

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2005-1562-PST-E TCEQ ID NO.: RN102352788 CASE NO.: 26896
RESPONDENT NAME: NAIDE ENTERPRISES, INC. DBA BIG STAR MART

ORDER TYPE:

<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> IMMEDIATE AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> EMERGENCY ORDER	

CASE TYPE:

<input type="checkbox"/> AGRICULTURE	<input type="checkbox"/> AIR	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE	<input type="checkbox"/> MUNICIPAL SOLID WASTE
<input type="checkbox"/> OCCUPATIONAL CERTIFICATION	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> RADIOACTIVE WASTE
<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL	<input type="checkbox"/> USED OIL
<input type="checkbox"/> USED OIL FILTER	<input type="checkbox"/> WATER QUALITY		

SITE WHERE VIOLATION(S) OCCURRED: 2803 Vance Jackson Road, San Antonio, Bexar County

TYPE OF OPERATION: Convenience store with retail sales of gasoline

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no previous complaints. There is no record of additional pending enforcement actions regarding this facility.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on March 12, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019; Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873

TCEQ Enforcement Coordinator: Mr. Kent Heath, Enforcement Division, MC 219, (512) 239-4575

TCEQ Contact: Mr. Henry Karnei, San Antonio Regional Office, MC R-13, (210) 403-4010

Respondent: Mr. Wael Suleiman, President, Naide Enterprises, Inc. dba Big Star Mart, 5835 Heather View, San Antonio, Texas 78249

Respondent's Attorney: Not represented by counsel.

RESPONDENT'S NAME: NAIDE ENTERPRISES, INC. DBA BIG STAR MART
DOCKET NO.: 2005-1562-PST-E

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date(s) of Investigation(s) Relating to this Case: January 18, 2005 and June 23, 2005</p> <p>Date(s) of NOV(s)/NOE(s) Relating to this Case: March 2, 2005 (NOV) and August 12, 2005 (NOE)</p> <p>Background Facts:</p> <p>The EDPRP was filed on March 13, 2006. Settlement was achieved and a signed Agreed Order and initial payment were received on January 10, 2007.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>PST:</p> <p>(1) Failed to post the delivery certificate in a location that is clearly visible at all times [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii)].</p> <p>(2) Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST [30 TEX. ADMIN. CODE § 334.8(c)(5)(C)].</p> <p>(3) Failed to notify the Commission within 30 days from the date of the occurrence of any change or addition to the UST system [30 TEX. ADMIN. CODE § 334.7(d)(3)].</p> <p>(4) Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>(5) Failed to equip each tank with a valve or other appropriate device designed to either automatically shut off or restrict the flow of regulated substances into the tanks when the liquid level in the tanks reach a preset level [30 TEX. ADMIN. CODE § 334.51(b)(2)(C) and TEX. WATER CODE § 26.3475(c)(2)].</p>	<p>Total Assessed: \$6,825</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>Total Paid/Due to General Revenue: \$210/\$6,615</p> <p>The Respondent has paid \$210 of the administrative penalty. The remaining amount of \$6,615 of the administrative penalty shall be payable in 35 monthly payments of \$189 each.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Avg. <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Avg. <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements</p> <p>(1) Immediately:</p> <p>(a) Begin conducting inventory control procedures for all USTs at the Facility;</p> <p>(b) Permanently tag, label, or mark the USTs with an identification number which corresponds to the Facility's registration and self-certification form; and</p> <p>(c) Submit a properly completed UST registration and self-certification form.</p> <p>(2) Within 30 days:</p> <p>(a) Install overflow prevention equipment; and</p> <p>(b) Install and implement a release detection method.</p> <p>(3) Within 45 days, submit written certification demonstrating compliance.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 19, 2005

DATES Assigned 22-Aug-2005
 PCW 08-Sep-2006 Screening 30-Aug-2005 EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent Naide Enterprises, Inc. dba Big Star Mart
 Reg. Ent. Ref. No. RN102352788
 Facility/Site Region 13-San Antonio Major/Minor Source Minor Source

CASE INFORMATION

Enf./Case ID No. 26896 No. of Violations 5
 Docket No. 2005-1562-PST-E Order Type 1660
 Media Program(s) Petroleum Storage Tank Enf. Coordinator Epifanio Villarreal
 Multi-Media EC's Team Enforcement Team 2
 Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 **\$6,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 5% Enhancement Subtotals 2, 3, & 7 **\$325**

Notes Enhancement for one prior NOV for a violation that was same or similar.

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

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction Subtotal 5 **\$0**

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

Notes The Respondent is not yet in compliance.

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

Total EB Amounts \$63
 Approx. Cost of Compliance \$2,220
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal **\$6,825**

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount **\$6,825**

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty **\$6,825**

DEFERRAL Reduction Adjustment **\$0**

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

Notes This is not an expedited case.

PAYABLE PENALTY **\$6,825**

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Screening Date 30-Aug-2005

Docket No. 2005-1562-PST-E

PCW

Respondent Naide Enterprises, Inc. dba Big Star Mart

Policy Revision 2 (September 2002)

Case ID No. 26896

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN102352788

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Epifanio Villarreal

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
Orders	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%
	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
Judgments and Consent Decrees	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%
	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 disclosed)	0	0%
Audits	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%
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) 5%

>> Repeat Violator (Subtotal 3)

No <

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer <

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one prior NOV for a violation that was same or similar.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

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Screening Date 30-Aug-2005

Docket No. 2005-1562-PST-E

PCW

Respondent Naide Enterprises, Inc. dba Big Star Mart

Policy Revision 2 (September 2002)

Case ID No. 26896

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN102352788

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Epifanio Villarreal

Violation Number 1

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(A)(iii)

Secondary Rule Cite(s)

Violation Description Failure to post the delivery certificate in a location that is clearly visible at all times.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	X			10%

Matrix Notes 100% of the rule requirement was not met.

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

Violation Events

Number of Violation Events 1

mark only one use a small v	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	X

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the June 23, 2005 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$1,050

This violation Final Assessed Penalty (adjusted for limits) \$1,050

9-8-06.gpw

Economic Benefit Worksheet

Respondent Naide Enterprises, Inc. dba Big Star Mart
 Case ID No. 26896
 Reg. Ent. Reference No. RN102352788
 Media [Statute] 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
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$20	23-Jun-2005	14-Apr-2006	0.8	\$1	n/a	\$1

Notes for DELAYED costs: Estimated cost to post the delivery certificate. Date Required is the investigation date. Final Date is the estimated date of compliance.

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$20

TOTAL \$1

Screening Date 30-Aug-2005

Docket No. 2005-1562-PST-E

PCW

Respondent Naide Enterprises, Inc. dba Big Star Mart

Policy Revision 2 (September 2002)

Case ID No. 26896

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN102352788

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Epifanio Villarreal

Violation Number 2

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(C)

Secondary Rule Cite(s)

Violation Description

Failure to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	X			10%

Matrix Notes 100% of the rule requirement was not met.

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

Violation Events

Number of Violation Events 1

mark only one use a small x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	X

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the June 23, 2005 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$1,050

This violation Final Assessed Penalty (adjusted for limits) \$1,050

Economic Benefit Worksheet

Respondent Naide Enterprises, Inc. dba Big Star Mart
 Case ID No. 26896
 Reg. Ent. Reference No. RN102352788
 Media [Statute] 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	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$50	23-Jun-2005	22-Nov-2005	0.4	\$1	n/a	\$1

Notes for DELAYED costs: Estimated cost to tag, label, or mark the UST system. Date Required is the date of the investigation. Final Date is the compliance date.

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

TOTAL

Screening Date 30-Aug-2005

Docket No. 2005-1562-PST-E

PCW

Respondent Naide Enterprises, Inc. dba Big Star Mart

Policy Revision 2 (September 2002)

Case ID No. 26896

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN102352788

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Epifanio Villarreal

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one use a small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semianual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="text" value="x"/>

Violation Base Penalty

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

9-8-06.gpw

Economic Benefit Worksheet

Respondent Naide Enterprises, Inc. dba Big Star Mart
 Case ID No. 26896
 Reg. Ent. Reference No. RN102352788
 Media [Statute] Petroleum Storage Tank
 Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$50	23-Jun-2005	14-Apr-2006	0.8	\$2	n/a	\$2

Notes for DELAYED costs: Estimated cost to submit an updated registration and self-certification form. Date required is the investigation date. Final date is the estimated date of compliance.

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs:

Approx. Cost of Compliance TOTAL

9-8-06.gpw

Screening Date 30-Aug-2005

Docket No. 2005-1562-PST-E

PCW

Respondent Naide Enterprises, Inc. dba Big Star Mart

Policy Revision 2 (September 2002)

Case ID No. 26896

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN102352788

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Epifanio Villarreal

Violation Number 4

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A)

Secondary Rule Cite(s) Tex. Water Code § 26.3475(c)(1)

Violation Description Failure to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

		Harm				
Release		Major	Moderate	Minor		
OR	Actual				Percent	25%
	Potential	X				

>> Programmatic Matrix

		Falsification	Major	Moderate	Minor		
						Percent	
Matrix Notes	Failing to conduct release detection for the USTs could result in a release of significant amount of product which would exceed levels protective of human health and environmental receptors.						

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 1

mark only one use a small x	daily	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One quarterly event is recommended based upon the June 23, 2005 investigation date to the August 30, 2005 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$25

Violation Final Penalty Total \$2,625

This violation Final Assessed Penalty (adjusted for limits) \$2,625

Economic Benefit Worksheet

Respondent Naide Enterprises, Inc. dba Big Star Mart
 Case ID No. 26896
 Reg. Ent. Reference No: RN102352788
 Media [Statute] Petroleum Storage Tank
 Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$1,500	23-Jun-2005	24-Oct-2005	0.3	\$25	n/a	\$25

Notes for DELAYED costs: Estimated cost to conduct release detection. Date Required is the investigation date. Final Date is the compliance date.

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs:

Approx. Cost of Compliance TOTAL

9-8-06.gpw

Screening Date 30-Aug-2005

Docket No. 2005-1562-PST-E

PCW

Respondent Naide Enterprises, Inc. dba Big Star Mart

Policy Revision 2 (September 2002)

Case ID No. 26896

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN102352788

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Epifanio Villarreal

Violation Number 5

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.51(b)(2)(C)

Secondary Rule Cite(s) Tex. Water Code § 26.3475(c)(2)

Violation Description

Failure to equip each tank with a valve or other appropriate device designed to either automatically shut off the flow or restrict the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

		Harm			
Release		Major	Moderate	Minor	
OR	Actual				Percent 10%
	Potential		X		

>> Programmatic Matrix

		Falsification	Major	Moderate	Minor	
						Percent
Matrix Notes	Failure to provide overfill prevention equipment could expose human health and the environment to significant amounts of pollutants which would not exceed protective levels for human health and environmental receptors.					

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

Violation Events

Number of Violation Events 1

mark only one use a small x	daily	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,000

One quarterly event is recommended based upon the June 23, 2005 investigation date to the August 30, 2005 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$34

Violation Final Penalty Total \$1,050

This violation Final Assessed Penalty (adjusted for limits) \$1,050

9-8-06.cpw

Economic Benefit Worksheet

Respondent Naide Enterprises, Inc. dba Big Star Mart
 Case ID No. 26896
 Reg. Ent. Reference No. RN102352788
 Media [Statute] Petroleum Storage Tank
 Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Percent Interest		Years of Depreciation	
						Onetime Costs	EB Amount		
Delayed Costs									
Equipment	\$600	23-Jun-2005	14-Apr-2006	0.8	\$2	\$32		\$34	
Buildings				0.0	\$0	\$0		\$0	
Other (as needed)				0.0	\$0	\$0		\$0	
Engineering/construction				0.0	\$0	\$0		\$0	
Land				0.0	\$0	n/a		\$0	
Record Keeping System				0.0	\$0	n/a		\$0	
Training/Sampling				0.0	\$0	n/a		\$0	
Remediation/Disposal				0.0	\$0	n/a		\$0	
Permit Costs				0.0	\$0	n/a		\$0	
Other (as needed)				0.0	\$0	n/a		\$0	

Notes for DELAYED costs: Estimated cost to provide overfill prevention equipment. Date Required is the date of the investigation. Final Date is the estimated date of compliance.

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0	\$0		\$0
Personnel				0.0	\$0	\$0		\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0		\$0
Supplies/equipment				0.0	\$0	\$0		\$0
Financial Assurance [2]				0.0	\$0	\$0		\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0		\$0
Other (as needed)				0.0	\$0	\$0		\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

TOTAL

Compliance History

Customer/Respondent/Owner-Operator:	CN602725806 Naide Enterprises, Inc.	Classification: AVERAGE	Rating: 4.000
Regulated Entity:	RN102352788 BIG STAR MART	Classification: AVERAGE	Site Rating: 4.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	5932
Location:	2803 VANCE JACKSON RD, SAN ANTONIO, TX, 78213		Rating Date: 9/1/05 Repeat Violator: NO
TCEQ Region:	REGION 13 - SAN ANTONIO		
Date Compliance History Prepared:	November 01, 2005		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	November 01, 2000 to November 01, 2005		

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Kent Heath Phone: (512) 239-4575

Site Compliance History Components

- | | |
|--|--------------------------------|
| 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 of the site during the compliance period? | Yes |
| 3. If Yes, who is the current owner? | <u>Naide Enterprises, Inc.</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>E-Z Mart Stores, Inc.</u> |
| 5. When did the change(s) in ownership occur? | <u>02/28/2005</u> |
| 6. Comments: | |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- | | | |
|---|------------|----------|
| 1 | 03/02/2005 | (371926) |
| 2 | 08/15/2005 | (404677) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- Date: 03/02/2005 (371926)
- | | |
|---|--|
| Self Report? NO | Classification: Moderate |
| Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)[G] | Description: Failure to provide records that document compliance with release detection for tanks and piping, corrosion protection, overflow prevention and financial assurance. |
| Self Report? NO | Classification: Moderate |
| Citation: 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(A)(ii) | Description: Failure to ensure a valid delivery certificate is posted at facility and is visible at all times. |
| Self Report? NO | Classification: Moderate |
| Citation: 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(C) | Description: Failure to physically label all tank fill pipes according to registration/self-certification form. |
| Self Report? NO | Classification: Moderate |
| Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3) | Description: Failure to amend, update or change the PST Registration to show correct facility telephone number and correct release detection currently being used. |
- F. Environmental audits.
N/A
Description:

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
NAIDE ENTERPRISES, INC. DBA
BIG STAR MART
RN102352788

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2005-1562-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Naide Enterprises, Inc. dba Big Star Mart ("Naide") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Naide appear before the Commission and together stipulate that:

1. Naide owns and operates a convenience store with retail sales of gasoline located at 2803 Vance Jackson Road, San Antonio, Bexar County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and Naide agree that the Commission has jurisdiction to enter this Agreed Order, and that Naide is subject to the Commission's jurisdiction.
4. Naide received notice of the violations alleged in Section II ("Allegations") on or about March 2, 2005.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Naide of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of six thousand eight hundred twenty-five dollars (\$6,825.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Naide has paid two hundred ten dollars (\$210.00) of the administrative

penalty. The remaining amount of six thousand six hundred fifteen dollars (\$6,615.00) of the administrative penalty shall be payable in 35 monthly payments of one hundred eighty-nine dollars (\$189.00) 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 Naide 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, Naide's failure to meet the payment schedule of this Agreed Order constitutes the failure by Naide to timely and satisfactorily comply with all of the terms of this Agreed Order.

7. 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.
8. The Executive Director of the TCEQ and Naide have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. 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 Naide has not complied with one or more of the terms or conditions in this Agreed Order.
10. 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.
11. 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. Naide is alleged to have violated:
 - a. 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii), by failing to post the delivery certificate in a location that is clearly visible at all times;
 - b. 30 TEX. ADMIN. CODE § 334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST at the Facility;

- c. 30 TEX. ADMIN. CODE § 334.7(d)(3), by failing to notify the Commission within 30 days from the date of the occurrence of any change or addition to the UST system. Specifically, the Respondent did not update the registration to include a correct phone number and the release detection method being utilized at the Facility;
- d. 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring);
- e. 30 TEX. ADMIN. CODE § 334.51(b)(2)(C) and TEX. WATER CODE § 26.3475(c)(2), by failing to equip each tank with a valve or other appropriate device designed to either automatically shut off the flow or restrict the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level.

III. DENIALS

Naide generally denies each allegation in Section II (“Allegations”).

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Naide pay an administrative penalty as set forth in Section I, Paragraph 6, above. The payment of this administrative penalty and Naide’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 action 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: Naide Enterprises, Inc. dba Big Star Mart, Docket No. 2005-1562-PST” to:

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

2. Naide shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, Naide shall:

- i. Begin conducting inventory control procedures for all USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.48;
 - ii. Permanently tag, label, or mark the USTs with an identification number which corresponds to the Facility's registration and self-certification form, in accordance with 30 TEX. ADMIN. CODE § 334.8; and
 - iii. Submit a properly completed UST registration and self-certification form, and post the delivery certificate in a location where the document is clearly visible at all times, in accordance with 30 TEX. ADMIN. CODE §§ 334.7 and 334.8
- b. Within 30 days after the effective date of this Agreed Order, Naide shall:
- i. Install overfill prevention equipment, in accordance with 30 TEX. ADMIN. CODE § 334.51; and
 - ii. Install and implement a release detection method, in accordance with 30 TEX. ADMIN. CODE § 334.50.
- c. Within 45 days after the effective date of this Agreed Order, Naide shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision Nos. 2.a.i. through iii and 2.b.i. and ii. Naide shall submit all correspondence, reports, and documentation required by these Ordering Provisions to:

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

and

Henry Karnei, Jr., Waste Section Manager
Texas Commission on Environmental Quality
San Antonio Regional Office
14250 Judson Road
San Antonio, Texas 78233-4480

3. The provisions of this Agreed Order shall apply to and be binding upon Naide. Naide is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Naide 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, Naide's failure to comply is not a violation of this Agreed Order. Naide shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Naide shall notify the Executive Director within seven days after Naide becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. 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 Naide shall be made in writing to the Executive Director. Extensions are not effective until Naide receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Naide in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 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 the Order to Naide, or three days after the date on which the Commission mails notice of the Order to Naide, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Naide Enterprises, Inc. dba Big Star Mart
DOCKET NO. 2005-1562-PST-E

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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Meron Rendon

3/2/07

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 the entity indicated below my signature, 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 my failure to comply with the Ordering Provisions, if any, in this order and/or Naide's failure to timely pay the penalty amount, may result in:

- A negative impact on Naide's compliance history;
- Greater scrutiny of any permit applications submitted by Naide;
- 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 against Naide;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Naide, 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

Wael S. Werner

1-9-07

Signature

Date

Wael S. Werner

president

Name (Printed or typed)

Title

Authorized representative of
Naide Enterprises, Inc. dba Big Star Mart