EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-1803-PST-E **TCEQ ID:** RN101434199 **CASE NO.:** 31432

RESPONDENT NAME: Linh Nguyen dba P&H Food 2

ORDER TYPE:

_X_ 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__AMENDED ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__SHUTDOWN ORDER	__FINDINGS DEFAULT ORDER	__EMERGENCY ORDER	

CASE TYPE:

__AGRICULTURE	__AIR	__INDUSTRIAL AND HAZARDOUS WASTE	__MUNICIPAL SOLID WASTE
__OCCUPATIONAL CERTIFICATION	_X_ PETROLEUM STORAGE TANKS	__PUBLIC WATER SUPPLY	__RADIOACTIVE WASTE
__MULTI-MEDIA (check all that apply)	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL	__USED OIL
__USED OIL FILTER	__WATER QUALITY		

SITE WHERE VIOLATION(S) OCCURRED: P&H Food 2, 5902 Fulton Street, Houston, Harris County

TYPE OF OPERATION: Convenience store with retail sales of gasoline

SMALL BUSINESS: __X__ Yes ____ No

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

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 April 9, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Mr. Philip DeFrancesco, Enforcement Division, Enforcement Section IV, MC R-04, (817) 588-5933; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896
TCEQ Field Investigator: Ms. LaJuan Julun, Houston Regional Office, MC R-12, (713) 500-8779
Respondent: Mr. Linh Nguyen, Owner, P&H Food 2, 5902 Fulton Street, Houston, Texas77009
Respondent's Attorney: Not represented by counsel on this enforcement matter

Attachment: Site Compliance History

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint _X_ Routine __ Enforcement Follow-up __ Records Review **Date of Complaint Relating to this Case:** None **Date of Investigation Relating to this Case:** September 5, 2006 **Date of NOE Relating to this Case:** September 27, 2006 (NOE) **Background Facts:** This was a routine investigation. Three violations were documented. **WASTE** 1) Failed to monitor underground storage tanks ("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)]. 2) Failed to provide proper release detection for the piping associated with the UST system [30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(ii) and TEX. WATER CODE § 26.3475(a)]. 3) Failed to demonstrate financial assurance for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].	**Total Assessed:** $5,625 **Total Deferred:** $1,125 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid (Due) to General Revenue:** $125 (remaining $4,375 due in 35 monthly payments of $125 each) **Site Compliance History Classification:** __High _X_ Avg. __Poor **Person Compliance History Classification:** __High _X_ Avg. __Poor **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** The Order will require the Respondent to: a. Within 30 days after the effective date of this Agreed Order: i. Install and implement a release detection method for the USTs and the piping associated with the USTs; and ii. Submit documentation that demonstrates acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs. b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a.i. through a.ii.

Penalty Calculation Worksheet (PCW)

TCEQ

Policy Revision 2 (September 2002) *PCW Revision May 19, 2005*

DATES					
Assigned	03-Oct-2006				
PCW	31-Jan-2007	Screening	10-Oct-2006	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Linh Nguyen dba P & H Food 2		
Reg. Ent. Ref. No.	RN101434199		
Facility/Site Region	12-Houston	Major/Minor Source	Minor Source

CASE INFORMATION

Enf./Case ID No.	31432	No. of Violations	2
Docket No.	2006-1803-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Philip DeFrancesco
Multi-Media		EC's Team	Enforcement Team 7
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* $4,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 25% Enhancement *Subtotals 2, 3, & 7* $1,125

Notes: Enhancement for one NOV with same or similar violations and one 1660 order.

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 does not meet the good faith criteria.

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

**Capped at the Total EB $ Amount*

Total EB Amounts	$1,426
Approx. Cost of Compliance	$2,800

SUM OF SUBTOTALS 1-7 Final Subtotal $5,625

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 $5,625

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty $5,625

DEFERRAL 20% Reduction Adjustment -$1,125

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY $4,500

Screening Date 10-Oct-2006 **Docket No.** 2006-1803-PST-E **PCW**
Respondent Linh Nguyen dba P & H Food 2 *Policy Revision 2 (September 2002)*
Case ID No. 31432 *PCW Revision May 19, 2005*
Reg. Ent. Reference No. RN101434199
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Philip DeFrancesco

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%
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	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government *(number of judgements 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*	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) **25%**

>> **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 NOV with same or similar violations and one 1660 order.

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

Screening Date 10-Oct-2006 **Docket No.** 2006-1803-PST-E **PCW**

Respondent Linh Nguyen dba P & H Food 2 *Policy Revision 2 (September 2002)*

Case ID No. 31432 *PCW Revision May 19, 2005*

Reg. Ent. Reference No. RN101434199

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Philip DeFrancesco

Violation Number 1

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A) and (b)(2)(A)(ii)

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

Violation Description Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Failed to provide proper release detection for the piping associated with the UST system.

Base Penalty $10,000

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

Release	Harm: Major	Moderate	Minor
Actual			
Potential	x		

OR

Percent 25%

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor

Percent

Matrix Notes: Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment -$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 on documentation of the violation during the September 5, 2006 investigation to the October 10, 2006 screening date.

Economic Benefit (EB) for this violation

Estimated EB Amount $61

Statutory Limit Test

Violation Final Penalty Total $3,125

This violation Final Assessed Penalty (adjusted for limits) $3,125

Economic Benefit Worksheet

Respondent Linh Nguyen dba P & H Food 2
Case ID No. 31432
Reg. Ent. Reference No. RN101434199
Media [Statute] Petroleum Storage Tank
Violation No. 1

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				0.0	$0	$0	$0
Buildings				0.0	$0	$0	$0
Line Testing				0.0	$0	$0	$0
Engineering/construction				0.0	$0	$0	$0
Monitoring	$1,500	05-Sep-2006	30-Jun-2007	0.8	$61	n/a	$61
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 release detection for the USTs and the piping associated with 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				0.0	$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: $1,500

TOTAL $61

Screening Date 10-Oct-2006 **Docket No.** 2006-1803-PST-E **PCW**

Respondent Linh Nguyen dba P & H Food 2 *Policy Revision 2 (September 2002)*

Case ID No. 31432 *PCW Revision May 19, 2005*

Reg. Ent. Reference No. RN101434199

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Philip DeFrancesco

Violation Number 2

Primary Rule Cite(s) 30 Tex. Admin. Code § 37.815(a) and (b)

Secondary Rule Cite(s)

Violation Description Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.

Base Penalty $10,000

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

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor
	x		

Percent 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 2

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

Violation Base Penalty $2,000

Two single events are recommended for the two USTs at the Facility.

Economic Benefit (EB) for this violation

Estimated EB Amount $1,365

Statutory Limit Test

Violation Final Penalty Total $2,500

This violation Final Assessed Penalty (adjusted for limits) $2,500

Economic Benefit Worksheet

Respondent Linh Nguyen dba P & H Food 2
Case ID No. 31432
Reg. Ent. Reference No. RN101434199
Media [Statute] 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				0.0	$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)				0.0	$0	n/a	$0
Notes for DELAYED costs							
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	$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]	$1,300	05-Sep-2005	05-Sep-2006	1.0	$65	$1,300	$1,365
ONE-TIME avoided costs [3]				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Notes for AVOIDED costs	Estimated cost to provide financial assurance for two petroleum USTs (at $650 per tank) for the twelve month period preceding the date of the investigation.						

Approx. Cost of Compliance $1,300

TOTAL $1,365

Compliance History

Customer/Respondent/Owner-Operator:	CN602937070	NGUYEN, LINH	Classification: AVERAGE	Rating: 12.00
Regulated Entity:	RN101434199	P&H FOOD 2	Classification: AVERAGE	Site Rating: 12.00

ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	69591
Location:	5902 FULTON ST, HOUSTON, TX, 77009	Rating Date: 9/1/2006 Repeat Violator: NO	
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	October 04, 2006		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	October 04, 2001 to October 04, 2006		

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

Name: Philip DeFrancesco Phone: 817-588-5933

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?	No
3. If Yes, who is the current owner?	N/A
4. if Yes, who was/were the prior owner(s)?	N/A
5. When did the change(s) in ownership occur?	N/A

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

Effective Date: 03/22/2004 ADMINORDER 2003-0892-PST-E

Classification: Moderate

Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)[G]
30 TAC Chapter 37, SubChapter I 37.815(b)[G]

Description: Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.

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 08/22/2002 (8800)
2 06/01/2002 (151406)
3 09/27/2006 (514131)
4 09/18/2006 (512581)
5 11/22/2002 (151737)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 06/01/2002 (151406)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)[G]
30 TAC Chapter 37, SubChapter I 37.815(b)[G]

Description: Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.

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	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
LINH NGUYEN DBA P&H FOOD 2	§	
RN101434199	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2006-1803-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Linh Nguyen dba P&H Food 2 ("Mr. Nguyen") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Mr. Nguyen appear before the Commission and together stipulate that:

1. Mr. Nguyen owns and operates a convenience store with retail sales of gasoline at 5902 Fulton Street in Houston, Harris County, Texas (the "Facility").

2. Mr. Nguyen's two underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.

3. The Commission and Mr. Nguyen agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Nguyen is subject to the Commission's jurisdiction.

4. Mr. Nguyen received notice of the violations alleged in Section II ("Allegations") on or about October 2, 2006.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Nguyen of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Five Thousand Six Hundred Twenty-Five Dollars ($5,625) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Nguyen has paid One Hundred Twenty-Five Dollars ($125) of the administrative penalty and One Thousand One Hundred Twenty-Five Dollars ($1,125) is deferred contingent upon Mr. Nguyen's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Mr. Nguyen fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Mr. Nguyen to pay all or part of the deferred penalty.

The remaining amount of Four Thousand Three Hundred Seventy-Five Dollars ($4,375) of the administrative penalty shall be payable in 35 monthly payments of One Hundred Twenty-Five Dollars ($125) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If Mr. Nguyen fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's 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, the failure of Mr. Nguyen to meet the payment schedule of this Agreed Order constitutes the failure by Mr. Nguyen to timely and satisfactorily comply with all 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 Mr. Nguyen 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 Mr. Nguyen 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

As owner and operator of the Facility, Mr. Nguyen is alleged to have:

1. Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on September 5, 2006.

2. Failed to provide proper release detection for the piping associated with the UST system, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(ii) and TEX. WATER CODE § 26.3475(a), as documented during an investigation conducted on September 5, 2006.

3. Failed to demonstrate financial assurance for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of

petroleum USTs, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b), as documented during an investigation conducted on September 5, 2006.

III. DENIALS

Mr. Nguyen generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Nguyen pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Nguyen'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 requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Linh Nguyen dba P&H Food 2, Docket No. 2006-1803-PST-E" 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. It is further ordered that Mr. Nguyen shall undertake the following technical requirements:

   a. Within 30 days after the effective date of this Agreed Order:

      i. Install and implement a release detection method for the USTs and the piping associated with the USTs, in accordance with 30 TEX. ADMIN. CODE § 334.50; and

      ii. Submit documentation that demonstrates acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in accordance with 30 TEX. ADMIN. CODE § 37.815.

   b. Within 45 days after the effective date of this Agreed Order, 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 2.a.ii.

      The certification shall be notorized by a State of Texas Notary Public and 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."

The certification shall be submitted to:

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

with a copy to:

Waste Section Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Street, Suite H
Houston, Texas 77023-1452

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Nguyen. Mr. Nguyen 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 Mr. Nguyen 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, Mr. Nguyen's failure to comply is not a violation of this Agreed Order. Mr. Nguyen shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Nguyen shall notify the Executive Director within seven days after Mr. Nguyen 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 Mr. Nguyen shall be made in writing to the Executive Director. Extensions are not effective until Mr. Nguyen 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 Mr. Nguyen 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), the effective date is the date of hand-delivery of the Order to Mr. Nguyen, or three days after the date on which the Commission mails notice of the Order to Mr. Nguyen, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

_____ 5/7/07
For the Executive Director Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, 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 my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- 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 me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

_____ JAN. 22, 07
Signature Date

LINH NGUYEN OWNER
Name (Printed or typed) Title
Authorized Representative of
Linh Nguyen dba P&H Food 2

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.