2022	5-Nov-2023	0.99	\$49	n/a	\$49

### Notes for DELAYED costs

Estimated delayed cost to implement a release detection method for the UST system at the Facility (\$1,000). The Date Required is the investigation date, and the Final Date is the estimated date of compliance.

Estimated delayed cost to conduct effective manual or automatic inventory control procedures for the UST system at the Facility (\$500). The Date Required is the investigation date, and the Final Date is the date of compliance.

## Avoided Costs

### ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

### Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

**TOTAL**

\$53

<b>Screening Date</b>	18-Jan-2023	<b>Docket No.</b>	2023-0141-PST-E	<b>PCW</b>
<b>Respondent</b>	E & J Fernandes Inc dba Johnny's Country Corner			
<b>Case ID No.</b>	63529	<i>Policy Revision 5 (January 28, 2021)</i>		
<b>Reg. Ent. Reference No.</b>	RN102715182	<i>PCW Revision February 11, 2021</i>		
<b>Media</b>	Petroleum Storage Tank			
<b>Enf. Coordinator</b>	Ramya Wendt			
<b>Violation Number</b>	2			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 334.49(a)(1) and Tex. Water Code § 26.3475(d)			
<b>Violation Description</b>	<p>Failed to provide corrosion protection for the UST system. Specifically, a triennial cathodic protection survey conducted on November 29, 2022 failed and indicated that the corrosion protection system was in need of repairs.</p>			
			<b>Base Penalty</b>	\$25,000

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

<b>OR</b>		<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor	
	Actual				
	Potential	X			<b>Percent</b> 15.0%

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
					<b>Percent</b> 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	70	Number of violation days
----------------------------	---	----	--------------------------

	daily				
	weekly				
	monthly				
	quarterly	X			<b>Violation Base Penalty</b> \$3,750
	semiannual				
	annual				
	single event				

One quarterly event is recommended from the November 9, 2022 investigation date to the January 18, 2023 screening date.

**Good Faith Efforts to Comply**

	0.0%				
	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer			<b>Reduction</b> \$0
Extraordinary					
Ordinary					
N/A	X				

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

**Violation Subtotal** \$3,750

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

<b>Estimated EB Amount</b>		\$259	<b>Violation Final Penalty Total</b>		\$4,688

**This violation Final Assessed Penalty (adjusted for limits)** \$4,688

# Economic Benefit Worksheet

**Respondent** E & J Fernandes Inc dba Johnny's Country Corner  
**Case ID No.** 63529  
**Reg. Ent. Reference No.** RN102715182  
**Media** Petroleum Storage Tank  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
------------------	-----------	---------------	------------	-----	----------------	-------------	-----------

## Delayed Costs

Equipment	\$3,750	9-Nov-2022	5-Nov-2023	0.99	\$12	\$247	\$259
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0
Notes for DELAYED costs	Estimated delayed cost to repair and test the corrosion protection system at the Facility, per quote. The Date Required is the investigation date, and the Final Date is the estimated date of compliance.						

## Avoided Costs

### ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Notes for AVOIDED costs							

Approx. Cost of Compliance	\$3,750	<b>TOTAL</b>	\$259
----------------------------	---------	--------------	-------



# Compliance History Report

Compliance History Report for CN605857085, RN102715182, Rating Year 2023 which includes Compliance History (CH) components from September 1, 2018, through August 31, 2023.

**Customer, Respondent, or Owner/Operator:** CN605857085, E & J Fernandes Inc **Classification:** SATISFACTORY **Rating:** 50.00

**Regulated Entity:** RN102715182, Johnnys Country Corner **Classification:** SATISFACTORY **Rating:** 50.00

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

**CH Group:** 14 - Other

**Location:** 3540 United States Highway 79 South, Henderson, Rusk County, Texas 75654-5753

**TCEQ Region:** REGION 05 - TYLER

**ID Number(s):**  
**PETROLEUM STORAGE TANK REGISTRATION**  
REGISTRATION 31373

**Compliance History Period:** September 01, 2018 to August 31, 2023 **Rating Year:** 2023 **Rating Date:** 09/01/2023

**Date Compliance History Report Prepared:** October 06, 2023

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** October 06, 2018 to October 06, 2023

**TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.**  
**Name:** Carolyn Kent **Phone:** (512) 239-2536

## 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) Who is the current owner/operator? E & J Fernandes Inc OWNER OPERATOR since 1/3/2021
- 4) Who was/were the prior owner(s)/operator(s)? Angel Rao LLC, OWNER OPERATOR, 2/6/2018 to 1/2/2021

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

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

- 1 Effective Date: 07/11/2019 ADMINORDER 2017-0916-PST-E (Findings Order-Default)  
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 per month.  
Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(d)  
30 TAC Chapter 334, SubChapter C 334.49(c)(2)(C)  
Description: Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure the rectifier and other system components are operating properly.

### **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

## **Component Appendices**

### **Appendix A**

#### **All NOVs Issued During Component Period 10/6/2018 and 10/6/2023**

N/A

### **Appendix B**

#### **All Investigations Conducted During Component Period October 06, 2018 and October 06, 2023**

Item 1	January 06, 2023**	(1856040)
--------	--------------------	-----------

\* No violations documented during this investigation

\*\*Investigation applicable for the Compliance History Rating period between 09/01/2018 and 08/31/2023.

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
E & J FERNANDES INC DBA JOHNNY'S  
COUNTRY CORNER;  
RN102715182

§  
§  
§  
§  
§  
§

BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

## DEFAULT AND SHUTDOWN ORDER

DOCKET NO. 2023-0141-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, corrective action of the respondent, and revocation of the facility's fuel delivery certificate. The Commission also considered the Executive Director's Motion requesting the entry of an Order requiring the respondent to shut down and remove from service the underground storage tanks ("USTs") located at 3540 United States Highway 79 South in Henderson, Rusk County, Texas. The respondent made the subject of this Order is E & J Fernandes Inc dba Johnny's Country Corner ("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, a UST system and a convenience store with retail sales of gasoline located at 3540 United States Highway 79 South in Henderson, Rusk County, Texas (Facility ID No. 31373) (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 an investigation conducted on November 9, 2022, an investigator documented that Respondent:
  - a. Failed to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days. Also, failed to conduct effective manual or automatic inventory control procedures for all UST's involved in the retail sale of petroleum substances used as motor fuel; and
  - b. Failed to provide corrosion protection for the UST system. Specifically, a triennial cathodic protection survey conducted on November 29, 2022, failed and indicated that the corrosion protection system was in need of repairs.
3. The Executive Director recognizes that by January 13, 2023, the Respondent began conducting effective manual or automatic inventory control procedures for the UST system at the Facility.
4. By letter dated January 6, 2023, Respondent was provided with written notice of the violations and of TCEQ's authority to shut down and remove from service USTs not in compliance with release detection, spill and/or overfill prevention, corrosion protection, and/or financial assurance requirements if the violations were not corrected.

5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of E & J Fernandes Inc dba Johnny's Country Corner" (the "EDPRP") in the TCEQ Chief Clerk's office on September 18, 2024.
6. By letter dated September 18, 2024 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 September 30, 2024, as evidenced by the signature on the card. According to USPS.com "Track & Confirm" delivery confirmation records, Respondent received notice of the EDPRP on September 30, 2024.
7. 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.
8. By letter dated January 15, 2025, the Executive Director provided Respondent with notice of TCEQ's intent to order the USTs at the Facility to be shut down and removed from service if Respondent failed to correct the release detection and corrosion protection violations within 30 days after Respondent's receipt of the notice.
9. As of the date of entry of this Order, Respondent has not provided the Executive Director with documentation demonstrating that the release detection and corrosion protection violations alleged in Findings of Fact Nos. 2.a. and 2.b. have been corrected.
10. The USTs at the Facility do not have release detection and corrosion protection as required by TEX. WATER CODE § 26.3475(c)(1) and (d) and 30 TEX. ADMIN. CODE §§ 334.49(a)(1) and 334.50(d)(1)(A) and may be releasing petroleum products to the environment. Therefore, conditions at the Facility constitute an imminent peril to public health, safety, and welfare.

#### 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 in a manner which will detect a release at a frequency of at least once every 30 days, in violation of TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A). Also, failed to conduct effective manual or automatic inventory control procedures for all UST's involved in the retail sale of petroleum substances used as motor fuel, in violation of 30 TEX. ADMIN. CODE §§ 334.50(d)(1)(B) and 334.48(c).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to provide corrosion protection for the UST system, in violation of TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(a)(1).
4. As evidenced by Findings of Fact Nos. 5 through 6, 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. 7, 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 \$9,375 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. As evidenced by Findings of Fact Nos. 2.a., 2.b., 4, 8, and 9, Respondent failed to correct documented violations of TCEQ requirements within 30 days after Respondent received notice of the release detection and corrosion protection violations and notice of the Executive Director's intent to shut down the USTs at the Facility.
9. TEX. WATER CODE §§ 26.3475(e) and 26.352(i) authorize the Commission to order a UST owner or operator to shut down a UST system if, within 30 days after receiving notice of the violations, the owner or operator fails to correct violations of TCEQ regulatory requirements relating to release detection for tanks and/or piping, spill and/or overfill prevention for tanks, corrosion protection for tanks and/or piping, and/or acceptable financial assurance.
10. 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.
11. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke the Facility's UST fuel delivery certificate if the Commission finds that good cause exists.
12. Good cause for revocation of the Facility's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2 and 5 through 7 and Conclusions of Law Nos. 2 through 5.
13. As evidenced by Findings of Fact Nos. 9 and 10, current conditions at the Facility constitute an imminent peril to public health, safety, and welfare. Therefore, pursuant to the Administrative Procedure Act, TEX. GOV'T CODE § 2001.144(a)(3), this Order is final and effective on the date it is signed by the Commission.

#### **ORDERING PROVISIONS**

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

1. Immediately upon the effective date of this Order, Respondent shall take the following steps to shut down operations of all USTs at the Facility:
  - a. Cease dispensing fuel from the USTs;
  - b. Cease receiving deliveries of regulated substances into the USTs;
  - c. Secure the dispensers to prevent access;
  - d. Empty the USTs of all regulated substances in accordance with 30 TEX. ADMIN. CODE § 334.54(d); and
  - e. Temporarily remove the USTs from service in accordance with 30 TEX. ADMIN. CODE § 334.54.
2. The Facility's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements set forth in this Order, including payment of the administrative penalty in full.
3. The USTs at the Facility shall remain out of service, pursuant to TEX. WATER CODE § 26.3475(e) and as directed by Ordering Provision Nos. 1.a. through 1.e. until such time as Respondent demonstrates to the satisfaction of the Executive Director that the release detection and corrosion protection violations noted in Conclusions of Law Nos. 2

and 3 have been corrected and Respondent obtains a new fuel delivery certificate for the Facility.

4. Immediately upon the effective date of this Order, Respondent shall cease accepting fuel at the Facility until such time as a valid delivery certificate is obtained from the TCEQ in accordance with 30 TEX. ADMIN. CODE §§ 334.7 and 334.8.
5. Within 10 days after the effective date of this Order, Respondent shall send the Facility's UST fuel delivery certificate to:

Petroleum Storage Tank Registration Team, MC 138  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

6. Within 15 days after the effective date of this Order, Respondent shall submit a detailed written report, in accordance with Ordering Provision No. 13, documenting the steps taken to comply with Ordering Provision Nos. 1.a. through 1.e., 4 and 5.
7. If Respondent elects to permanently remove from service any portion of the UST system at the Facility, Respondent shall, immediately upon the effective date of this Order, permanently remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.55, and within 15 days after the effective date of this Order, shall submit a written report documenting compliance with 30 TEX. ADMIN. CODE § 334.55 to:

Petroleum Storage Tank Registration Team, MC 138  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

8. Respondent is assessed an administrative penalty in the amount of \$9,375 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.
9. 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: E & J Fernandes Inc dba Johnny's Country Corner; Docket No. 2023-0141-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

10. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline, Respondent shall undertake the following technical requirements:
  - a. Implement a release detection method for the USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.50;
  - b. Repair and test the corrosion protection system at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.49; and
  - c. Obtain a new fuel delivery certificate from the TCEQ.

11. Upon obtaining a new fuel delivery certificate, Respondent shall post the fuel delivery certificate in a location at the Facility where the delivery certificate is clearly visible at all times, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii).
12. Within 10 days of resuming retail sales of gasoline, Respondent shall submit written certification, in accordance with Ordering Provision No. 13 to demonstrate compliance with Ordering Provision Nos. 10 and 11.
13. The certifications required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by Respondent, and shall include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Respondent shall submit the written certifications and supporting documentation necessary to demonstrate compliance with these Ordering Provisions to:

Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

and:

Waste Section Manager  
Tyler Regional Office  
Texas Commission on Environmental Quality  
2916 Teague Drive  
Tyler, Texas 75701-3734

14. All relief not expressly granted in this Order is denied.
15. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
16. 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. Extension requests shall be sent to the Enforcement Division at the address listed above.
17. 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.

18. 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.
19. The provisions of this Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
20. 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.
21. 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

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



## UNSWORN DECLARATION OF MARILYN NORROD

"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 E & J Fernandes Inc dba Johnny's Country Corner' (the "EDPRP") was filed in the TCEQ Chief Clerk's office on September 18, 2024

The EDPRP was mailed to Respondent's last known address on September 18, 2024 via certified mail, return receipt requested, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on September 30, 2024, 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.

By letter dated January 22, 2025, sent via first class mail and certified mail, return receipt requested article no. 7022 3330 0000 1189 9884, I provided Respondent with notice of the TCEQ's intent to order the USTs at the Facility be shut down and removed from service if the release detection and corrosion protection violations pertaining to were not corrected within 30 days of Respondent's receipt of the letter. The United States Postal Service returned the Notice sent by certified mail as "unclaimed." The first class mail has not been returned.

As of the date of this declaration, I am not aware of any evidence that indicates that Respondent has corrected the violations noted during the November 9, 2022 investigation."

"My name is Marilyn A. Norrod, and I am an employee of the following governmental agency: Texas Commission on Environmental Quality. I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the foregoing is true and correct."

Executed in Travis County,  
State of Texas,  
on the 22<sup>nd</sup> day of January, 2025

A handwritten signature in black ink, appearing to read "Marilyn A. Norrod".

---

Declarant