

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2006-1103-DCL-E TCEQ ID: RN102294329 CASE NO.: 30678
RESPONDENT NAME: TONY NGUYEN DBA CLASSIC CLEANERS

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" 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 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 checked="" type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 3319 Cavalcade Street, Houston, Harris County</p> <p>TYPE OF OPERATION: A dry cleaning drop station</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 May 7, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Mr. Benjamin O. Thompson, Litigation Division, MC 175, (512) 239-1297 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Ms. Libby Hogue, Enforcement Division, Section II, MC 219, (512) 239-1165 TCEQ Regional Contact: Ms. Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623 Respondent: Mr. Tony Nguyen, Owner, Classic Cleaners, 3319 Cavalcade Street, Houston, Texas 77026 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:</p> <p><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: May 31, 2006</p> <p>Date of NOV/NOE Relating to this Case: July 25, 2006 (NOE)</p> <p>Background Facts: An EDRP was filed on January 31, 2007. The Respondent received notice of the EDRP on or about February 7, 2007. The Respondent has not filed an answer or requested a hearing.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>DCL:</p> <p>Failed to renew the Facility's registration by completing and submitting the required registration form to TCEQ for a dry cleaning and/or drop station facility [30 TEX. ADMIN. CODE § 337.11(e) and TEX. HEALTH & SAFETY CODE § 374.102].</p>	<p>Total Assessed: \$1,185</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Settlement</p> <p><input type="checkbox"/> Financial Inability to Pay</p> <p>Total Due to General Revenue: \$1,185</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this proposed Order.</p> <p>Site Compliance History Classification <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input checked="" type="checkbox"/> High <input 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>Ordering Provision(s)</p> <p>The Respondent shall undertake the following technical requirements:</p> <p>1) Within 15 days, complete and submit the required drop station registration form for the Facility.</p> <p>2) Within 30 days, submit written certification shall include detailed supporting documentation including receipts and/or other records to demonstrate compliance.</p>



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 19, 2005

DATES	Assigned	07-Aug-2006	Screening	08-Aug-2006	EPA Due	
	PCW	08-Aug-2006				

RESPONDENT/FACILITY INFORMATION	
Respondent	Tony Nguyen dba Classic Cleaners
Reg. Ent. Ref. No.	RN102294329
Facility/Site Region	12-Houston
Major/Minor Source	Minor Source

CASE INFORMATION			
Enf./Case ID No.	30678	No. of Violations	1
Docket No.	2006-1103-DCL-E	Order Type	1660
Media Program(s)	Drycleaner	Enf. Coordinator	Libby Hogue
Multi-Media		EC's Team	Enforcement Team 4
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$50

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 **\$1,185**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History -10% Reduction Subtotals 2, 3, & 7 **-\$119**

Notes: Reduction due to high performer classification.

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 EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with a small x)

Notes: The respondent does not meet good faith criteria.

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

Total EB Amounts	\$18	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$250	

SUM OF SUBTOTALS 1-7 Final Subtotal **\$1,066**

OTHER FACTORS AS JUSTICE MAY REQUIRE 10% Enhancement Adjustment **\$119**

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

Notes: Because this is a Default Order, an enhancement of 10% is applied to offset the Respondent's compliance history classification as a high performer.

Final Penalty Amount **\$1,185**

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty **\$1,185**

DEFERRAL 0% Adjustment **\$0**

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

Notes: No deferral offered for a non-expedited Order.

PAYABLE PENALTY **\$1,185**

Screening Date 08-Aug-2006

Docket No. 2006-1103-DCL-E

PCW

Respondent Tony Nguyen dba Classic Cleaners

Policy Revision 2 (September 2002)

Case ID No. 30678

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN102294329

Media [Statute] Drycleaner

Enf. Coordinator Libby Hogue

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>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	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 (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were</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%
<i>Please Enter Yes or No</i>			
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) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Reduction due to high performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) -10%

Screening Date 08-Aug-2006 **Docket No.** 2006-1103-DCL-E **PCW**
Respondent Tony Nguyen dba Classic Cleaners *Policy Revision 2 (September 2002)*
Case ID No. 30678 *PCW Revision May 19, 2005*
Reg. Ent. Reference No. RN102294329
Media [Statute] Drycleaner
Enf. Coordinator Libby Hogue
Violation Number 1
Primary Rule Cite(s) 30 Tex. Admin. Code § 337.11(e)
Secondary Rule Cite(s) Tex. Health & Safety Code § 374.102
Violation Description The respondent failed to renew the facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility.
Base Penalty \$50

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

		Harm			
Release		Major	Moderate	Minor	
OR	Actual				Percent
	Potential				

>> **Programmatic Matrix**

		Major	Moderate	Minor	
Falsification					Percent
		X			

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

Adjustment -\$45

Base Penalty Subtotal \$5

Violation Events

Number of Violation Events 237

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

Violation Base Penalty \$1,185

Two hundred thirty-seven daily events are recommended from the September 1, 2005 deadline to the April 26, 2006 deadline established by the TCEQ letter dated March 24, 2006.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount \$18	Violation Final Penalty Total \$1,185
This violation Final Assessed Penalty (adjusted for limits) \$1,185	

Economic Benefit Worksheet

Respondent: Tony Nguyen dba Classic Cleaners
 Case ID No. 30678
 Reg. Ent. Reference No. RN102294329
 Media [Statute] Drycleaner
 Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs	\$250	01-Sep-2005	31-Jan-2007	1.4	\$18	n/a	\$18
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: The estimated cost to register a dry cleaning or drop station facility annually. The date required is the date that the completed registration form was due and the final date is the date the respondent is projected to come into 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

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
TONY NGUYEN DBA CLASSIC
CLEANERS,
RN102294329

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2006-1103-DCL-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 374, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Tony Nguyen dba Classic Cleaners ("Mr. Nguyen").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Mr. Nguyen owns and operates a drop station located at 3319 Cavalcade Street in Houston, Harris County, Texas (the "Facility").
2. The Facility is a retail commercial establishment where the primary business is to act as a collection point for the drop-off and pick-up of garments or other fabrics that are sent to a dry cleaning facility for processing. As such, the Facility is a dry cleaning drop station as defined in TEX. HEALTH & SAFETY CODE § 374.001(6).
3. During an inspection on May 31, 2006, a TCEQ Houston Regional Office investigator documented that Mr. Nguyen failed to renew the Facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility.
4. Mr. Nguyen received notice of the violation on or July 30, 2006.

5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Tony Nguyen dba Classic Cleaners" (the "EDPRP") in the TCEQ Chief Clerk's office on January 31, 2007.
6. By letter dated January 31, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Nguyen with notice of the EDPRP. According to the return receipt "green card," Mr. Nguyen received notice of the EDPRP on February 7, 2007, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Mr. Nguyen received notice of the EDPRP, provided by the Executive Director. Mr. Nguyen failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Nguyen is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 374, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Nguyen failed to renew the Facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility, in violation of 30 TEX. ADMIN. CODE § 337.11(e) and TEX. HEALTH & SAFETY CODE § 374.102.
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director has timely served Mr. Nguyen with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 7, Mr. Nguyen has failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Nguyen and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Nguyen for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.

6. An administrative penalty in the amount of one thousand one hundred eighty-five dollars (\$1,185.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE §§ 7.053 and 7.0525(c).
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Mr. Nguyen is assessed an administrative penalty in the amount of one thousand one hundred and eight-five dollars (\$1,185.00) for violations of TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 374, and rules of the TCEQ. The payment of this administrative penalty and Mr. Nguyen's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Tony Nguyen dba Classic Cleaners; Docket No. 2006-1103-DCL-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. Mr. Nguyen shall undertake the following technical requirements:
 - a. Within 15 days after the effective date of this Order, Mr. Nguyen shall complete and submit the required drop station registration form for the Facility, in accordance with 30 TEX. ADMIN. CODE § 337.11 to:

Dry Cleaning Registration Team
Texas Commission on Environmental Quality
P.O. Box 13087

Austin, Texas 78711-3087

- b. Within 30 days after the effective date of this Order, Mr. Nguyen shall submit written certification of compliance with Ordering Provision 2.a. The certification shall, include detailed supporting documentation including receipts and/or other records to demonstrate compliance, be notarized by a State of Texas Notary Public and include the following 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

And

Nicole Bealle, Waste Section Manager
Texas Commission on Environmental Quality
Houston Regional Office
5425 Polk St., Suite H
Houston, Texas 77023-1452

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. Nguyen. Mr. Nguyen is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. If Mr. Nguyen fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Nguyen's failure to comply is not a violation of this 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.

6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by 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.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Nguyen if the Executive Director determines that Mr. Nguyen has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF DEANNA SIGMAN

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Deanna Sigman. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Tony Nguyen dba Classic Cleaners” (the “EDPRP”) with the Office of the Chief Clerk on January 31, 2007.

I sent the EDPRP to Mr. Nguyen at his last known address on January 31, 2007 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card”, Mr. Nguyen received notice of the EDPRP on February 7, 2007, as evidenced by the signature on the card.

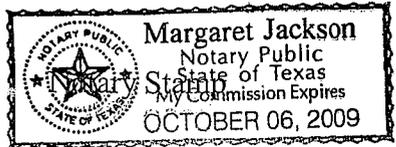
More than 20 days have elapsed since Mr. Nguyen received notice of the EDPRP. Mr. Nguyen failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference”.

DC

Deanna Sigman
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Deanna Sigman, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 16 day of March, A.D., 2007.



Margaret Jackson

Notary Signature