

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:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Xpress Mart, 652 West Randol Mill Road, Arlington, Tarrant County</p> <p>TYPE OF OPERATION: Convenience store with retail sales of gasoline</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on April 2, 2007. No comments were received.</p> <p>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</p>		

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 of Investigation Relating to this Case: September 21, 2006</p> <p>Date of NOE Relating to this Case: October 25, 2006 (NOE)</p> <p>Background Facts: This was a routine investigation. Three violations were documented.</p> <p>WASTE</p> <p>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)].</p> <p>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)].</p> <p>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)].</p>	<p>Total Assessed: \$4,815</p> <p>Total Deferred: \$963 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$107 (remaining \$3,745 to be paid in 35 monthly payments of \$107)</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <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>Corrective Actions Taken:</p> <p>1) The Executive Director recognizes that Mr. Do has implemented the following corrective measures at the Station:</p> <p>a. As of January 3, 2007, the TCEQ DFW Regional office received Statistical Inventory Reports verifying that all USTs are being monitored; and</p> <p>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.</p> <p>Ordering Provisions:</p> <p>2) The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, repair or replace the damaged spill bucket for the UST system; and</p> <p>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</p>



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 19, 2005

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

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

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

Notes

Culpability No 0% Enhancement Subtotal 4

Notes

Good Faith Effort to Comply 0% Reduction Subtotal 5

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

Notes

Economic Benefit 0% Enhancement* Subtotal 6

Total EB Amounts	<input type="text" value="\$35"/>	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	<input type="text" value="\$1,850"/>	

SUM OF SUBTOTALS 1-7 Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment

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

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty

DEFERRAL 20% Reduction Adjustment

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

Notes

PAYABLE PENALTY

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 <i>(number of NOVs meeting criteria)</i>	1	5%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	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 <i>(number of judgements or consent decrees meeting criteria)</i>	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events (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 <i>(number of audits for which notices were)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Please Enter Yes or No

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

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Base Penalty

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

Release	Harm		
	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Percent

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

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

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)

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

TOTAL

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**

		Harm			
Release		Major	Moderate	Minor	
OR	Actual				Percent
	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

<i>mark only one use a small x</i>	<i>daily</i>	
	<i>monthly</i>	
	<i>quarterly</i>	
	<i>semiannual</i>	
	<i>annual</i>	
	<i>single event</i>	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

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$1,070

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

Economic Benefit Worksheet

Respondent Tuah 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	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**

Harm

Release Major Moderate Minor

OR

Actual			
Potential		X	

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

Statutory Limit Test

Estimated EB Amount \$12

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	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		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? | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>N/A</u> |
| 5. When did the change(s) in ownership occur? | <u>N/A</u> |

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

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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 first part of the document discusses the importance of maintaining accurate records of all transactions and activities.

It is essential to ensure that all data is entered correctly and consistently to avoid any discrepancies or errors.

The second part of the document outlines the various methods and techniques used to collect and analyze data.

Conclusion

In conclusion, the information presented here is intended to provide a comprehensive overview of the subject matter.

References

1. Smith, J. (2010). *Advanced Data Analysis Techniques*. New York: Academic Press.

2. Johnson, A. (2015). *Statistical Methods in Business*. London: Routledge.

3. Brown, C. (2018). *Modern Data Science*. Boston: MIT Press.

4. Davis, E. (2012). *Big Data Analytics*. San Francisco: Morgan Kaufmann.

5. White, F. (2016). *Data Mining and Analytics*. New York: Wiley.

The following references provide additional resources for further study and research on the topics discussed in this document.

These references are listed in alphabetical order and include both books and articles from reputable sources.

It is recommended that you consult these references to gain a deeper understanding of the concepts and methods presented here.

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

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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

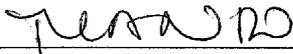
Date 5/18/07

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.



Signature

1/27/07
Date



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.

Faint header text at the top of the page, possibly containing a title or reference number.

Handwritten text or signature on the left side of the page.

Handwritten text or signature on the right side of the page.

First main paragraph of text, appearing very faint and mostly illegible.

Second main paragraph of text, appearing very faint and mostly illegible.

Third main paragraph of text, appearing very faint and mostly illegible.

Fourth main paragraph of text, appearing very faint and mostly illegible.

Fifth main paragraph of text, appearing very faint and mostly illegible.

Faint footer text at the bottom of the page.