EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-1912-PST-E **TCEQ ID:** RN102236551 **CASE NO.:** 31625

RESPONDENT NAME: Tuan Ngoc Do dba Xpress Mart

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	X PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Xpress Mart, 652 West Randol Mill Road, Arlington, Tarrant 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 2, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Ms. Judy Kluge, Enforcement Division, Enforcement Section IV, MC R-04, (817) 588-5825; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896
TCEQ Field Investigator: Ms. Tanya Apple, DFW Regional Office, MC R-04, (817) 588-5800
Respondent: Mr. Tuan Ngoc Do, Owner, Xpress Mart, 652 Randol Mill Road, Arlington, Texas 76011
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: ___ Complaint _X_ Routine ___ Enforcement Follow-up ___ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** September 21, 2006 **Date of NOE Relating to this Case:** October 25, 2006 (NOE) **Background Facts:** This was a routine investigation. Three violations were documented. **WASTE** 1) Failed to ensure that all underground storage tanks ("USTs") are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring). Specifically, the automatic tank gauge was not put into test mode at least once per month [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)]. 2) Failed to have the required UST records maintained, readily accessible, and available for the inspection upon request by agency personnel. Specifically, the release detection and inventory control records were not available for review [30 TEX. ADMIN. CODE § 334.10(b)]. 3) Failed to ensure that all spill and overfill prevention devices are maintained in good operating condition and that such devices are inspected and serviced in accordance with the manufacturers' specifications. Specifically, the spill bucket was damaged on the north tank [30 TEX. ADMIN. CODE § 334.51(a)(6) and TEX. WATER CODE § 26.3475(c)(2)].	**Total Assessed:** $4,815 **Total Deferred:** $963 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid (Due) to General Revenue:** $107 (remaining $3,745 to be paid in 35 monthly payments of $107) **Site Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Person Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Major Source:** ___ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** 1) The Executive Director recognizes that Mr. Do has implemented the following corrective measures at the Station: a. As of January 3, 2007, the TCEQ DFW Regional office received Statistical Inventory Reports verifying that all USTs are being monitored; and b. As of January 3, 2007, the TCEQ DFW Regional office received documentation verifying that release detection and inventory control records are being maintained at the Station. **Ordering Provisions:** 2) The Order will require the Respondent to: a. Within 30 days after the effective date of this Agreed Order, repair or replace the damaged spill bucket for the UST system; and 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 Provision No. 2.a

Penalty Calculation Worksheet (PCW)

TCEQ

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

DATES					
Assigned	30-Oct-2006				
PCW	08-Jan-2007	Screening	03-Nov-2006	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Tuan Ngoc Do dba Xpress Mart		
Reg. Ent. Ref. No.	RN102236551		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor Source

CASE INFORMATION

Enf./Case ID No.	31625	No. of Violations	3
Docket No.	2006-1912-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Judy Kluge
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 7% Enhancement *Subtotals 2, 3, & 7* $315

Notes: Enhancement for one prior NOV with same or similar violations and one prior NOV with dissimilar violations.

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	$35
Approx. Cost of Compliance	$1,850

SUM OF SUBTOTALS 1-7 Final Subtotal $4,815

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 $4,815

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty $4,815

DEFERRAL 20% Reduction Adjustment -$963

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 $3,852

Screening Date 03-Nov-2006 **Docket No.** 2006-1912-PST-E **PCW**
Respondent Tuan Ngoc Do dba Xpress Mart *Policy Revision 2 (September 2002)*
Case ID No. 31625 *PCW Revision May 19, 2005*
Reg. Ent. Reference No. RN102236551
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Judy Kluge

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	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability *(number of orders meeting criteria)*	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government *(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) **7%**

>> **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 with same or similar violations and one prior NOV with dissimilar violations.

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

Screening Date 03-Nov-2006 **Docket No.** 2006-1912-PST-E **PCW**

Respondent Tuan Ngoc Do dba Xpress Mart *Policy Revision 2 (September 2002)*

Case ID No. 31625 *PCW Revision May 19, 2005*

Reg. Ent. Reference No. RN102236551

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 1

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 Failed to ensure that all USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring). Specifically, the automatic tank gauge was not put into test mode at least once per month.

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 21, 2006 investigation to the November 3, 2006 screening date.

Economic Benefit (EB) for this violation

Estimated EB Amount $21

Statutory Limit Test

Violation Final Penalty Total $2,675

This violation Final Assessed Penalty (adjusted for limits) $2,675

Economic Benefit Worksheet

Respondent Tuan Ngoc Do dba Xpress Mart
Case ID No. 31625
Reg. Ent. Reference No. RN102236551
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
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	21-Sep-2006	03-Jan-2007	0.3	$21	n/a	$21
Notes for DELAYED costs	The estimated cost of monitoring all USTs for releases. The date required is the investigation date and the final date is the 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 $21

Screening Date 03-Nov-2006 **Docket No.** 2006-1912-PST-E **PCW**

Respondent Tuan Ngoc Do dba Xpress Mart *Policy Revision 2 (September 2002)*

Case ID No. 31625 *PCW Revision May 19, 2005*

Reg. Ent. Reference No. RN102236551

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 2

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.10(b)

Secondary Rule Cite(s)

Violation Description Failed to have the required UST records maintained, readily accessible, and available for the inspection upon request by agency personnel. Specifically, the release detection and inventory control records were not available for review.

Base Penalty $10,000

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

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

OR

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 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 September 21, 2006 investigation.

Economic Benefit (EB) for this violation

Estimated EB Amount $1

Statutory Limit Test

Violation Final Penalty Total $1,070

This violation Final Assessed Penalty (adjusted for limits) $1,070

Economic Benefit Worksheet

Respondent Tuan Ngoc Do dba Xpress Mart
Case ID No. 31625
Reg. Ent. Reference No. RN102236551
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	$100	21-Sep-2006	03-Jan-2007	0.3	$1	n/a	$1
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 maintain UST records. The date required is the investigation date and the final date is the 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 $100

TOTAL $1

Screening Date 03-Nov-2006 **Docket No.** 2006-1912-PST-E **PCW**

Respondent Tuan Ngoc Do dba Xpress Mart *Policy Revision 2 (September 2002)*

Case ID No. 31625 *PCW Revision May 19, 2005*

Reg. Ent. Reference No. RN102236551

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 3

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.51(a)(6)

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

Violation Description Failed to ensure that all spill and overfill prevention devices are maintained in good operating condition and that such devices are inspected and serviced in accordance with the manufacturers' specifications. Specifically, the spill bucket was damaged on the north tank.

Base Penalty $10,000

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

Release	Harm: Major	Moderate	Minor
Actual			
Potential		x	

OR

Percent 10%

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor

Percent

Matrix Notes: Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

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 on documentation of the violation during the September 21, 2006 investigation to the November 3, 2006 screening date.

Economic Benefit (EB) for this violation

Estimated EB Amount $12

Statutory Limit Test

Violation Final Penalty Total $1,070

This violation Final Assessed Penalty (adjusted for limits) $1,070

Economic Benefit Worksheet

Respondent Tuan Ngoc Do dba Xpress Mart
Case ID No. 31625
Reg. Ent. Reference No. RN102236551
Media [Statute] Petroleum Storage Tank
Violation No. 3

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	$250	21-Sep-2006	01-Jun-2007	0.7	$1	$12	$12
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 of inspecting and assuring that all spill and overfill prevention devices are maintained and operating properly. 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: $250

TOTAL $12

Compliance History

Customer/Respondent/Owner-Operator:	CN601194178	DO, TUAN NGOC	Classification: AVERAGE	Rating: 2.25
Regulated Entity:	RN102236551	XPRESS MART	Classification: AVERAGE	Site Rating: 2.25
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	55098	
Location:	652 W RANDOL MILL RD, ARLINGTON, TX, 76011	Rating Date: September 01 06	Repeat Violator: NO	
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	October 31, 2006			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	October 31, 2001 to October 31, 2006			

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

Name: Judy Kluge Phone: 817-588-5825

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.

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 11/13/2003 (252406)
2 10/25/2006 (513804)
3 02/10/2004 (259613)
4 03/05/2004 (264931)

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

Date: 11/13/2003 (252406)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.246(7)(A)
Description: failure to maintain records on-site at facilities ordinarily manned during business hours, and made immediately available for review upon request by authorized representatives of the Texas Commission on Environmental Quality (TCEQ), the U.S. Environmental Protection Agency (EPA), or any local air pollution control prog

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)
Description: failure to verify proper operation of the Stage II equipment once every 12 months. The verification shall include all functional tests that were required for the initial system test, except for TXP-101, Vapor Space Manifold, and TXP-103, Dynamic Backpressure, which must be performed at least once every 36 months.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 115, SubChapter C 115.242(9)[G]
Description: failure to post operating instructions conspicuously on the front of each dispenser equipped with a Stage II system

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(A)

Description: failure to provide and maintain the Stage II vapor recovery system in proper operating condition, as specified by California Air Resources Board (CARB) Executive Order(s), and free of defects that would impair the effectiveness of the system, including the absence or disconnection of any component that is a part of th

Date: 02/09/2004 (259613)

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.242(5)

Description: Failure to submit the results of all tests required by this section to the appropriate regional office and any local air pollution control program with jurisdiction within ten working days of the completion of the test(s) using the format specified in the TCEQ Vapor Recovery Test Procedures Handbook (RG-399, November

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN ENFORCEMENT ACTION CONCERNING TUAN NGOC DO DBA XPRESS MART RN102236551	**§ § § § §**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2006-1912-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 Tuan Ngoc Do dba Xpress Mart ("Mr. Do") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Mr. Do appear before the Commission and together stipulate that:

1. Mr. Do owns and operates a convenience store with retail sales of gasoline at 652 West Randol Mill Road in Arlington, Tarrant County, Texas (the "Station").

2. Mr. Do's three underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).

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

4. Mr. Do received notice of the violations alleged in Section II ("Allegations") on or about October 30, 2006.

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

6. An administrative penalty in the amount of Four Thousand Eight Hundred Fifteen Dollars ($4,815) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Do has paid One Hundred Seven Dollars ($107) of the administrative penalty and Nine Hundred Sixty Three Dollars ($963) is deferred contingent upon Mr. Do's timely and satisfactory compliance with all the terms of this Agreed Order. If Mr. Do fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require Mr. Do to pay all or part of the deferred penalty.

   The remaining amount of Three Thousand Seven Hundred Forty-Five Dollars ($3,745) of the

administrative penalty shall be payable in 35 monthly payments of One Hundred Seven Dollars ($107) 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. Do 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. Do to meet the payment schedule of this Agreed Order constitutes the failure by Mr. Do 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. Do have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. The Executive Director recognizes that Mr. Do has implemented the following corrective measures at the Station:

   a. As of January 3, 2007, the TCEQ Dallas/Fort Worth Regional office received Statistical Inventory Reports verifying that all USTs are being monitored; and

   b. As of January 3, 2007, the TCEQ Dallas/Fort Worth Regional office received documentation verifying that release detection and inventory control records are being maintained at the Station.

10. 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. Do has not complied with one or more of the terms or conditions in this Agreed Order.

11. 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.

12. 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 Station, Mr. Do is alleged to have:

1. Failed to ensure that all USTs are monitored in a manner which will detect a release 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 21, 2006. Specifically, the automatic tank gauge was not put into test mode at least once per month.

2. Failed to have the required UST records maintained, readily accessible, and available for the inspection upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 334.10(b), as documented during an investigation conducted on September 21, 2006. Specifically, the release detection and inventory control records were not available for review.

3. Failed to ensure that all spill and overfill prevention devices are maintained in good operating condition and that such devices are inspected and serviced in accordance with the manufacturers' specifications, in violation of 30 TEX. ADMIN. CODE § 334.51(a)(6) and TEX. WATER CODE § 26.3475(c)(2), as documented during an investigation conducted on September 21, 2006. Specifically, the spill bucket was damaged on the north tank.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Do pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Do'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: Tuan Ngoc Do dba Xpress Mart, Docket No. 2006-1912-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. Do shall undertake the following technical requirements:

   a. Within 30 days after the effective date of this Agreed Order, repair or replace the damaged spill bucket for the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.51; and

   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 No. 2.a.

The certification shall be notarized 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
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Do. Mr. Do is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Station operations referenced in this Agreed Order.

4. If Mr. Do 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. Do's failure to comply is not a violation of this Agreed Order. Mr. Do shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Do shall notify the Executive Director within seven days after Mr. Do 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. Do shall be made in writing to the Executive Director. Extensions are not effective until Mr. Do 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. Do 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. Do, or three days after the date on which the Commission mails notice of the Order to Mr. Do, 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

For the Executive Director

Date 5/10/07

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.

TUAN DO
Signature

1/27/07
Date

TUAN DO
Name (Printed or typed)
Authorized Representative of
Tuan Ngoc Do dba Xpress Mart

Owner
Title

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.